

IN THE MATTER between **BM**, Applicant, and **LM and KM**, 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:

BM

Applicant/Landlord

-and-

LM and KM

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	April 19, 2022
<u>Place of the Hearing:</u>	Hay River, Northwest Territories
<u>Appearances at Hearing:</u>	BM, the Applicant GL, witness for the Applicant LM, the Respondent KM, the Respondent
<u>Date of Decision:</u>	April 20, 2022

REASONS FOR DECISION

The parties entered into a tenancy agreement commencing September 1, 2017. The Applicant collected a security deposit of \$1,200. No inspection report was completed at the commencement of the tenancy. The tenancy agreement was terminated by mutual consent and the Respondents vacated the premises on March 31, 2021.

The Respondents filed an application on May 21, 2021, and an order was made requiring the Applicant to return the security deposit and accrued interest. The security deposit and accrued interest has been returned to the Respondents.

The Applicant filed an application on August 6, 2021, alleging the Respondents had caused damages to the rental premises and seeking the costs of repairs.

The Applicant testified that the vinyl siding had been damaged by spray, causing areas of discolouration. Photographs of the siding before the damage and photographs of the damaged areas were provided in evidence. A cost estimate for the replacement of the damaged areas with new siding was presented in evidence. The estimated repair cost was \$1,264.39. The Applicant testified that the work had not been completed as the contractor had a large backlog of work due to the COVID-19 pandemic. The Applicant's witness testified that he had tried to wash the siding with soap and a pressure washer but the staining could not be removed.

The Respondents stated that the staining was caused by an insecticide spray which was used to eliminate wasps. They stated that the wind had carried the spray on to the house and that, in their opinion, the stains could be easily removed. They stated that they had not attempted to remove the stains.

Section 42 of the *Residential Tenancies Act* (the Act) obligates a tenant to repair damages that are caused by their willful or negligent conduct:

42. (1) A tenant shall repair damage to the rental premises and the residential complex caused by the wilful or negligent conduct of the tenant or persons who are permitted on the premises by the tenant.

Aerosol insecticides contain hazardous toxins usually in a petrochemical solution. The instructions and cautions for use of these products are extensive and normally contain specific instructions to avoid over-spray as the ingredients can cause damage to plants, animals, humans, and many materials. Often the instructions specifically warn against using in windy conditions.

The photographic evidence does not suggest that the spray was carried by the wind. The stain patterns are clearly streaks, suggesting that the spray was directed at the house. If the spray had been carried by the wind, the stains would have been more diffuse and widespread. In my opinion, the insecticide spray was used in a negligent manner, causing the stains on the siding.

The internet contains numerous suggestions concerning removal of insecticide stains. Several suggest that these stains are usually indelible. The Applicant has made a reasonable effort to remove the stains without success. In my opinion, the replacement of the damaged area is warranted and I find the costs of repairs reasonable.

I find the Respondents in breach of their obligation to repair the damages to the siding caused by their negligent use of the insecticide spray. I find the repair costs reasonable. An order shall issue requiring the Respondents to pay the Applicant repair costs of \$1,264.39.

Hal Logsdon
Rental Officer