File #15489

IN THE MATTER between **ES and SS**, Applicant, and **SCPL**, Respondent.

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 **Adelle Guigon**, Rental Officer,

BETWEEN:

ES and SS

Applicants/Tenants

-and-

SCPL

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing:	**March 29, 2017**
Place of the Hearing:	**Yellowknife, Northwest Territories**
Appearances at Hearing:	**ES, applicant** **TK(2), representing the respondent** **DP, witness for the respondent**
Date of Decision:	**June 16, 2017**

REASONS FOR DECISION

An application to a rental officer made by ES and SS as the applicants/tenants against TK(1) (Landlord of Beck Court Apartments) as the respondent/landlord was filed by the Rental Office December 15, 2016. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The applicants served the filed application on the respondent by registered mail signed for December 30, 2016.

The applicants/tenants alleged the respondent/landlord had improperly retained the security deposit and that the respondent/landlord had improperly removed and disposed of the applicants/tenants bicycles. An order was sought for the return of the retained security deposit and compensation for the lost property.

A hearing was scheduled for March 29, 2017, in Yellowknife, Northwest Territories. ES appeared as applicant and on behalf of SS. TK(2) appeared representing the respondent, with DP appearing as a witness for the respondent.

Preliminary matters

The application to a rental officer identified TK(1) as the landlord of the rental premises. The applicant's representative confirmed that she was TK(1) but that her legal name is TK(2). The applicant's representative also confirmed that she is a manager for the landlord, who is SCPL The parties agreed at the hearing that the respondent/landlord identified on the application to a rental officer should appropriately be identified as SCPL. The style of cause going forward will reflect SCPL as the respondent/landlord.

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Tenancy agreement

The parties agreed that a residential tenancy agreement had been entered into between them commencing June 1, 2014. The parties also agreed that the tenancy agreement ended September 30, 2016. I am satisfied a valid tenancy agreement was in place between the parties in accordance with the Act.

Security deposit and damages

An exit inspection was conducted of the rental premises with both the tenant and landlord present on October 3, 2016. The landlord's notes in the inspection report state:

> "Carpets were not steam cleaned. Washer/dryer unit dirty. Stove not clean. Outside of kitchen cupboards dirty. Inside of kitchen cupboards not clean (food residue). Very dirty behind fridge and stove. Blinds in both bedrooms very dirty and broken. Will have to hire a cleaner."

The tenant's notes in the inspection report state:

> "I, ES, disagree that this report fairly represents the condition of the premises for the following reasons: disagree washer/dryer is dirty, stove is dirty, outside of kitchen cupboards dirty, inside kitchen cupboards is dirty. Disagree blinds are broken."

The landlord's representative prepared a security deposit refund request dated October 7, 2016, to their head office which identified the security deposit paid of $1,795, a charge for suite cleaning in the amount of $252, and a charge to replace two broken blinds in the amount of $262.50; the landlord made a note to their head office to calculate the interest on the security deposit. The landlord's head office prepared a statement number S000021 identifying the security deposit of $1,795, the interest on the security deposit of $1.26, and a total "chargeback" deduction of $514.50; a cheque in the amount of $1,281.76 was returned to the tenants for the balance of the security deposit with this statement.

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The tenant's did not receive a copy of the security deposit refund request form, therefore, they had no detailed information on what the chargeback of $514.50 was for. The only notice the tenant's received regarding the landlord's intention to retain any portion of the security deposit was the statement provided with the payment of the remaining balance.

Section 18(7)(a) of the Act requires the landlord who intends to withhold all or a portion of a security deposit to give written notice to the tenant of that intention within 10 days after the day the tenant vacates the rental premises. Section 18(8)(c) of the Act elaborates that the notice of intention to retain the security deposit must include a final itemized statement of account for any repairs that the landlord is claiming.

I am not satisfied the landlord has complied with the requirements to provide a final itemized statement of account in this case. The statement provided to the tenants is woefully inadequate in describing what repairs the tenant was charged for and their respective costs. In other cases I would be inclined to issue an order for the landlord to return the retained portion of the security deposit in full to the tenants, however, in this case the tenants and the landlord were both given and took the opportunity to explain and make their cases for the damages in dispute from which I have made the following determinations.

Cleaning

As previously mentioned, the landlord claimed $252 for cleaning the rental premises. At hearing, invoice number 2016-208 dated October 6, 2016, from Tidy & Cleaning Services was entered into evidence itemizing the costs for the following:

> Cleaned appliances including behind stove and fridge, cleaned cupboard in and out. Cleaned dinning (sic) room lamp, all glass on windows and patio door and toilet. 6 hours @ $40.00 per hour.

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Both parties entered sets of photographs into evidence which were taken at or near the time of the exit inspection. Both sets of photos do appear to represent the same rental premises at the same time. From viewing both sets of photos I am able to determine the following:

- that the interior and front and top surfaces of the fridge and stove were cleaned by the tenants, but the sides and back of the two appliances and floors and walls beneath, beside, and behind the appliances were not cleaned;
- that all except two interior shelves of the kitchen cupboards were adequately cleaned by the tenants;
- that there is no evidence that the dining room lamp had not been cleaned by the tenants;
- that all the windows in the rental premises, including the patio door, do appear to have been cleaned by the tenants; and
- that both the toilets had been cleaned, excepting two hairs and some dust on the base of one of the toilets.

Section 45(2) of the Act requires tenants to maintain the rental premises in a state of ordinary cleanliness. For the most part, the tenants have complied with this obligation. They did miss cleaning around and beneath the stove and fridge, wiping some stains off two kitchen shelves, and fully wiping off the base of one of the toilets, all of which would be required to maintain ordinary cleanliness of the premises.

I am satisfied the landlord is entitled to compensation for having these items cleaned. I am not satisfied that the tenant is liable to the landlord for the full costs of the cleaning services received by them. To my mind the cleaning for which the tenant is liable would have taken no more than one hour for two cleaners to complete. To be clear: the interior, front, and top of the stove and fridge did not require cleaning, nor did any parts of the washer, dryer, and dishwasher; only two kitchen cupboard shelves required wiping; and only the base of one toilet required wiping – not the whole toilet. The cleaner's hourly rate is reasonable and average considering there were likely two cleaners doing the work.

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I find the tenant liable to the landlord for the costs of cleaning the above identified items in the total amount of $42, including GST.

Blinds

As previously mentioned, the landlord claimed $262.50 to replace two window blinds (one from each bedroom). At hearing, an invoice numbered Y0114614 dated March 18, 2016, for four blinds was entered into evidence. The landlord's representative referenced the invoice as reflecting the replacement costs of the blinds. In the photographs submitted by the tenants, all of the window blinds are open, leaving an unobstructed view through the windows. In the photographs submitted by the landlord, the blinds are closed and clearly show broken and extremely dirty slats. The tenant confirmed that they had never cleaned the slats during the tenancy and admitted that what attempt they did make to do so at the end of the tenancy was difficult and unsuccessful.

I am satisfied that the tenants failed to maintain the ordinary cleanliness of the two bedroom blinds during the tenancy resulting in damages necessitating the replacement of the blinds. I find the tenant liable to the landlord for costs to replace two window blinds in the amount of $262.50.

Disposal of property

The rental premises and residential complex is not equipped with a bicycle rack. The tenants secured their bicycles near a dumpster on the property. There were no signs prohibiting the storage or securing of items in this location. The tenants did not notify the landlord that the bicycles secured to the dumpster were theirs. The bicycles remained constantly secured to the dumpster for several months, as had several other bicycles throughout the property.

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In September 2016 the landlord took note of the number of bicycles left around the property which appeared to be abandoned and determined to clean up the property by removing those bicycles. In recognition that some, if not most, of the bicycles likely belonged to their tenants, on September 19, 2016, the landlord delivered notices to each of the rental premises in the residential complex asking tenants to identify to management which ones were theirs. The tenants were advised that any bicycles which were not claimed by 5:00 p.m., September 23, 2016, would be disposed of. The notices were left in the door handle of each apartment and posted on the community bulletin board in the lobby. The next day, September 20th, the landlord again circulated the notice to tenants by pushing them under the apartment doors.

The landlord confirmed that many of the tenants of the residential complex did approach management and identify their bicycles, but no one came forward to claim the bicycles secured near the dumpster by the specified due date of September 23rd. Maintenance personnel proceeded to remove the unclaimed bicycles from the property. Any bicycles with all parts apparently intact were donated to Glassworks Bicycle Shop for recycling, which is where one of the tenants' bicycles went; any bicycles with missing parts were left at the dump, which is where the other of the tenants' bicycles went as it was missing the seat and a tire.

During the week of September 26th as the tenants' were preparing to move out of the rental premises, they discovered their bicycles were gone. The tenants' approached the landlord inquiring after their bicycles. The landlord was cooperative with the tenants, telling them where the bicycles were disposed of. The tenant was able to retrieve the bicycle that had been delivered to Glassworks Bicycle Shop, but not the one that had been disposed of at the dump.

The tenants disputed either having received the notices or seeing the notice on the community bulletin board. They felt the bicycles had been disposed of improperly and sought compensation for replacement value of the unrecovered bicycle and a bicycle lock.

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Sections 64 and 65 of the Act set out the process for dealing with personal property abandoned by tenants. In this case, the landlord had no knowledge of who these two particular bicycles belonged to, whether the owners were tenants or not. The landlord had received no notice from the tenants identifying the bicycles as theirs or even requesting permission to secure the bicycles where they did on the property. The bicycles had remained secured but unused for several months, apparently abandoned. Notices were posted in the residential complex and delivered to the rental premises twice. I do not believe there was any negligence on the part of the landlord to attempt to identify the owners of any of the bicycles located on the property. It was not unreasonable at this point for the landlord to treat the bicycles as abandoned by parties other than one of their tenants. While it is unfortunate that the tenants lost the property, I am not satisfied that the landlord is liable to the tenants for the loss suffered. The tenants' claim for costs of replacing one of the bicycles and the bicycle lock is denied.

Orders

An order will issue requiring the landlord to return a portion of the security deposit to the tenant in the amount of $210. This amount is calculated by deducting the allowed costs for cleaning of $42 from the amount retained by the landlord for cleaning of $252.

Adelle Guigon
Rental Officer