

IN THE MATTER between **M.W. and K.J. and D.L.**, Applicants, and **L.G.**, 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:

**M.W. AND K.J. AND D.L.**

Applicants/Tenants

-and-

**L.G.**

Respondent/Landlord

**REASONS FOR DECISION**

**Date of the Hearing:** May 17, 2022

**Place of the Hearing:** Yellowknife, NT via teleconference

**Appearances at Hearing:** M.W., Applicant

K.J., Applicant

C.T., representing the Respondent

**Date of Decision:** May 17, 2022

### **REASONS FOR DECISION**

The parties entered into a written one-year tenancy agreement to commence on October 1, 2021. The residential complex is a house containing two dwelling units. The monthly rent was \$2150. The Applicants provided a security deposit in the amount of \$2150 and a pet deposit of \$350. The tenancy agreement obligates the tenants to pay for the cost of water, heat and power during the term.

The Applicants moved out of the premises on January 31, 2022. The Respondent issued a statement of the security deposit on February 10, 2022 deducting the following amounts from the combined deposit of \$2500 and returning \$808.80 to the Applicants.

Utilities for December	\$595.07
Utilities for January	866.00
Administration fee (15%)	219.17
GST	<u>10.96</u>
Total	\$1691.20

The Applicants filed an application, on January 24, 2022, alleging numerous breaches of sections 30, 33, 18, 25 and 26 of the *Residential Tenancies Act*. The Applicants sought relief in the form of a return of all rent (\$6450) and all utilities (\$1387.70) paid during the term.

The *Residential Tenancies Act* is intended to be remedial. If a landlord or tenant breaches an obligation imposed by the Act or the tenancy agreement, the remedies contained in the Act are intended to correct the breach and provide compensation for loss that is directly related to the breach. Compensation is not punishment for committing the breach.

The Applicants alleged that they did not have the ability to adequately control the heat and that the premises were not adequately maintained or repaired to prevent the entry of cold air or maintain a comfortable temperature. I need not make a determination as to whether the Respondent was in breach of their obligation to repair or provide adequate control or supply of heat as I find no evidence of financial loss and none of the other remedies contained in sections 30 or 33 would benefit the Applicants as they are no longer in possession of the premises. No order pursuant to sections 30 or 33 would be remedial for the Applicants.

Similarly, the Applicants' allegations concerning illegal entry and failure to provide proper locking mechanisms have not resulted in any tangible loss and none of the remaining remedies pursuant to sections 25 and 26 would benefit the Applicants now that they have moved out of the premises.

The Applicants alleged that the premises were illegally rented and provided several e-mails between the Respondent, the Deputy Fire Chief, and Building Inspector with the City of Yellowknife. In one e-mail, from the Deputy Fire Chief to the Respondent and copied to one Respondent, dated January 25, 2022, the Chief writes, "Your tenant, M.W. shall vacate #2, 5123-49 St. No later than February 28." There is no reference to the authority to take such action nor was any notice sent directly to M.W. or any other tenant either by the Deputy Fire Chief or the Respondent. In my opinion there is not sufficient evidence to conclude that the Respondent interfered with the Applicants' lawful possession of the premises or that the premises were not permitted to be rented by law.

The Applicants disputed the retention of their security and pet deposits stating that the premises should have been provided with a separate electrical services and heating equipment so that each tenant would be billed separately and charged only for the utilities they used. While I agree and suspect this is one aspect of the City of Yellowknife's objection to the rental of the unit, I note that only rent and repairs of damages may be deducted from a security 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.*

The accounts for heating oil and electricity were both in the name of the tenant who occupied the other apartment in the residential complex. The tenants were expected to split the expense between themselves. The landlord neither held the accounts or collected the money or paid the bills. The Applicants were aware of this arrangement and agreed to it in the tenancy agreement. In an undated text message obviously prior to the commencement of the tenancy agreement, the Respondent sets out that the utilities will be in the upstairs tenant's name and they will forward the bills for 50% payment by the Applicants. The Applicant responded, "That makes sense and sounds fair. No worries at all." The utility amounts are not rent or repair costs and are not permitted to be deducted from a security deposit.

I can find no reason to find a service charge or the application of GST to be appropriate. Those deductions are denied.

The Applicants' request for the return of rent and utilities paid during the term is denied. An order shall issue for the Respondent to return the retained portion of the security deposit and accrued interest in the amount of \$1691.62 to the Applicants. I calculate the amount as follows:

Security deposit	2150.00
Pet deposit	350.00
Interest	0.42
Previous returned	<u>(808.80)</u>
Amount due Applicants	\$1691.62

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Hal Logsdon  
Rental Officer