

IN THE MATTER between **JOY STEWART**, Applicant, and **KIRK VANDER PLOEG**, Respondent;

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act")and amendments thereto;

AND IN THE MATTER of a Hearing before, **HAL LOGSDON**, Rental Officer, regarding the rental premises at **HAY RIVER, NT**.

BETWEEN:

JOY STEWART

Applicant/Landlord

- and -

KIRK VANDER PLOEG

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondent shall pay the applicant repair costs in the amount of four thousand nine hundred twenty seven dollars and seventy three cents (\$4927.73).

DATED at the City of Yellowknife, in the Northwest Territories this 2nd day of September, 2011.

Hal Logsdon
Rental Officer

IN THE MATTER between **JOY STEWART**, Applicant, and **KIRK VANDER PLOEG**, Respondent.

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

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BETWEEN:

JOY STEWART

Applicant/Landlord

-and-

KIRK VANDER PLOEG

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REASONS FOR DECISION

Date of the Hearing: August 5, 2011

Place of the Hearing: Yellowknife, NT via teleconference

Appearances at Hearing: Joy Stewart, applicant
Kirk Vander Ploeg, respondent

Date of Decision: September 2, 2011

REASONS FOR DECISION

The tenancy agreement between the parties was terminated on December 28, 2010 when the respondent abandoned the premises. The applicant retained the security deposit but was ordered to return the deposit and interest as she had neglected to provide a statement of the deductions (files #10-11962 and #10-12073, filed on May 3, 2011). The applicant sought an order requiring the respondent to pay repair and cleaning costs.

The applicant provided a summary of cleaning and repair costs totalling \$17,895 as well as invoices, quotations and photographs. The parties agree that no written inspection report was completed at the commencement of the tenancy agreement. Section 15(1) of the *Residential Tenancies Act* in effect when the tenancy agreement commenced, requires such a report but the Act does not preclude a claim for damages pursuant to section 42.

15.(1) At the commencement of the tenancy and when a security deposit is requested, a landlord and tenant shall sign a document that sets out the condition and contents of the rental premises.

42.(1) A tenant shall repair damage to the rental premises and the residential complex caused by the wilful or negligent conduct of the tenant or persons who are permitted on the premises by the tenant.

The applicant's claim is composed of the following elements:

GENERAL CLEANING

The applicant submitted that the premises were not left in a state of ordinary cleanliness and required 44 person hours of cleaning for a total cost of \$1220. The applicant

submitted an itemized invoice for \$500. The applicant indicated that the remaining expenditure of \$720 was paid to another party but did not provide any documentation regarding that expenditure. The respondent disputed the requirement for cleaning, stating that the premises were clean including the walls which were washed and the carpet that was steam cleaned.

The photographic evidence supports the requirement for some cleaning but in my opinion does not indicate the need for 44 person hours. The photographic evidence indicates that the washer, dishwasher and the bathroom were not clean and the furniture was dirty and stained. The photographs also indicate an overhead light fixture stained due to cigarette smoke. In my opinion, the evidence supports only 10 hours of cleaning. I find compensation of \$250 to be reasonable.

WALL REPAIR AND PAINTING

The applicant submits that the entire premises had to be repainted and walls patched. An invoice for drywall repairs and painting labour totalling \$6090 was provided along with other invoices for paint totalling \$868.93. The applicant stated that the suite had been repainted in 2004 and the remainder of the premises in 2002 when the premises were renovated. The applicant stated that some allowance had been made for “normal wear and tear” and sought relief of \$3334. Some of the labour invoice related to water damage in the suite bedroom, storage room and furnace room. The cost of these repairs was not itemised on the invoice.

The respondent questioned whether the allowance for “normal wear and tear” was sufficient given the length of time he had been a tenant.

The photographic evidence does not indicate any significant wall damage or the requirement to paint the premises. In my opinion, the normal useful life of paint in a rental property is approximately five years. The age of the paint in these premises exceeds that guideline. Notwithstanding whether the walls were discoloured by the respondent’s smoking, the premises were due for repainting at the landlord’s expense. Regardless of the liability for the alleged water damage, I am unable to estimate a value for the work that was done. Neither the photographic evidence or the contractor’s invoice provide sufficient guidance to estimate a reasonable cost. The respondent’s request for relief of \$3334 is therefore denied.

CARPET CLEANING/REPLACEMENT

The applicant sought compensation of \$799.57 for carpet cleaning and provided an invoice from the cleaner for the work. She noted that Articles 6 and 7 of the tenancy agreement obligate the tenant to have the carpets professionally cleaned.

The respondent testified that he had steam cleaned the carpets himself. The respondent also noted that there was no inspection report done at the commencement of the tenancy agreement setting out the condition of the premises. He stated that he did not know if there were burn marks on the carpet at that time because there was no inspection report to

refer to. When asked if there were any repair costs now being claimed by the applicant for damages he noticed at the commencement of the tenancy agreement, he replied, “No...No sir. My point is that there was no pre-inspection done.”

The applicant stated that the cleaning was unsuccessful in removing the stains and that the carpet also suffered numerous cigarette burns making replacement necessary. In addition to the cleaning costs, the applicant also sought compensation for the replacement of the carpets. She provided a quotation for the replacement of the carpets totalling \$9027.41. The applicant stated that she had considered an allowance for “normal wear and tear” and sought relief of \$4513.50.

The photographic evidence, which I presume represents the condition of the carpets after the professional cleaning, shows numerous cigarette burns and stains. In my opinion, the carpets are beyond repair. The respondent’s equivocal statements concerning the damage indicate to me that the burns and stains were not present at the commencement of the tenancy agreement but, in his opinion, the landlord is not entitled to relief because the inspection report was not completed. As stated previously, in my opinion, the Act does not preclude a claim pursuant to section 42.

Although the applicant did not give a specific age of the carpeting, it is reasonable to assume that it was installed no later than 2002 when the premises were renovated.

Therefore, the applicant has enjoyed eight years of it’s useful life, which in my opinion is

ten years. Therefore, in my opinion, reasonable compensation, is \$1805.48 or 20% of the replacement cost. The cleaning costs are denied as the respondent cleaned the carpets, resulting in a state of ordinary cleanliness and further cleaning was unnecessary.

KITCHEN CABINETS AND COUNTER TOPS

The applicant alleged that a number of ceramic tiles on the kitchen counter backsplash were missing, the Corien kitchen counter top cracked, the cabinet paint was chipped and there was water damage under the sink. The applicant sought compensation of \$1072.07 and provided two invoices documenting the repair costs. Photographs of the missing and damaged tiles were provided. There were no photographs of the cabinets or the alleged water damage and the photographs of the Corien counter show no visible cracks. The applicant is claiming \$1040 of the labour invoice for 20 hours at \$52/hour to provide “labour to repair damaged tiles on Kitchen Back Splash and Master Bathroom Floor.” The applicant also claims material costs of \$32.07 for grout and edging.

The respondent stated that the tiles simply fell off the wall. He stated that the tiles were not discarded and were available to the landlord to re-apply. The respondent stated that in his opinion, the repairs were made necessary due to normal wear and tear. I agree.

Although the applicant stated that she believes the tiles were damaged by persons sitting on the counter, I doubt this would cause the tiles to fall off. The applicant’s request for relief is denied.

KITCHEN SINK SPRAYER

The applicant sought compensation for a broken kitchen sink nozzle and provided a photograph of the item. A receipt for a replacement was also provided indicating a cost of \$136.49. In my opinion, this is not normal wear and tear and the cost is reasonable.

STOVE TOP REPLACEMENT

The applicant sought compensation for damaged ceramic stove tops and elements. Photographs of the stove tops was provided as well as evidence of replacement cost totalling \$868.35. The applicant stated that she suspected the damage was caused by using over-sized pots on the cooking surface. The applicant has considered an allowance for "normal wear and tear" and seeks relief of \$434.18.

Some discolouration of the cooking surface should be expected over time and, in my opinion, is normal wear and tear. In my opinion cooking element failures are also due to normal wear and tear. The applicant's request for relief is denied.

OVEN REPLACEMENT

The applicant sought compensation for the replacement of a wall oven. Photographs and an invoice for the replacement cost of \$1888.95 were provided in evidence. The applicant stated that the oven door was locked when the landlord took possession and could not be opened. The oven door appears to have been pried open, severely damaging the oven door and frame. The applicant noted that the top surface of the door was discoloured and the

oven contained some ash residue. The applicant speculated that the oven was put in the self clean mode when it was extremely dirty or when food was left in the oven, causing a fire, which caused the door to malfunction.

The respondent denied that a fire had occurred.

Although the discolouration could have been caused by a fire, there does not appear to be a large volume of ash in the oven and the discolouration is limited to only part of the top portion of the door. The discolouration could also have been caused by a leaky door seal and multiple self cleaning cycles without wiping up the residue afterwards. It is not unreasonable to speculate that the door latch failed due to other reasons not caused by the tenant's negligence.

I am not convinced that the only method of opening the oven door was to pry it open, ruining the appliance and eliminating any possibility that the oven could have been made serviceable again. It is certainly beyond repair now but may have been rendered so by the landlord's action rather than the tenant's.

I am not convinced by the evidence that the oven was damaged due to the negligence of the tenant. The request for relief is denied.

MISSING VERTICAL BLINDS

The applicant stated that the living room vertical blinds were removed from the premises. The respondent did not dispute the allegation. I find the relief of \$282.87 to be reasonable.

REPLACEMENT OF ARTWORK

The applicant stated that she left a piece of artwork in the living room of the premises at the respondent's request. She stated that the artwork had been removed from the living room and was discovered downstairs damaged by water. The artwork was not appraised or specifically covered by insurance but the applicant stated that the original price was \$1200 and sought compensation in that amount. Photographs of the artwork show it leaning against a wall resting on pieces of lumber to keep it off the floor. Presumably that was where the artwork had been stored when removed from the living room.

There were several water escapes during the tenancy noted by the respondent. It is not clear if any of these incidents resulted in the damage to the artwork but several of the water escapes were due to a leaky tap and a leaking water tank, neither of which were the result of tenant negligence. Although the artwork would have perhaps been more safe hanging in the living room, it was not stored in a negligent manner and the damage can not be attributed to a negligent act by the tenant. The applicant's request for relief is denied.

REPLACEMENT OF BATH CONTROL AND TOWEL RACK

The damage to these items is not normal wear and tear and the replacement costs totally \$169.98 are reasonable.

FIREPLACE REMOTE REPLACEMENT

This item was not in the premises at the end of the tenancy agreement. I find the replacement cost of \$259.31 to be reasonable.

BURN ON MOVABLE KITCHEN CABINET

The applicant submitted that the movable kitchen cabinet was damaged by burn marks and water damage and sought compensation of \$250. Photographs of the burn marks were provided but the nature and extent of the alleged water damage is not apparent. The applicant has not provided any documentation regarding the replacement value. The three cigarette burn marks are the result of negligence and the respondent did not dispute the allegations or the compensation requested. I find the cost of \$250 to be reasonable.

REMOVAL OF PLATFORM IN YARD

The respondent built a platform adjoining the premises. There was no evidence that the respondent sought the permission of the applicant to construct it or leave it as an improvement to the property. The applicant does not want it on the property and seeks compensation of \$1200 to pay for its removal. The applicant provided a quotation of \$1200 to remove the structure.

In my opinion, it is reasonable to require the respondent to restore the yard to its original condition by removing the structure and the relief of \$1200 requested by the applicant is reasonable.

GARAGE CLEAN-UP

The applicant sought compensation for cleaning up garbage left in the garage and cleaning the garage floor. Photographs of the garage floor were provided in evidence but give little guidance as to the extent of the work needed to be done. The applicant referred to a payment made by cheque but no invoice or cancelled cheque was provided. I am unable to determine from the evidence if the claimed costs of \$420 are reasonable. The relief is denied.

SNOW REMOVAL

The written tenancy agreement between the parties obligates the respondent to keep the sundeck clear of snow during the winter months. The applicant stated that the sundeck had significant snow accumulation when the respondent vacated the premises and provided a cheque for \$200 dated December 29, 2010 for snow removal. I find the relief sought by the applicant to be reasonable.

DECK REPAIR

The applicant sought repair costs of \$141.75 to repair the PVC deck. Photographs of the damaged deck were provided as well as an invoice for the work. The respondent stated

that the deck material was subject to breakage in cold weather. While that may be the case, I am confident that the posts did not break spontaneously or due to normal use. I find the repairs were made necessary due to the negligence of the respondent and find the repair costs to be reasonable.

GLASS TABLE TOP

The applicant sought replacement costs for a small glass table top which was missing at the end of the tenancy agreement. She estimated the cost of the glass to be \$75. The respondent did not dispute the allegations. I find the respondent liable for the damage and find the cost of \$75 to be reasonable.

REPAIR OF CLOTHES DRYER AND DISHWASHER.

The applicant stated that the dryer had been used without the lint filter, causing the dryer to fill up with lint. She stated that the filter was replaced and the dryer cleaned out. The applicant also submits that a piece was missing from the dishwasher. An invoice was provided indicating that a nut was replaced on the dishwasher arm, a new filter supplied and labour for a total of \$164.25. Photographs of the dryer and the lint that was removed were also provided. In my opinion, the continued use of the dryer without a filter is negligent but the loss of the dishwasher nut is most likely normal wear and tear.

Deducting the cost of the nut (\$7.40), I find reasonable compensation to be \$156.85. I assume the labour component to reinstall one nut was negligible.

REPLACEMENT OF CEILING LIGHTS AND SMOKE DETECTOR

The applicant submits that the smoke detectors and ceiling light fixtures were so discoloured by cigarette smoke that they had to be replaced. There is no evidence that indicates the fixtures or smoke detectors were not in working order. Photographs were provided in evidence. The tenancy agreement between the parties does not prohibit smoking in the premises.

In my opinion, the photographs do not indicate that the fixtures or the smoke detectors were so badly stained that they required replacement. In my opinion, the remaining discolouration is normal wear and tear. The applicants request for relief is denied.

In summary, I find the respondent in breach of his obligation to repair damages to the premises and find reasonable compensation to be \$4927.73 calculated as follows:

ITEM	RELIEF
Cleaning	\$250.00
Carpet replacement	1,805.48
Kitchen sink nozzle	136.49
Blind replacement	282.87
Bathroom repairs	169.98
Fireplace remote	259.31
Cabinet burns	250.00
Removal of platform	1,200.00
Snow removal	200.00
Broken deck posts	141.75
Table glass top	75.00
Dryer/dishwasher	<u>156.85</u>
TOTAL	\$4,927.73

An order shall issue requiring the respondent to pay the applicant repair costs in the amount of \$4927.73.

Hal Logsdon
Rental Officer