

IN THE MATTER between **B.G.**, Applicant, and **P.D.**, 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 **Hal Logsdon**, Rental Officer,

BETWEEN:

B.G.

Applicant/Tenant

-and-

P.D.

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: April 19, 2018

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: B.G., applicant
K.M., representing the respondent

Date of Decision: May 3, 2018

REASONS FOR DECISION

The tenancy agreement between the parties was terminated by mutual agreement on July 31, 2017. The respondent applied the security deposit (\$1695) and accrued interest (\$46.09) to cleaning costs (\$400), a red stain on carpet (\$50) and a range hood filter (\$20), returning the balance of \$1271.09 to the tenant. The applicant disputed the deductions and sought the return of the \$470 which was retained.

In addition, the applicant alleged that he had complied with the obligation to have the carpets professionally cleaned when that obligation was not legally enforceable. He sought his carpet cleaning costs of \$236.25 reimbursed by the respondent.

The applicant provided an invoice in evidence indicating that he had paid \$330.75 to have the apartment professionally cleaned and an invoice indicating that he had paid \$236.25 to have the carpets professionally cleaned. The applicant also provided copies of the inspection reports and photographs (poor quality) provided to him by the landlord.

Memos, provided to the applicant by the respondent on November 1, 2017 from A.W. and B.M. outlining their observations of the rental premises on July 31, 2017 were also provided in evidence by the applicant.

The applicant argued that the *Residential Tenancies Act* permits only the deduction of rent arrears and the repair of tenant damages from a security deposit and that deductions for cleaning or repairs related to normal wear and tear are not permitted. He submitted that notwithstanding the provisions of the Act, the premises were left in a state of ordinary cleanliness and required no additional cleaning.

The respondent argued that the apartment was not left in a state of ordinary cleanliness and pointed out the areas noted on the inspection report and photographs as needing cleaning. The respondent also provided a letter from the employee who conducted the inspection report verifying that the applicant had been present at the inspection, disagreed with her observations and made it clear that he did not intend to do any further cleaning. The check-out inspection report was unsigned by the applicant.

Deductions from the Security Deposit

Section 18(4) of the *Residential Tenancies Act* sets out the right of a landlord to retain all of part of the security deposit at the end of a tenancy agreement.

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.

While the Act does not specifically use the term "cleaning", the failure of a tenant to leave the premises reasonably has long been considered by this tribunal as damage to the premises and cleaning as a repair. The question in this matter is not whether cleaning costs are permissible but rather was additional cleaning required to bring the premises to a state of ordinary cleanliness.

The "ordinary cleanliness" standard is not necessarily the landlord's standard for an apartment ready to re-rent. A new tenant will certainly appreciate a meticulously clean apartment, and no doubt earn the landlord a good reputation, but it is not the obligation of the previous tenant to return the apartment to the landlord in a pristine state.

It appears that the respondent complied with all aspects of the Act pertaining to the process of dealing with the security deposit. The inspections and the statement of the deposit were completed and provided to the tenant in a timely manner. Although the check-out inspection was not signed by the applicant nor did he register his comments on the inspection document, he certainly made it clear to the landlord that he disputed the cleaning observations and did not intend to sign the document.

The following areas were checked on the inspection report as requiring cleaning:

Kitchen Stove/Range hood

There is no photograph of the stove. There is an illegible note concerning the range hood and a charge of \$20 to replace the filter.

Refrigerator

There is no photograph of the refrigerator. No additional detail is provided.

Kitchen Cupboards/Doors

Noted that some cupboards need cleaning. Photos claim to show crumbs in drawers. The memo from A.W. confirms crumbs in some kitchen drawers. (The applicant argued that the A.W. and B.M. memos should not be considered as they contained observations which were not contained on the inspection report. To an extent, I agree. The inspection report is intended to be the final report concerning the condition of the premises at the end of the tenancy. I shall only consider observations contained in these memos to the extent that they refer to items noted on the inspection reports.)

Kitchen Walls/Trim

No photograph of the walls or trim. No additional detail provided.

Kitchen Floor

The floor plan indicates ceramic tile in the kitchen. Heavy wear noted on tile floor under the sink. Photograph of floor indicates dirt on floor. A.W. memo indicates tile was darker in areas of the floor.

Vanity/ Mirror

Noted as not clean. No photograph or additional detail.

Bathroom Fan

Noted than fan needs cleaning. Photograph shows dust. A.W. memo indicates dust.

Bathroom Ceiling

Noted that ceiling needs cleaning. A.W. and B.M. memos note hair on ceiling.

Bathroom Toilet/Sink/Tub/Shower

Noted that all required cleaning. Photograph of bath drain notes grime. A.W. memo notes tub discolouration. No additional detail on other fixtures.

I find the photographs of little use in determining whether the above noted areas require cleaning in order to achieve a standard of ordinary cleanliness. Clearly, the applicant and the respondent do not agree on the work that was necessary and there is no corroborating evidence to support some of the work undertaken.

The applicant had the premises professionally cleaned and the majority of the cleaning was satisfactory to the landlord. One must question to what extent additional cleaning was required. The evidence, in my opinion, suggests very little remained to be done to bring the premises to a state of ordinary cleanliness. I do however agree that items such as vacuuming crumbs from drawers, dusting fan vents and sweeping and mopping tile floors, although minor, are necessary in order to meet that standard. In my opinion, however, the amount of the security deposit retained by the landlord is excessive.

In my opinion, the following cleaning tasks were required to bring the premises to a state of ordinary cleanliness:

Vacuum kitchen cupboards, drawers

Sweep and mop kitchen floor

Dust exhaust fan

Vacuum bathroom ceiling

Clean bathroom tub

In my opinion, completion of these tasks should not cost more than \$105 (2 persons x 1.5 hours x \$35/hour).

In my opinion the discolouration of the kitchen floor is normal wear and tear and the replacement of the range hood filter (\$20) is a maintenance responsibility of the landlord. I assume that the charge related to the carpet stain represents the loss of value of the carpet. Given the respondent's testimony concerning the age of the carpet and the notes on the floor plan indicating very heavy carpet wear, I suggest that the carpet has been fully depreciated and that any damage represents little or no loss of value.

In summary, I find the deduction of \$470 from the security deposit to be unreasonable. I find a reasonable deduction to be \$105. An order shall issue requiring the respondent to return a portion of the security deposit to the applicant in the amount of \$365.

Reimbursement of Carpet Cleaning Costs

The applicant alleged that the tenancy agreement between the parties required the tenant to professionally clean the carpets upon the termination of the tenancy agreement. The applicant did not provide a copy of the tenancy agreement but the respondent did not dispute the statement.

Section 45(1) of the Act obligates a tenant to comply with obligations set out in a written tenancy agreement that are not specifically set out in the Act, provided those obligation are reasonable in all circumstances.

45. (1) Where in a written tenancy agreement a tenant has undertaken additional obligations, the tenant shall comply with the obligations under the tenancy agreement and with the rules of the landlord that are reasonable in all circumstances.

The tenant's obligation to maintain the rental premises in a state of ordinary cleanliness is set out in the Act. A landlord is not entitled to demand a higher standard. In some cases, professional carpet cleaning may be necessary to achieve the standard set out in the Act and not in others.

If a landlord deducts the cost of professional carpet cleaning from a security deposit, the tenant may dispute the deduction through an application pursuant to section 18.1. However if a tenant elects to have the carpets professionally cleaned, there is no monetary remedy contained in the Act to permit a rental officer to order the reimbursement of the amount. I have no jurisdiction to apply the remedy sought by the applicant and therefore the request for relief is denied.

Hal Logsdon
Rental Officer