

IN THE MATTER between **JV and LS**, Applicants, and **SE**, 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:

JV and LS

Applicants/Tenants

-and-

SE

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: September 29, 2020

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: JV, Applicant
LS, Applicant
SE, Respondent

Date of Decision: October 8, 2020

REASONS FOR DECISION

The written term tenancy agreement between the parties commenced on September 1, 2018, and ended on June 30, 2020. The Applicants vacated the premises at the end of the term. The monthly rent for the premises was \$1,000 and a security deposit of \$1,000 was paid at the commencement of the term. The agreement required the Applicants to pay for fuel during the term and obligated the Landlord to provide a full tank of fuel at the commencement of the tenancy.

The Applicants alleged that the Respondent had breached the tenancy agreement by failing to provide a full tank of fuel at the commencement of the tenancy and sought an order requiring the Respondent to reimburse them for the cost to fill the tank. The Applicants also alleged that the security deposit had not been returned and sought an order requiring the Respondent to return the security deposit and accrued interest.

The Respondent disputed the fuel oil allegations, testifying that the tank was filled by the previous tenant when they vacated the premises. The Respondent acknowledged that the security deposit had been retained but stated that she had a right to keep it for repairs of damages and for the Applicants' failure to complete improvements to the premises.

Fuel oil

The Applicants provided a paid invoice dated September 10, 2018, for heating fuel delivered to the premises in the amount of \$640.48. It represents payment for 533.2 litres of heating fuel. The Applicants stated that they ordered and paid for this fuel. The invoice does not specifically state the delivery date.

The Respondent provided a fuel oil delivery slip. The Respondent stated that the previous tenant moved out in late June or early July and that the premises were vacant until the Applicants took possession. The delivery slip appears to be dated July 3, 2017, which is prior to the commencement of the previous tenant's possession. It is of no use in determining this matter.

The Respondent also provided an invoice dated September 7, 2018, for a \$200 deposit for fuel oil to be delivered to the premises. The invoice indicates that a delivery of 181.4 litres was made on September 10, 2018. This was presumably ordered and paid for by the previous tenant.

Clearly, if both deliveries were made on September 10th, both could not have filled the tank. It is also not likely that the Applicants' fuel would have filled the tank between September 1st and September 10th and a second delivery by the previous tenant on September 10th would require 181.4 litres to top up the tank.

I note that the invoice of the previous tenant is for a \$200 *deposit* which, at the cost of fuel at that time, would purchase about 181 litres of fuel. In my opinion it is more likely than not that \$200 worth of fuel did not fill the tank and that an additional 533.2 litres, purchased by the Applicants, was required to fill the tank when they took possession.

I find the Respondent in breach of her obligation to fill the fuel tank at the commencement of the tenancy agreement. I find the cost of fuel paid for by the Applicants on her behalf to be \$640.48. An order shall issue requiring the Respondent to pay the Applicants \$640.48.

Security deposit

The Respondent testified that the rent for the premises had previously been \$1,300. A copy of the tenancy agreement with the prior tenant was provided in evidence and does indicate a rent of \$1,300 per month. The Respondent stated that she had lowered the rent on the understanding that the Respondents would undertake some improvements to the premises. The Respondent testified that the Applicants failed to do any of the improvements and she was therefore entitled to retain the security deposit as compensation.

The tenancy agreement between the Applicants and Respondent is in the form set out in the *Residential Tenancies Regulations* (the Regulations) and clearly sets out the monthly rent as \$1,000. There are no provisions in the tenancy agreement for reduction or abatement of the monthly rent or any provisions obligating the Tenants to perform any improvements or repairs other than those caused by the negligence of the Tenants. There are no other obligations of the Tenants included in the tenancy agreement.

The Respondent also testified that a window had apparently been removed and reinstalled with only nails holding it in place. Photographs of the window and a quotation for a replacement window were provided in evidence.

The Applicants testified that the window had apparently been removed and reinstalled by the previous tenant and was left in the same condition at the end of their tenancy.

The Residential Tenancies Act (the Act) permits a landlord to retain all or part of a security deposit pursuant to the following provisions:

- 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.*
- 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.*
- 18 (7) *A landlord who intends to withhold all or a portion of a security deposit, a pet security deposit or both shall, within 10 days after the day a tenant vacates or abandons the rental premises,*
- (a) give written notice to the tenant of that intention; and*
 - (b) subject to subsection (9), return the balance of the deposit or deposits to the tenant.*
- 18 (8) *A notice must include*
- (a) an itemized statement of account for the deposit or deposits;*
 - (b) a final itemized statement of account for any arrears of rent that the landlord is claiming; and*
 - (c) subject to subsection (9), a final itemized statement of account for any repairs that the landlord is claiming.*

The alleged failure of the Applicants to complete any improvements that may have been agreed to does not constitute rent arrears or repairs of damages. Pursuant to subsection 18(4), only those items may be deducted from a security deposit.

There was no evidence that a statement of the security deposit had been prepared in accordance with subsections 18(7) and 18(8). Although both parties acknowledged that an inspection report was completed at the commencement of the tenancy, neither party provided a copy of the report. There was no evidence that a check-out inspection report was completed.

As there was no check-out inspection report, no repair costs may be deducted from a security deposit. As well, since there was no check-in inspection report provided in evidence, I can not be assured that the window was not damaged at the commencement of the tenancy. The cost of repairs to the window may not be deducted from the security deposit. I find no grounds for the retention of the security deposit by the Respondent.

I find the interest due on the security deposit to be \$0.92. An order shall issue requiring the Respondent to return the security deposit to the Applicants in the amount of \$1,000.92.

Hal Logsdon
Rental Officer