

IN THE MATTER between **L.K.**, Applicant, and **J.S.**, 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:

L.K.

Applicant/Tenant

-and-

J.S.

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: December 3, 2018

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: L.K., applicant
J.S., respondent

Date of Decision: December 3, 2018

REASONS FOR DECISION

The parties entered into a verbal monthly tenancy agreement on July 1, 2018. The premises consisted of a room in a condominium unit also occupied by the respondent and her family. The monthly rent for the premises is \$1200 and a security deposit of \$1200 was required. The parties agree that the first month's rent and \$500 of the required security deposit were paid at the commencement of the tenancy agreement.

There was no written inspection report created at the commencement or at the end of the tenancy agreement.

It is apparent that the parties did not have a clear mutual understanding of the applicant's right to use some of the common areas of the condominium, specifically the kitchen and living room areas. The applicant alleged that his rights to use these areas was curtailed by the respondent, forcing him to move out. The tenancy agreement was terminated on July 15, 2018 when the applicant vacated the premises.

The applicant sought the return of the security deposit and 50% of the July rent.

Security Deposit

The respondent stated that she was entitled to retain the full security deposit because the applicant had drilled four holes in the wall to mount a television set and had not repaired the damages when he left. She provided photographs of the damage and an invoice for the repair of the damage indicating that she had paid \$514.14 for the repair.

Section 18.5 of the *Residential Tenancies Act* sets out the following prohibition:

- 18.(5) A landlord may not retain any amount of a security deposit or pet security deposit for repairs of damage to the rental premises if the landlord or his or her agent*
- (a) fails to complete an entry inspection report and an exit inspection report; or*
 - (b) fails, without a reasonable excuse accepted by a rental officer, to give a copy of each report to the tenant.*

The respondent has clearly failed to provide the required inspection reports and is not entitled to deduct any repair costs from the security deposit. There is no interest due on the deposit due to the short duration of the tenancy. An order shall issue requiring the respondent to return the \$500 deposit to the applicant.

Rebate of Rent

The applicant submitted that he was forced to leave the premises due to the refusal of the respondent to permit him use of the previously shared facilities, notably the kitchen. He submitted that since he had paid the full rent for the month of July and left on July 15, he was entitled to a return of 50% of the rent.

A monthly tenancy may be terminated in accordance with the Act in several ways:

1. The tenant may terminate the tenancy on the last day of any month by giving written notice to the landlord of at least 30 days (s. 52(1)(b)).
2. The parties may agree in writing to terminate the tenancy on a specific date (s. 50).
3. The landlord or the tenant may make an application to terminate the tenancy agreement and a rental officer may terminate the tenancy on a specific date for cause.

Text correspondence between the parties indicates that the tenant clearly set out his intention to leave on July 15, 2018. The landlord appears to have agreed to a termination date of July 30 but clearly refused consent for the 15th.

Tenant: "If I move out before the 15th may I have my 600 back?"

Landlord: "You will need to stay up to month end and make sure my walls are intact."

Tenant: "Well then im taking you to court and im out on the 15th."

There is no evidence to suggest the tenancy agreement was terminated in accordance with the Act.

There is no evidence that the respondent interfered with the applicant's possession of his room. There may have been a very brief period that his right to use the kitchen was interrupted. On July 9th the applicant texted "I cant access any kitchen facilities. This is unlivable." but a little more than an hour later, the landlord replied, "Cook if you want to..." I cannot find the respondent in substantial breach of their obligation to not interfere with the tenant's possession.

The monthly rent was paid in advance for the month and the applicant enjoyed the right of possession for that month. Nevertheless, he decided to abandon the premises. There are no grounds to refund any of the rent paid for July, 2018.

Hal Logsdon
Rental Officer