

IN THE MATTER between **RC**, Applicant, and **VP**, 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 **Adelle Guigon**, Rental Officer, regarding a
rental premises located within the **city of Yellowknife in the Northwest Territories**;

BETWEEN:

RC

Applicant/Tenant

-and-

VP

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: August 30, 2022

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: RC, the Applicant

Date of Decision: September 6, 2022

REASONS FOR DECISION

An application to a rental officer made by RC as the Applicant/Tenant against VP as the Respondent/Landlord was filed by the Rental Office May 13, 2022. 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 email, deemed received June 3, 2022, pursuant to subsection 4(4) of the *Residential Tenancies Regulations* (the Regulations).

The Tenant alleged the Landlord had failed to return the security deposit in accordance with the *Residential Tenancies Act* (the Act) and had failed to return a portion of rent that had been paid in advance. An order was sought for the return of the security deposit and a refund of the overpaid rent.

The Landlord appeared for a hearing scheduled for June 14, 2022, which the Tenant failed to appear for. Given this was the Tenant's application, a fail to appear notice was issued to the Tenant requesting her intentions for the application. The Tenant replied and the hearing was rescheduled and held August 30, 2022, by three-way teleconference. RC appeared at the rescheduled hearing as the Applicant/Tenant. VP was served with notice of the rescheduled hearing by email, deemed received July 26, 2022. The Respondent/Landlord did not appear at the hearing, nor did anyone appear on her behalf. The hearing proceeded in the Respondent's absence pursuant to subsection 80(2) of the Act.

Tenancy agreement

It was established at the hearing that an oral residential tenancy agreement had been entered into between the parties for a bedroom in the Landlord's house with shared facilities, commencing April 14, 2022. The tenancy ended when the Tenant vacated the rental premises May 8, 2022. I am satisfied a valid tenancy agreement was in place in accordance with the Act.

Security deposit

The Landlord required a security deposit equivalent to one month's rent, that being \$1,000. The Tenant paid the security deposit in two installments of \$500 on April 22nd and May 6th. Neither an entry inspection report nor an exit inspection report were completed. There were no rental arrears. The Landlord did not complete a statement of security deposit and did not notify the Tenant of her intention to retain the security deposit.

I am satisfied the Landlord has not returned the security deposit to the Tenant. I find the Landlord has failed to comply with her obligations respecting the return and accounting of the security deposit. An order will issue requiring the Landlord to return the security deposit to the Tenant in the amount of \$1,000.

Overpaid rent

Evidence was presented satisfying me that, despite not having it in writing, the Landlord and Tenant had agreed to end the tenancy on May 8, 2022. Issues arose and were repeated which appear to have created an undesirable living situation for the Landlord, compelling the Landlord to ask the Tenant to leave. Given the circumstances, the Tenant agreed to leave and moved out of the premises.

The Tenant had paid the full month's rent for May of \$1,000 on May 1st. The Tenant asked the Landlord to return a portion of the rent given the agreed termination of the tenancy. The Landlord did not respond to the Tenant's request and has not returned any monies.

Given my finding that the termination of the tenancy was agreed to by the parties, I found at the hearing that the Landlord was not entitled to retain the full month's rent and that a prorated amount of \$741.98 should be returned to the Tenant as overpaid rent.

However, in the course of writing these reasons for decision and further reviewing the Act, I am reminded that there is no authority in the Act for overpaid rent to be ordered returned to the Tenant in the circumstances that are before me today.

While there is clear intent in the Act to consider overpaid rent, it is specific under sections 56, 58, and 59 to circumstances involving rental premises provided as a benefit of employment, or where the tenancy was terminated early due to the landlord or purchaser intending to reside at the rental premises or the landlord demolishing, changing the use of, or doing extensive repairs or renovations to the rental premises. Section 47 also provides for the return of overpaid rent resulting from an invalid rent increase. Nowhere in the Act is there provision for ordering the return of overpaid rent in any other circumstances. Consequently, I cannot order the Respondent/Landlord in this case to return the overpaid rent to the Applicant/Tenant.

Order

An order will issue requiring the Landlord to return the security deposit to the Tenant in the amount of \$1,000.

