

IN THE MATTER between **SM and MS**, Applicants, and **SV**, 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 **Janice Laycock**, Rental Officer,

BETWEEN:

SM and MS

Applicants/Tenants

-and-

SV

Respondent/Landlord

REASONS FOR DECISION

<u>Date of the Hearing:</u>	January 19, 2022
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	SM, the Applicant MS, the Applicant SV, the Respondent
<u>Date of Decision:</u>	January 20, 2022

REASONS FOR DECISION

An application to a rental officer made by SM and MS as the Applicants/Tenants against SV as the Respondent/Landlord was filed by the Rental Office October 15, 2021. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was served on the Respondent by registered mail on November 24, 2021.

The Applicant claimed the Respondent had not returned all of their security deposit and that the damages claimed constituted wear and tear. An order was sought for the return of \$682.50 of the security deposit.

A hearing was scheduled for November 16, 2021. This hearing was cancelled because proof of service on the Respondent was not provided. The Applicant provided proof of service of the filed application and notices of the re-scheduled hearing were served on the parties. The hearing was held December 8, 2021, by three-way teleconference. At the hearing MS appeared representing the Applicants, and SV appeared as the Respondent.

I adjourned the December 8th hearing to give the Respondent an opportunity to provide further information to support their testimony relating to the entry and exit inspections and damages needing repair, including copies of the entry and exit inspection reports and photographs showing the condition of the walls requiring repair and painting. The requested information was provided to the Rental Office and the Applicants on December 15, 2021, and the hearing resumed on January 19, 2022, by three-way teleconference. SM and MS appeared as the Applicants. SV appeared as the Respondent. At the end of the hearing I reserved my decision in order to further review the evidence and testimonies.

Tenancy agreement

Evidence was provided establishing a tenancy agreement between the parties commencing on October 1, 2020, for a one-year period. In September 2021 the Applicants provided notice of their intention to end the tenancy. I am satisfied a valid tenancy agreement was in place in accordance with the *Residential Tenancies Act* (the Act) and that this agreement was terminated on October 1, 2021.

Return of security deposit

At the end of the tenancy the Respondent deducted \$882.50 from the Applicants' security deposit to cover the costs of cleaning and repairs of damages. The Applicants agreed to the \$200 deduction for cleaning but disputed the deduction of \$662.50 for repairs and painting of the walls. The Applicants asserted that the charge was unreasonable as it was wear and tear of the property.

At the hearings two main questions arose relating to the Respondent's claim against the security deposit for costs of repairs of damages:

1. Were entry and exit reports completed and provided to the Applicants as required under the Act?
2. Were there damages beyond wear and tear to the rental premises that needed repair?

On the first question: Under sections 15 and 17.1 of the Act a Landlord is required to conduct an entry and exit inspection and offer the Tenants an opportunity to participate. After an entry or exit inspection is completed the Landlord has to prepare a report, sign it, provide the Tenants with an opportunity to include comments and sign it, and then provide the Tenants with a copy of the report within five days of the inspection.

Also, according to subsection 18(5) of the Act:

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.

At the hearing the Respondent testified that an entry inspection was carried out with the Applicants and a copy of the "Rental Inspection Checklist" dated September 26, 2020, was provided as evidence. This checklist includes the Respondent's comment "great condition, brand new" but does not include the signature of the Applicants or any comments from the Applicants. The Respondent testified they thought a copy had been given to the Applicants but they weren't sure. The Applicants testified they hadn't received a copy.

The Respondent further testified that an exit inspection was carried out with the Applicants in attendance. At the walk-through they discussed their concerns about the condition of the walls. At the end of the inspection notes about the condition of the rental premises were provided to the Applicants. As the Respondent did not have the "Rental Inspection Checklist" form with them they did not complete the exit inspection report until later, and because they did not have a forwarding address for the Applicants they claimed they were not able to send a copy. A copy of the "Rental Inspection Checklist" dated September 29, 2021, was provided as evidence.

The Applicants testified that the Respondent conducted the inspection with her brother, sometimes in a language that the Applicants did not understand, and provided them only with a handwritten note that did not include any mention of damages to the walls. Further, the Respondent had corresponded with them by email and could have provided a copy of the exit inspection report by email.

After receiving testimony and evidence from both parties I am satisfied that an entry inspection was carried out with the Applicants. However a copy of the report was not provided to them, nor was a reasonable excuse provided for not providing the report. Similarly, although an exit inspection was carried out, a copy of the inspection report was not provided to the Applicants nor was a reasonable excuse provided to me to explain why they had not provided the report. As a result, I find under subsection 18(5) of the Act that the Respondent is not entitled to deduct damages from the security deposit and is required to return \$682.50 of the retained security deposit to the Applicants.

Damages

Despite this application being the Tenants' against the Landlord regarding the return of the security deposit, I believe that I heard sufficient evidence at the hearing regarding the disputed damages to make a decision about the Landlord's claim for costs of repairs.

From the testimony and evidence at the hearings I provide the following summary:

- Applicant - Four holes were made in the walls to hang pictures. The Applicants repaired those holes and touched up the paint with paint in the unit. They also tried to repair a shelf in the bathroom that was chipped. They have no knowledge of the other repairs as they did not do them. Photos of the walls were provided.

- Respondent - Claimed the repairs were not done properly and are visible. The paint was not consistent with the remaining wall. There were a number of other areas that had been damaged and poorly repaired leaving the surfaces uneven. The Respondent sought and received a quote of \$682.50 from a painter to repair the bathroom shelf and to repair and paint three walls in the entry. The Respondent also provided photos taken at the time of move out to show the alleged damage.

After hearing the testimony of both parties and examining the photos provided by the Respondent and the Applicants, I am not convinced that the Applicants are responsible for further repairs and painting of the rental premises. The Applicants are firm in their testimony that they only created holes for a few pictures, that they tried to repair these holes, and that they had painted them with paint left on the premises. The photographs provided as evidence by the Applicants are not detailed and do not show damages. The photographs provided by the Respondent are more detailed and show minor differences in the repaired areas, but not anything that I believe might be considered damage. As well, it is not unusual for Tenants to hang pictures and in my opinion this would qualify as “wear and tear”, which under subsection 42(2) of the Act would not constitute damage to the premises.

The photographs of the bathroom shelf show stains and minor chips in the finish. At the hearing and in the application the Applicants testified that they tried to fix this area. The painter quoted \$52.50, including GST, to fix this shelf. I think that the Landlord’s claim for this repair is reasonable. The damage was discussed and communicated in the notes prepared at the exit inspection, the Applicants mentioned it in their application, and the estimated cost for repairs is reasonable. I will order the Applicants to pay the Respondent \$52.50 as compensation for repairing the bathroom shelf.

Orders

An order will issue:

- requiring the Respondent to return a portion of the retained security deposit to the Applicants in the amount of \$682.50 (ss. 18.1(b)); and
- requiring the Applicants to pay the Respondent \$52.50 for the costs to repair damages (p. 42(3)(e)).

Janice Laycock
Rental Officer