

IN THE MATTER between **BKGK and NTHC**, Applicant, and **JF and TL**, Respondents.

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:

BKGK and NTHC

Applicant/Landlord

-and-

JF and TL

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	September 18, 2019
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories, via conference call
<u>Appearances at Hearing:</u>	WM, representing the Applicant
	LE, representing the Applicant
<u>Date of Decision:</u>	September 27, 2019

REASONS FOR DECISION

The Respondents were served with the filed application and notices of attendance sent by registered mail and confirmed delivered. The Respondents failed to appear at the hearing and the hearing was held in their absence.

The Respondents entered into several joint tenancy agreements with the Applicant, the last one being a written monthly agreement commencing on April 1, 2012. A check-in inspection was completed and signed by the Applicant and the Respondents on March 9, 2015. That tenancy agreement was replaced with a written monthly tenancy agreement between the Applicant and JF as sole tenant commencing on November 1, 2018. The sole tenancy between the Applicant and JF was terminated when Mr. Football abandoned the premises on February 28, 2019.

A previous order (File 16001, filed on May 3, 2018) ordered the Respondents to pay rent arrears in the amount of \$3,931.09 and terminated the tenancy agreement on July 31, 2018, unless the rent arrears were paid in full. There is no evidence that the order was filed with the Supreme Court of the Northwest Territories or enforced.

The Applicant alleged that after the premises were abandoned by JF, it was found to be significantly damaged and required extensive repairs and cleaning. An inspection report was completed on April 10, 2019, as well as a detailed repair and cleaning estimate completed on March 1, 2019.

The Applicant continues to hold a security deposit for the joint tenancies. There was no statement of the security deposit issued nor was there any inspection report completed after the joint tenancy agreement was terminated. A security deposit ledger provided into evidence indicates that the Applicant held a security deposit and accrued interest in the amount of \$466.37 as at March 31, 2019.

The Applicant sought an order requiring the Respondents to pay rent arrears in the amount of \$4,111.09, an order requiring JF to pay rent arrears in the amount of \$450, and for JF to pay for repairs and damages in the amount of \$8,585.

Rent arrears - Joint Tenancy

The Applicant provided a copy of the lease balance statement in evidence. The statement does not segregate the tenancy agreements and indicates a balance of rent arrears as at February 1, 2019, in the amount of \$4,411.09. The Applicant already has a previous order for \$3,931.09.

Since the previous order and up to the commencement of the sole tenancy agreement, additional rent arrears of \$180 accrued. These arrears are the responsibility of both Respondents as joint tenants. However, the Applicant still holds a security deposit and accrued interest for this tenancy agreement that has not been resolved. At the end of this tenancy, the Applicant should have applied the deposit and accrued interest to these rent arrears and any repair costs, issued a statement, and refunded any balance to the joint tenants.

Pursuant to subsection 18(5) of the *Residential Tenancies Act*, the Applicant may not deduct any repair costs as no inspection report was completed at the end of the joint tenancy agreement.

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 Applicant may retain \$180 of the security deposit and apply it to the rent arrears associated with the joint tenancy.

Security Deposit

Subsection 83(1) of the *Residential Tenancies Act* permits a Rental Officer to make an order that has not been applied for.

- 83. (1)** *After holding a hearing, a rental officer may make any order or decision that has been applied for, or that could have been applied for, that he or she considers justified in the circumstances.*

Although there is no application from the joint tenants seeking the partial return of the security deposit, such an application in my opinion would be reasonable. Given the lack of any inspection report demonstrating that there were damages at the end of the joint tenancy, I find no justification to retain any of the deposit except that portion required to cover the rent arrears of the joint tenants. I find an amount due to the joint tenants of \$286.31. This amount shall be paid by cheque to both Tenants jointly and shall not be applied to the repair costs associated with the sole tenancy of JF without the mutual consent of both joint Tenants.

Security Deposit and Interest	(\$466.31)
To be retained for rent arrears	<u>180.00</u>
Balance due Respondents	\$286.31

Repairs and Cleaning

Because there were no inspection reports conducted at the end of the joint tenancy agreement or at the commencement of the sole tenancy agreement, it is impossible to accurately determine the responsibility for the repair costs. However, the Applicant may reasonably elect to hold JF responsible for the entire amount as he was jointly and severally responsible during the term of the joint tenancy and solely responsible during the sole tenancy. The Applicant testified that in her opinion, it was reasonable to assume that the damages were done during the sole tenancy. I note that the previous application, heard five months prior to the termination of the joint tenancy, made no mention of damages. Reviewing the March and April inspection reports and particularly the photographic evidence, I find the repair and cleaning costs claimed to be reasonable and I find JF responsible for the costs of repairs and cleaning in the amount of \$8,585.

Rent Arrears - Sole Tenancy

The lease balance statement indicates that JF paid no rent during the term of his sole tenancy agreement (November 1, 2018, to February 28, 2019). The monthly rent for the premises was \$75. I find rent arrears accumulated under the sole tenancy in the amount of \$300.

An order shall issue requiring the Applicant to return a portion of the retained security deposit to the Respondents in the amount of \$286.31 and ordering the Respondent JF to pay the Applicant rent arrears in the amount of \$300 and repairs and cleaning costs of \$8,585.

Hal Logsdon
Rental Officer