

IN THE MATTER between **ERO**, Applicant, and **KC**, 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 **Jerry Vanhantsaeme**, Rental Officer, regarding a rental premises located within the **Town of Fort Smith in the Northwest Territories**;

BETWEEN:

ERO

Applicant/Tenant

-and-

KC

Respondent/Landlord

REASONS FOR DECISION

<u>Date of the Hearing:</u>	November 19, 2024
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	ERO, representing the Applicant
<u>Date of Decision:</u>	November 19, 2024

REASONS FOR DECISION

An application to a rental officer made by ERO as the Applicant/Tenant against KC as the Respondent/Landlord was filed by the Rental Office October 11, 2024. The application was made regarding a residential tenancy agreement for a rental premises located in Fort Smith, Northwest Territories. The filed application was served on the Respondent by email and deemed served on October 21, 2024.

The Applicant alleged the Respondent breached their obligation to return the security deposit. An order was sought for the return of the security deposit.

A hearing was scheduled for November 19, 2024, by three-way teleconference. ERO appeared representing the Applicant. The Respondent did not appear, nor did anyone on their behalf. The hearing proceeded in the Respondent's absence as provided for in subsection 80(2) of the *Residential Tenancies Act*. At the hearing, I reserved my decision to further review the evidence and testimony.

Preliminary matters

Dates in the application were not in correspondence with the testimony or evidence presented. The Applicant testified they have trouble with dates, but the dates on the application were correct. The reasoning for the application is not affected by the dates outlined in the Applicant's claim.

Tenancy Agreement

The Applicant's testimony established an oral month-to-month tenancy agreement between the parties commencing April 22, 2024 to August 24, 2024. A text message between the parties indicated rent was due the last day of the month. The Applicant testified the rent due was for the following month.

I am satisfied a valid tenancy agreement is in place in accordance with the subsection 9(1) of the *Act*.

Security deposit

The Applicant testified when taking possession of the rental premises on April 19, 2024, they had paid \$1,100.00 for a portion of the month (\$200.00 and for the security deposit (\$900.00). The Applicant claimed they were not told in advance the Respondent would be collecting the security deposit. To avoid conflict, the Applicant paid the deposit.

The Applicant testified they were having issues with employment and on August 6, 2024 gave notice they would not be continuing with the tenancy. The parties met and in agreement the Applicant would vacate on August 24, 2024, to allow the Respondent time to find another tenant. The Applicant also testified and provided text message evidence the Respondent was willing to return the security deposit but later changed their mind as proper notice of termination had not occurred. The Applicant testified the security deposit was for damages and the rental premises was in better condition than it was received. Prior to the hearing, the Applicant was contacted by the Respondent to advise they will return the security deposit once they have the rental premises rented out.

The Rental Officer questioned and was informed by the Applicant no formal written entry or exit inspection had been completed.

Section 18(3) of the Act requires a landlord to return the security deposit with an itemized statement of account within 10 days of the tenant vacating the rental premises.

Section 18(4) permits the landlord to retain the security deposit against rental arrears and/or for costs to repair damages. For clarity, lost future rent is not rental arrears.

Section 18(5) prohibits the retention of the security deposit against costs to repair damages if either an entry or exit inspection report was not completed or a copy of either report was not provided to the tenant.

Section 18(7) requires the landlord who intends to withhold any part of the security deposit to notify the tenant in writing of that intention within 10 days of the day the tenant vacates the rental premises.

Subsection 17(1) directs a landlord to keep all security deposits, pet security deposits and interest separate and apart from money belonging to the landlord.

Subsection 17(2) directs the landlord to hold all security deposits, pet security deposits and interest in trust.

I find the Respondent was not entitled to retain the security deposit.

Applicant comments

The Applicant testified before vacating, they had looked into finding another tenant for the Respondent. When later talking with the prospective new tenant, they were told the Respondent advised the rental premises was not available.

Orders

An order will be issued requiring the Respondent to pay to the Applicant the security deposit in the total amount of \$900.00.

Jerry Vanhantsaeme
Rental Officer