

IN THE MATTER between **SL and KC**, Applicants, and **MW**, 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:

SL and KC

Applicants/Tenants

-and-

MW

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: May 30, 2021

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: SL, Applicant
KC, Applicant
MW, Respondent
TA, representing the Respondent

Date of Decision: May 30, 2021

REASONS FOR DECISION

The tenancy agreement between the parties was made for a one-year term which expired on July 1, 2020, and was renewed on a monthly basis. Although the agreement requires a larger security deposit, the parties agreed that a security deposit of \$800 was provided by the Applicants. The tenancy agreement was terminated on January 31, 2021, when the Applicants vacated the premises. The application was filed on February 28, 2021, but not served on the Respondent until April 2, 2021, resulting in the delay of the hearing from April 7 to May 18, 2021. The Applicants alleged that the security deposit had not been returned to them and sought an order requiring the return of the deposit.

On May 17, 2021, the Respondent filed several documents with the Rental Office including photographs in electronic format. The Applicants stated that they had received the documents but had not received the attached photographic files. Included in the evidence filed by the Respondent on May 17th was a statement of the security deposit. The statement set out the following deductions and an amount owing to the Applicants:

Security deposit	\$800.00
Cleaning fees	(350.00)
Power invoice	(146.29)
Replace glass - china cabinet	(98.30)
House and mail keys	(20.00)
Printing documents	(10.00)
Cleaning supplies	<u>(46.75)</u>
Amount due Tenants	<u><u>\$178.66</u></u>

I note that the balance due to the Applicants is incorrect due to an arithmetic error. The Respondent continues to hold the security deposit.

Subsections 18(4) and 18(5) of the *Residential Tenancies Act* (the Act) set out what may be deducted from a security deposit. Only arrears of rent and repairs of damages may be deducted from a deposit.

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.*

(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.

[Emphasis mine]

The Applicants testified that they had never received an inspection report setting out the condition of the premises at the beginning of the tenancy agreement. The Respondent testified that there had been an inspection done with the tenants and a report produced but never provided to the tenants. There were no inspection reports produced at the hearing or attached to the tenancy agreement as Schedule B.

The Respondent submitted that the cleaning costs should not be disqualified as they should not be considered repairs. I disagree. In my opinion, the act of returning rental premises to a state of reasonable cleanliness, including labour and cleaning materials, must be considered a repair pursuant the Act. Creating uncleanliness is damage and cleaning is repair. The replacement of lost keys is also a repair.

I need not examine the photographic evidence or hear testimony on any of the cleaning or china cabinet allegations nor do I express any opinion on these allegations. Clearly, the Respondent has failed to provide the required inspection reports to the Tenants. Therefore, the Respondent was not entitled to deduct any of these costs from the deposit.

Printing costs are not repairs or rent and may not be deducted from a security deposit. In my opinion they are a cost of doing business.

Subsections 18(7) and 18(8) of the Act set out the time frame for final accounting and return of the deposit.

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.

(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 Act does contain provisions to extend the 10-day requirement in certain circumstances but not beyond 45 days after the Tenant vacates the premises.

There is no evidence that a statement of the security deposit was provided to the Applicants until May 17, 2021, more than 3.5 months after the tenancy agreement ended. None of the cleaning was completed until April, and the quotation for the china cabinet repairs was not generated until May 14, 2021. The electrical bill was generated on February 4, 2021. The Applicants contacted the Respondent on several occasions urging the Respondent to complete a check-out inspection and finalize the security deposit. Even considering the disruptions caused by the COVID-19 pandemic, the security deposit statement could have been generated within the time frame set out in the Act

Electricity

The Respondent provided one invoice for electricity covering the period December 20, 2020, to January 28, 2021 totalling \$146.29. The bill was generated on February 4, 2021. There was no accounting of utility charges and payments during the term of the tenancy provided by the Respondent other than a notation that \$270 had been paid for the months of November and December 2020.

The tenancy agreement between the parties obligates the Tenants to pay for electricity during the term of the tenancy. Normally, the Tenant would establish an account with the supplier of electricity and pay the monthly bills directly to the supplier. However, this tenancy agreement requires the Tenants to pay the monthly electrical bills to the Landlord who has kept the account in the Landlord's name. In this case, payments of electricity are "services and facilities" and are considered rent. Accordingly, arrears for electricity may be deducted from a security deposit.

1. (1) *"rent" includes the amount of any consideration paid or required to be paid by a tenant to a landlord or his or her agent for the right to occupy rental premises and for any services and facilities, privilege, accommodation or thing that the landlord provides for the tenant in respect of his or her occupancy of the rental premises, whether or not a separate charge is made for the services and facilities, privilege, accommodation or thing.*

"services and facilities" includes furniture, appliances and furnishings, parking and related facilities, laundry facilities, elevator facilities, common recreational facilities, garbage facilities and related services, cleaning or maintenance services, storage facilities, intercom systems, cable television facilities, heating facilities or services, air-conditioning facilities, utilities and related services, and security services or facilities.

[Emphasis mine]

Although electrical costs may, in this situation be deducted from a security deposit, in my opinion, there is insufficient evidence to determine the accuracy of the balance that may be owed by the Applicants without a more complete accounting of the charges and payments made during the term. As well, in my opinion, the security deposit statement could have easily been provided to the Applicants in a timely manner

For these reasons, an order shall issue requiring the Respondent to return the full amount of the security deposit plus accrued interest to the Applicants in the amount of eight hundred dollars and sixty-one cents (\$800.61)

Hal Logsdon
Rental Officer