

IN THE MATTER between **SR**, Applicant, and **LPM**, 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:

SR

Applicant/Tenant

-and-

LPM

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: April 10, 2018

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: SR, applicant/tenant
ZT, representing the respondent/landlord
CT, representing the respondent/landlord

Date of Decision: April 10, 2018

REASONS FOR DECISION

An application to a rental officer made by SR as the applicant/tenant against LPM as the respondent/landlord was filed by the Rental Office November 10, 2017. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife. The filed application was served on the respondents by registered mail signed for January 9, 2018.

The tenant alleged the landlord had improperly withheld the security deposit against damages the tenant disputes responsibility for. An order was sought for the return of the security deposit.

A hearing originally scheduled for February 27, 2018, was postponed at the request of the landlord. The hearing was re-scheduled to April 10, 2018, peremptory on the landlord, by three-way teleconference. SR appeared as the applicant/tenant. ZT and CT appeared as representatives of the respondent/landlord.

Tenancy agreement

The parties agreed and evidence was presented establishing that a residential tenancy agreement between the parties for rental of a room with shared common areas commenced March 1, 2017. The tenant vacated the rental premises August 29, 2017, ending the tenancy agreement. I am satisfied a valid tenancy agreement was in place in accordance with the *Residential Tenancies Act* (the Act).

Security deposit

The parties agreed that at the commencement of the tenancy the tenant had paid a security deposit in the amount of \$1,100. By invoice to the tenant dated September 7, 2017, the landlord accounted for the security deposit, notified the tenant that they were withholding \$805.76 against costs of replacing two broken windows, and returned \$294.24 to the tenant. The interest on the security deposit of \$0.27 was not accounted for.

Damages

The tenant disputed that he was responsible for the broken windows and requested the return of the retained security deposit. The landlord refused, claiming they were told by the window installer that the damage was caused by impacts. The tenant disputed this claim, reiterating that he did nothing to cause the damages.

The tenant testified that he notified the landlord shortly after noticing the cracks in the windows. He submitted photographs of the two damaged windows into evidence. One window has a single crack meandering from the top middle edge to near the bottom left edge. There are no impact points or evidence of 'spidering'. The other window has several cracks meandering around the window from all four edges and meeting in at least six places, with two triangular sections falling out. There are no impact points or evidence of spidering.

The landlord claims to have asked their window installer for their opinion on what happened to the windows. They claim they were told the damages looked like impact damage. The window installer was not presented as an expert witness, nor was a sworn statement entered into evidence. What the window installer may or may not have told the landlords is hearsay and cannot be accepted as evidence.

The landlord referred to an email exchange with someone replying under the window installer company's email address in which that person states: "Our guys believe one was broken by someone, and the other hit with an object." Nowhere in the email chain is the rental premises identified. Nor are either "our guys" identified or their expertise to make such findings. The email chain cannot be accepted as evidence.

In my experience as presiding Rental Officer I have considered similar matters regarding broken windows. Windows usually break in two ways. Breaks caused by impacts will exhibit an impact point from which cracks 'spider' from the impact point, or a sunburst-type pattern will emerge from the impact point. Breaks caused by manufacturing defects, extreme temperature variations, or shifting will not have an impact point; they usually start from the edges of the window and meander across the window.

In my opinion, based on what I am seeing in the submitted photographs and without reliable expert evidence to the contrary, the breaks in the windows at the rental premises were not caused by impacts. There is no evidence to support that any wilful or negligent action by the tenant caused the damages to the windows. I am not satisfied that the tenant is liable for the costs of replacing the two broken windows.

Order

An order will issue for the landlord to return the retained portion of the security deposit to the tenant in the amount of \$806.03.

Adelle Guigon
Rental Officer