File #10-14388

IN THE MATTER between **CONSTANTINA TSETSOS AND R. WAYNE GUY**, Applicants, and **KASSANDRA DEFRANCIS AND JUSTIN MACEACHREN**, 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:

CONSTANTINA TSETSOS AND R. WAYNE GUY

Applicants/Landlords

- and -

KASSANDRA DEFRANCIS AND JUSTIN MACEACHREN

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondents shall pay the applicants repair costs in the amount of nine hundred twenty dollars and sixty five cents ($920.65).

DATED at the City of Yellowknife, in the Northwest Territories this 9th day of December, 2014.

Hal Logsdon
Rental Officer

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Applicants/Landlords

-and-

KASSANDRA DEFRANCIS AND JUSTIN MACEACHREN

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing:	**November 18, 2014**
Place of the Hearing:	**Yellowknife, NT**
Appearances at Hearing:	**Constantina Tsetsos, applicant (by telephone)** **Kassandra DeFrancis, respondent** **Justin MacEachren, respondent**
Date of Decision:	**December 4, 2014**

REASONS FOR DECISION

The tenancy agreement between the parties was terminated on May 30, 2014. The applicants retained the security deposit ($1600) and interest ($1.57), applying it against kitchen counter material ($1734.53), a 10% administration fee on the counter ($236.45), counter installation labour ($630), carpet cleaning ($173.25) and propane bills ($533.77) resulting in a balance owing the applicants of $1706.43. The applicants sought relief in that amount. A statement of the security deposit and deductions, dated September 18, 2014 was provided in evidence.

The respondents disputed the amount owing on several grounds. The respondents provided a statement of the security deposit and deductions dated June 10, 2014 and titled "final statement" in evidence. The deductions for the counter ($2175.52), propane bills ($511.97) and administration fee ($234.88) were lower than the September 18, 2014 statement resulting in a balance owing of $1494.05. The respondents noted the provisions of sections 18(9) and 18(10) of the *Residential Tenancies Act* and submitted that the applicants' June 10 statement was not an estimated statement nor was the September 18 statement provided within the time limitations set out in section 18(10).

The respondents acknowledged that they damaged the counter but argued that only two of the three sections of the counter had been damaged. The respondents provided photographs and a sketch of the counter showing a burn mark. The respondents argued that only two of the three sections needed to be replaced and suggested that the costs claimed by the applicants be reduced

to reflect the area of only two of the three sections. The applicant testified that they were advised that the two damaged sections of the counter could not be replaced without damaging the third section and therefore the entire unit had to be replaced. The counter has a laminate surface.

The respondents alleged that the landlord had failed to provide them with timely or complete billings for the propane. The applicant provided invoices from Superior Propane for the premises and an accounting of the propane used by the respondents during the term of the tenancy.

The written tenancy agreement between the parties sets out the tenants' obligation to pay for fuel during the term and names Superior Propane as the supplier. The propane fuel is stored in a common tank and is distributed by meter to individual premises. The account for 3512-B McDonald Drive is in the name of the landlords. The respondents testified that they had not made any application to Superior Propane for service and were advised by the landlord at the beginning of the tenancy that they would be billed by the landlords for the propane. The applicant stated that they had been advised by Superior Propane that they would not set up accounts for propane with tenants and that the account would have to be in the landlord's name.

I am advised by the sales manager of Superior propane that they do set up accounts for tenants who are on metered service but do not enter service contracts with tenants where there is a single rented tank. The manager did acknowledge however, that this policy could have been misinterpreted by the local supplier.

The respondents did not dispute the carpet cleaning charges.

THE COUNTER

Given the construction of the counter it is unlikely that a proper fit and finish could have been achieved by replacing only two of the counter components. In my opinion, the applicants' decision to replace the entire counter was not unreasonable. Section 42 of the *Residential Tenancies Act* obligates the tenant to repair any damages to the rental premises and the option to arrange for the repair of the counter themselves was certainly available to the respondents.

The applicants itemized the cost of the counter repairs in both security deposit statements. While the material cost was about the same, the September 18 statement shows a significantly higher labour cost which is confirmed by an invoice from the installer. The applicant was not sure how the earlier labour cost was determined. Nevertheless, the Act requires that a timely statement be produced and since the June 10 statement was issued as a final statement rather than an estimate and no later statement was provided within the time limitation imposed by the Act, in my opinion, the earlier labour cost must be accepted.

In this case, the landlord was required to find a supplier, order the counter, identify an installer and deliver the counter to the installer. In essence, the applicants acted as general contractor for the work and, in my opinion, the 10% administration fee is not unreasonable. It should, however be adjusted to reflect the lower labour cost allowed.

PROPANE COST

The tenancy agreement clearly sets out that the tenants are obligated to pay for propane during the term yet the landlords have kept the account in their name and re-billed the tenants for costs incurred. It appears from the testimony of the respondents that they never requested service from the supplier or were advised to do so. If the applicants knew that the supplier was not going to set up an account with tenants of these premises, why did they construct the tenancy agreement as they did?

Re-billing for utilities creates a fundamental problem which render the practice inconsistent with the Act. “Rent” and “services and facilities” are defined in section 1(1) of 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.**
>
> **"services and facilities" includes furniture, appliances and furnishings, parking and related facilities, laundry facilities, elevator facilities, common recreational facilities, garbage facilities and related services, cleaning or maintenance services, storage facilities, intercom systems, cable television facilities, heating facilities or services, air- conditioning facilities, utilities and related services, and security services or facilities.**

Therefore utilities, being included as a service or facility, is considered rent if payable to the landlord. If the landlord charges a flat rate every month for fuel, there is no inconsistency provided it is set out in the tenancy agreement. However a problem arises when the charge for utilities increases. Any increase for re-billed utilities would be inconsistent with the provisions

for rent increases contained in section 47 of the Act. For this reason and because the tenancy agreement does not contain any obligation of the tenants to pay the landlord for fuel, the relief for propane charges requested by the landlord are denied.

I find the amount owing to the applicants to be $920.65 calculated as follows:

Security deposit	($1600.00)
Interest	(1.57)
Counter supply	1734.52
Administration	173.45
Counter labour	441.00
Carpet cleaning	173.25
Amount owing applicants	$920.65

An order shall issue requiring the respondents to pay the applicants repair costs in the amount of $920.65.

Hal Logsdon
Rental Officer