

IN THE MATTER between **J.M. ALAIN CHIASSE**, Applicant, and **SEAN FRADSHAM AND RONA FRADSHAM**, Respondents;

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 **YELLOWKNIFE, NT**.

BETWEEN:

J.M. ALAIN CHIASSE

Applicant/Tenant

- and -

SEAN FRADSHAM AND RONA FRADSHAM

Respondents/Landlords

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18.1(b) of the *Residential Tenancies Act*, the respondents shall return the retained security deposit and accrued interest to the applicant in the amount of one thousand six hundred ninety six dollars and twenty nine cents (\$1696.29).

DATED at the City of Yellowknife, in the Northwest Territories this 30th day of September, 2013.

Hal Logsdon
Rental Officer

IN THE MATTER between **J.M. ALAIN CHIASSON**, Applicant, and **SEAN FRADSHAM AND RONA FRADSHAM**, Respondents.

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

AND IN THE MATTER of a Hearing before **Hal Logsdon**, Rental Officer.

BETWEEN:

J.M. ALAIN CHIASSON

Applicant/Tenant

-and-

SEAN FRADSHAM AND RONA FRADSHAM

Respondents/Landlords

REASONS FOR DECISION

Date of the Hearing: September 3, 2013

Place of the Hearing: Yellowknife, NT via teleconference

Appearances at Hearing: J.M. Alain Chiasson, applicant
Carole Hebert, witness for the applicant
Rona Fradsham, respondent
Sean Fradsham, respondent
Patricia Tiffen, representing the respondents

Date of Decision: September 30, 2013

REASONS FOR DECISION

The tenancy agreement between the parties was terminated on November 30, 2012 when the applicants vacated the premises. The respondents retained the security deposit (\$1650) and accrued interest (\$46.29) applying it against the repair of a kitchen sink leak and resultant damage to the kitchen cabinets and counter (\$6850). The respondents prepared a statement of the security deposit dated December 9, 2012. The statement appears to be an estimated statement in accordance with section 18(9) or 18(10). It was accompanied by a quotation for the cabinet and counter repairs but noted that "there will be more quotes coming" and indicated that the final balance would be determined when all quotations were received and the work completed.

It does not appear that a final statement of the security deposit was prepared until August 15, 2013 when the following statement was filed by the respondents' legal counsel.

Labour	\$2560.00
Materials	600.00
Lumber supplies	200.00
Loss of rental income:	
\$1750 x 2 (December & January)	3500.00
Fuel, water and power bills	1190.00
Unpaid water bill by tenant	139.49
Less security deposit	<u>(1650.00)</u>
Amount due landlord	\$6539.49

The applicant disputed the deductions from the security deposit and sought the return of the security deposit and accrued interest.

The respondents have not filed an *Application to a Rental Officer*. Therefore the only issue

before me is whether the deductions from the applicant's security deposit are reasonable. In addition to the \$6539.49 alleged owing to the respondent, the respondent seeks \$1750 in damages due to the alleged failure of the applicant to give adequate notice to terminate the tenancy agreement. These damages do not appear on the security deposit statement nor should they. Without an application from the landlord I am unable to determine this element of the dispute.

Section 18(4) of the *Residential Tenancies Act* sets out what may be deducted from a security deposit

18(4) A landlord may, in accordance with this section, retain all or a part of a security deposit, a pet security deposit or both for arrears of rent owing from a tenant to the landlord in respect of the rental premises, and for repairs of damage to the premises caused by the tenant or a person permitted on the premises by the tenant.

Arrears of rent is rent that has come due and has not been paid. This tenancy agreement was terminated on November 30, 2012. No rent came due after that date. While a tenant may be liable for compensation after a tenancy agreement is terminated, that compensation is not rent. It is a damages claim and must be sought through an application by the landlord. The parties agree that the rent was paid up to November 30, 2012. Therefore, the loss of rental income of \$3500 is not a permissible deduction from the security deposit.

Rent is defined in the Act as follows:

"rent" includes the amount of any consideration paid or required to be paid by a tenant to a landlord or his or her agent for the right to occupy rental premises and for any services and facilities, privilege, accommodation or thing that the landlord

provides for the tenant in respect of his or her occupancy of the rental premises, whether or not a separate charge is made for the services and facilities, privilege, accommodation or thing.

The tenancy agreement between the parties obligates the tenant to pay for fuel, water and power during the term of the agreement. None of these costs are rent as they are not paid to the landlord. As with compensation for lost rent, any relief must be sought through the landlord's application. The deductions of \$1190 and \$139.49 are not permissible deductions from the security deposit.

The respondents submit that there was significant damage to the kitchen cabinet and counter due to a leaking faucet. Rather than hiring the contractor who had provided the original quotation for the repairs, the respondents undertook the work themselves at a lower cost.

The applicant denied that the damage was a result of his negligence stating that he did not notice the leak until he was cleaning on November 27, 2012 just prior to moving out. He stated that he notified the landlord when the leak was discovered and that the water escape was only noticeable when he moved a box from under the sink and found it to be wet. He stated that he found a rag stuffed in the opening of the cabinet where the water supply entered. He stated that he was previously unaware that the rag was there and did not place it in the cabinet himself. He stated that he did not know where the leak originated.

The applicant's witness stated that she frequently used items from the cabinet and had not noticed any water escape.

The applicant stated that he had lived in the premises for 2½ years and had always contacted the landlord if there were any repairs or maintenance to be done. The respondents acknowledged that they had been advised of several problems during the term and had attended to them promptly. The respondents noted that there was no leakage noted on the check-in inspection report and that no leakage was discovered during an inspection conducted in June, 2012.

The respondents provided several photographs of the cabinet, fixture and the affected area which were taken during the first week of December, 2012. The pictures show a conventional double stainless steel drop-in sink with a double handle swivel spout mounted on the sink skirt. The counter is a conventional laminate counter with a backsplash. A photograph of the interior of the cabinet clearly shows a dark rectangular stain under the sink where the wet box was located. There is also some staining on the back of the cabinet where the box was located.

Mr. Fradsham testified that when the faucet was turned on, there was clearly some water escape around the base of the spout. He stated that the leak would have been easily detected by anyone using the fixture. He stated that the leak was most likely caused by a worn seal. These fixtures commonly utilize an o-ring or similar seal at the base of the faucet to prevent leakage. There is also a gasket between the fixture and the sink skirt. A photograph of the fixture after it had been removed, showed considerable corrosion under the base plate, suggesting that water had been collecting in that area. Mr. Fradsham did not think that the leak occurred under the sink but instead migrated from the leaking fixture into the cabinet. The respondents denied placing the rag in the cabinet.

As previously stated, section 18(4) permits repair costs related to tenant damages to be deducted from a security deposit. Section 42 adds some clarity to the definition of tenant damage, eliminating “ordinary wear and tear” and requiring some degree of “wilful or negligent conduct”.

- 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.**
- (2) Ordinary wear and tear of rental premises does not constitute damage to the premises.**

Section 30 obligates the landlord to maintain the rental premises in a good state of repair.

Subsection 5 requires the tenant to give reasonable notice to the landlord of any substantial breach that comes to the attention of the tenant.

- 30. (1) A landlord shall**
 - (a) provide and maintain the rental premises, the residential complex and all services and facilities provided by the landlord, whether or not included in a written tenancy agreement, in a good state of repair and fit for habitation during the tenancy; and**
 - (b) ensure that the rental premises, the residential complex and all services and facilities provided by the landlord comply with all health, safety and maintenance and occupancy standards required by law**
- (5) A tenant shall give reasonable notice to the landlord of any substantial breach of the obligation imposed by subsection (1) that comes to the attention of the tenant.**

The damage to the counter and cabinet certainly appears to have occurred during the term of this tenancy agreement. Neither the check-in inspection or the inspection in June 2012 noted any damage. Both the photographic evidence and the testimony of Mr. Fradsham suggest that the damage to the counter and cabinet was caused by a leak which was caused by failure of the faucet

seal. In my opinion, this is the most likely source of the leak. The water escaped from the faucet due to a failed seal and then migrated past the deteriorated gasket and into the cabinet. Where the rag came from or who placed it in the cabinet can not be determined but in my opinion, it had little or nothing to do with the leak. The failure of the seal was not due to any negligence or wilful act of the applicants. It was normal wear and tear. If there is a negligent or wilful act on the part of the applicant, it would have to be a failure to advise the landlord of the leak in accordance with section 30(5). The respondent submits that the applicant must have noticed the leak. The applicant submits that it was not noticed until he removed the box under the sink just prior to moving out. His witness also stated that she did not notice the leak. There is evidence that the applicant notified the landlord of a number of required repairs during the term and the landlord took prompt action to make the repairs. It would be reasonable to assume that the applicant would have reported the leak if it was discovered earlier.

In my opinion, there is no negligent or wilful act that caused the damage to the cabinet or the counter. While Mr. Fradsham may have noticed the failed fixture seal and understood that water may have been able to find its way into the cabinet below due to a deteriorated gasket, I am not convinced that the applicant, who readily acknowledged his lack of plumbing knowledge, would have noted the leak or understood the possible consequences.

In summary. I find the deductions from the security deposit are not reasonable and shall issue an order requiring the respondents to return the security deposit and accrued interest in the amount of \$1696.29 to the applicant.

Hal Logsdon
Rental Officer