

IN THE MATTER between **SM and EM**, Applicant, and **GHL**, 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 **town of Hay River in the Northwest Territories**;

BETWEEN:

**SM and EM**

Applicants/Tenants

-and-

**GHL**

Respondent/Landlord

**REASONS FOR DECISION**

<b><u>Date of the Hearing:</u></b>	<b>February 7, 2023</b>
<b><u>Place of the Hearing:</u></b>	<b>Yellowknife, Northwest Territories</b>
<b><u>Appearances at Hearing:</u></b>	<b>SM, the Applicant BD, representing the Respondent JG, representing the Respondent</b>
<b><u>Date of Decision:</u></b>	<b>February 7, 2023</b>

### **REASONS FOR DECISION**

An application to a rental officer made by SM and EM as the Applicants/Tenants against GHL as the Respondent/Landlord was filed by the Rental Office January 4, 2023. The application was made regarding a residential tenancy agreement for a rental premises located in Hay River, Northwest Territories. The filed application was served on the Respondent by email, deemed received January 21, 2023, pursuant to subsection 4(4) of the *Residential Tenancies Regulations*.

The Tenant alleged the Landlord had improperly withheld a portion of the security deposit at the end of the tenancy. An order was sought for the return of the retained portion of the security deposit.

A hearing was held February 7, 2023, by three-way teleconference. SM appeared as the Applicant/Tenant. BD and JG appeared representing the Respondent/Landlord.

#### **Tenancy agreement**

Evidence was presented establishing a residential tenancy agreement between the parties commencing July 1, 2021. The tenancy ended September 30, 2022. I am satisfied a valid tenancy agreement was in place in accordance with the *Residential Tenancies Act* (the Act).

#### **Security deposit**

When the tenancy began the rent was established at \$3,500 and a security deposit for that amount was paid in two installments with \$3,000 paid on June 8, 2021, and \$500 paid on June 10, 2021. The rent was subsequently renegotiated to \$3,000 per month effective February 1, 2022, and the Landlord returned \$500 of the security deposit to the Tenants on September 8, 2022.

A portion of the security deposit amounting to \$1,000 was retained by the Landlord at the end of the tenancy, with the remaining \$2,000 being returned to the Tenant on October 11, 2022. Although there are text message communications between the parties regarding the cleaning required at the rental premises, the Landlord did not complete and provide an exit inspection report, did not provide the Tenant with an itemized statement of the security deposit account, and did not account for the interest on the security deposit.

*Entry inspection report*

Section 15 of the Act requires the Landlord to conduct an inspection of the rental premises at the beginning of the tenancy. The Tenant must be given reasonable opportunity to participate in the entry inspection, but the Tenant is not required to be there. The Landlord must prepare and sign a report of the inspection and give a copy of that report to the Tenant within 5 days of doing the inspection.

The Landlord testified that the following paragraph included in the written tenancy agreement below the signature blocks constituted a report of the condition of the rental premises when the Tenants moved in:

“By initialling this you will confirm that the premises you are renting was handed over to you in good repair and clean condition. Any exceptions you wish to make note of will be emailed to the landlord within one week of moving in.”

Not only was that paragraph not initialled, but it does not in fact establish the condition of the premises at the beginning of the tenancy. Additionally, the tenancy agreement was signed June 1, 2021, – one month before the Tenants took occupancy of the rental premises. That paragraph also contradicts section 6 of the written tenancy agreement, which complies with the Act in setting out the agreement that the Landlord and Tenant “will inspect the premises at the commencement of the tenancy and upon surrender of possession at or following the expiration of the tenancy and that the condition of the premises will be noted on the document attached to this Agreement.” No document, entry/exit inspection report, check-in/check-out report, move-in/move-out report, or otherwise, was attached to the written tenancy agreement.

Although the Landlord is not required to use any specific form for the inspection reports, there is an approved form available for Landlords to use. This form is referenced at paragraphs 15(4) and 17.1(4) of the Act.

I am satisfied the Landlord failed to comply with their obligation to conduct an entry inspection of the rental premises, prepare a report from that inspection, and give that report to the Tenants.

### *Exit inspection report*

Section 17.1 of the Act requires the Landlord to conduct an inspection of the rental premises at the end of the tenancy. The Tenant must be given reasonable opportunity to participate in the exit inspection, but the Tenant is not required to be there. The Landlord must prepare and sign a report of the inspection and give a copy of that report to the Tenant within 5 days of doing the inspection.

The Landlord testified that she did a walkthrough of the premises the day the Tenants left the community and took photographs of various deficiencies. The Landlord mentioned her general observations to the Tenant by text message, but a formal exit inspection report was not completed.

While I can be satisfied that the Landlord complied with their obligation to conduct an exit inspection of the rental premises without delay upon the Tenants vacating the rental premises, the Landlord failed to comply with their obligations to prepare an exit inspection report and give it to the Tenant.

### *Disposition of the security deposit*

Section 18 of the Act provides for the disposition and accounting of the security deposit at the end of the tenancy. The Landlord must return the security deposit and an itemized statement of account for the security deposit to the Tenant within 10 days of the day they vacate the rental premises. The Landlord may retain the security deposit against rental arrears that have accumulated as of the last day of the tenancy, or against costs of repairs of damages to the rental premises for which the Tenant is responsible, but must give written notice to the Tenant of their intention to withhold any part of the security deposit, along with an itemized statement detailing what they are retaining the security deposit against, within 10 days of the day the Tenant vacates the rental premises. However, where the Landlord failed to comply with their obligations respecting the entry and exit inspections and reports the Landlord is no longer authorized to retain the security deposit against costs of repairs.

In this case, as previously mentioned, the landlord retained \$1,000 of the security deposit against claims for cleaning costs. However, because the Landlord did not complete the requisite entry and exit inspection reports in accordance with the Act, the Landlord did not have the authority to retain the \$1,000 from the security deposit.

Additionally, the Landlord did not provide written notice to the Tenant of their intention to retain the security deposit, nor did they provide the Tenant with an itemized statement of account for the security deposit.

To clarify, the Act and Regulations stipulate that written notice may be served by personal service, registered mail, fax, or email. This means that emails are recognized as a form of writing for the purposes of serving notices, as long as the email includes: the sender's name, address, telephone number, and email address; the date and time of transmission; and the name and telephone number of a person to contact in the event of transmission problems. There was communication between the Landlord and the Tenant by text message regarding the condition of the premises and the disposition of the security deposit, but text messages are not emails and do not generally include the identifiers required in emails, and therefore text messages are not an acceptable form of writing for the purposes of serving notices under the Act and Regulations.

I am satisfied the Landlord failed to comply with the obligations to return the security deposit to the Tenants, to provide an itemized statement of account of the security deposit to the Tenants, and to notify the Tenants of the intention to retain any portion of the security deposit.

#### *Interest on the security deposit*

Section 16 of the Act requires the Landlord to annually calculate interest on the security deposit and to credit that interest to the Tenant with the return of the security deposit at the end of the tenancy. The Landlord failed to comply with this obligation for this tenancy when returning the security deposit.

The annual interest rate for the last three years has been 0.01 percent. Given the paid security deposit was \$3,500 until September 7, 2022, and then \$3,000 from September 8<sup>th</sup> to 30<sup>th</sup>, I calculated the interest accordingly to be \$0.46.

#### Conclusions respecting the Security Deposit

Being satisfied that the Landlord failed to comply with their obligations respecting the preparation and sharing of the entry and exit inspection reports, I find the Landlord was not entitled to retain the security deposit against the cleaning costs.

With respect to the findings that the Landlord failed to comply with their obligations to conduct entry and exit inspections, prepare reports from those inspections, and give copies of those inspection reports to the Tenants, there are no immediate remedies available under the Act that the Rental Officer can order. Those contraventions constitute summary offences under section 91 of the Act, for which charges could be laid against the Landlord to be heard before a Justice of the Peace or a Territorial Court Judge. If found guilty of that offence, a corporation would face a maximum fine of \$25,000.

With respect to the finding that the Landlord improperly retained a portion of the security deposit, remedies are available for the Rental Officer to order the Landlord to comply with their obligations respecting the disposition of the security deposit and/or to return all or part of the security deposit to the Tenant. A breach of this part of the Act, section 18, is also included under section 91 as a summary offence.

Despite this tenancy having ended, I will be issuing an order for the Landlord to comply with their obligations in the future respecting the disposition of the security deposit as required under section 18 of the Act.

### **Cleaning**

The Landlord responded to the Tenants' application by providing evidence and explanations for why they retained the \$1,000 from the security deposit. Although there were no formal inspection reports, the Landlord's representative testified to direct personal knowledge of the condition of the premises at the end of the tenancy, and provided photographic evidence to support her observations. The Landlord also provided an invoice for cleaning costs and a subsequently provided email from the cleaners detailing the hours worked and their hourly rate.

The Tenants claimed that they had completed approximately 25 hours worth of cleaning before departing the premises, and felt they had scrubbed the premises and left it in better condition that they received it. They acknowledged – both through text messages sent at the time and at the hearing – that there may have been some additional cleaning required for which the Landlord may need to hire the cleaners that were previously offered to the Tenants to connect with, but the Tenants questioned the amount claimed for the cleaning.

The photographs corroborate the Landlord's observations. They show that the fridge/freezer had not been cleaned, the microwave had not been cleaned, the bathroom fixtures had not been adequately cleaned, the dishwasher had not been cleaned, the oven had not been cleaned, the furniture had not been vacuumed or dusted and cleaned, the countertops had not been wiped down, the premises had not been dusted, the floors had not been adequately swept and mopped, the mattresses had not been vacuumed, and the wastebaskets had not been cleaned. It was further established at the hearing that none of the spaces behind and under the various appliances was cleaned.

Subsection 45(2) of the Act requires the Tenant to maintain the ordinary cleanliness of the rental premises, and of all services and facilities that the Tenant has exclusive use of. This obligation is regardless of the cleanliness of the rental premises when the Tenant takes possession. If the premises was not ordinarily clean at the beginning of the tenancy, the Tenant could have approached the Landlord to remedy the situation then. The Tenant remains obligated throughout the term of their tenancy to keep the premises clean, including returning it at the end of the tenancy in an ordinarily clean condition.

The Tenants clearly did not return the premises to the Landlord's possession in an ordinary state of cleanliness. Whatever cleaning the Tenants did was inadequate. I am satisfied the rental premises required cleaning at the end of the tenancy. I am also satisfied that the cleaners claim of 15 hours for two workers to clean the premises is reasonable. I am satisfied that the Landlord suffered the monetary loss of \$945 (including GST) to bring the rental premises to an ordinary state of cleanliness, as demonstrated by the cleaning invoice provided by the Landlord. I find the Tenants liable to the Landlord for cleaning costs in the amount of \$945.

### **Orders**

Although the Landlord technically retained the security deposit without authority, for which in other circumstances the Landlord would be ordered to return the retained portion to the Tenant, in this case the Landlord has effectively countered the Tenant's claim with evidence supporting the cleaning costs for which the security deposit was originally retained. I could order the Landlord to return the entire \$1,000 that was retained plus the \$0.46 in interest, and then order the Tenant to pay the Landlord the costs of cleaning amounting to \$945. It is more efficient to order the difference be returned to the Tenants.

An order will issue:

- requiring the Landlord to comply in the future with their obligations respecting the disposition of the security deposit at the end of a tenancy as specified under section 18 of the Act (p. 18.1(a)); and
- requiring the Landlord to return a portion of the security deposit to the Tenants in the amount of \$55.46 (p. 18.1(b)).

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Adelle Guigon  
Rental Officer