

IN THE MATTER between **JENNIFER JOHNSTON**, Tenant, and **MARIE-ANICK ELIE**, Landlord;

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, regarding the rental premises at **INUVIK, NT**.

BETWEEN:

**JENNIFER JOHNSTON**

Tenant

- and -

**MARIE-ANICK ELIE**

Landlord

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to sections 62(2) and 45(4)(c) of the *Residential Tenancies Act*, the tenant shall pay the landlord the cost of water paid on her behalf and compensation for lost rent in the total amount of six hundred thirty dollars and seventy three cents (\$630.73).

DATED at the City of Yellowknife, in the Northwest Territories this 10th day of November, 2005.

Hal Logsdon  
Rental Officer

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-and-

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Landlord

**REASONS FOR DECISION**

<b><u>Date of the Hearing:</u></b>	<b>November 9, 2005</b>
<b><u>Place of the Hearing:</u></b>	<b>Inuvik, NT via teleconference</b>
<b><u>Appearances at Hearing:</u></b>	<b>Andre Rancourt, representing the tenant Harley Matthew, witness for the tenant Marie-Anick Elie, landlord</b>
<b><u>Date of Decision:</u></b>	<b>November 10, 2005</b>

### **REASONS FOR DECISION**

The tenant's application was filed on September 22, 2005 and the landlords application was filed on October 13, 2005. As both applications relate to the same rental premises and the same tenancy agreement, with the agreement of both parties, both matters were heard at a common hearing.

The tenancy agreement between the parties was made in writing for a term from October 1, 2004 to September 30, 2005. A security deposit of \$1500 was provided to the landlord at the commencement of the tenancy agreement. The tenant gave notice in writing on August 2, 2005 to terminate the tenancy agreement on August 31, 2005. The landlord retained the security deposit at the termination of the tenancy agreement. There is no evidence that an itemized statement of the deposit and deductions was completed by the landlord in accordance with section 18(3) of the *Residential Tenancies Act*. The tenant sought the return of the security deposit.

The landlord alleged that cleaning and repairs to the premises were necessary and sought an order for costs in excess of the security deposit. The landlord also alleged that the tenant had abandoned the premises prior to the end of the term and sought compensation for lost rent. The landlord also alleged that the tenant had failed to pay for the full amount of water used during the term of the tenancy agreement and sought compensation for water costs which were paid on behalf of the tenant.

The tenancy agreement, although made for a term, sets out the following provision for termination by the tenant's notice.

**4(2)(a) During the initial term of the tenancy, at least 30 days before the expiration of any month to be effective on the last day of the second month.**

The tenant's notice, given on August 2, 2005, could not therefore be effective on August 31, 2005. As well, the clause in the tenancy agreement is inconsistent with section 51(1) of the *Residential Tenancies Act*.

**51.(1) Where a tenancy agreement specifies a date for the termination of the tenancy agreement, the tenant may terminate the tenancy on the date specified in the agreement by giving the landlord a notice of termination not later than 30 days before the termination date.**

The tenant's August 2nd notice could only be effective to terminate the tenancy agreement on September 30th. Therefore, the premises can be considered abandoned following August 31, 2005 and the tenant liable for lost rent, subject to the landlord's reasonable efforts to mitigate loss.

The landlord testified that she advertised the premises and showed them to prospective tenants after the tenant gave notice. The landlord provided copies of e-mails and the advertisement in evidence. The landlord testified that the premises were re-rented on October 1, 2005. I find that the landlord took reasonable steps to re-rent the premises but lost rent in the amount of \$1500 due to the abandonment of the premises.

The landlord provided a copy of a water bill for services from July 29, 2005 to September 1,

2005 in the amount of \$82.40 which had been paid by her on behalf of the tenant. The tenancy agreement obligates the tenant to pay for the cost of water during the term of the tenancy. The tenant's representative stated that the tenant actually vacated in July but was not sure if the landlord was notified. I find the tenant in breach of her obligation to pay for the water bill. The tenant's notice clearly implies that she intended to remain in possession until August 31, 2005 and she is therefore obligated to pay for the water during this period.

At the request of the rental officer, the landlord provided an itemised statement of the cleaning and repair costs to support the invoice for unspecified labour costs of \$1305 which was included with her application. A copy was provided to the tenant by the landlord. The tenant's representative disputed these costs stating that the premises were clean, some repair costs were unreasonable and some repairs were necessary due to normal wear and tear. I find the following with regard to the requested compensation for repair and cleaning costs:

**1. Repair of Bifold Closet Doors**

The photographs provided by the landlord clearly show that the bifold doors have been removed from the closets. The doors themselves are not damaged nor are the tracks but the landlord stated that some of the hardware necessary to re-install the doors was missing. In my opinion, the requirement for 6 hours of labour to complete this job is unreasonable. The hardware is readily available, easily installed and inexpensive. The doors can be reinstalled on the tracks in a matter of minutes, not hours. In my opinion, reasonable compensation for this repair is \$20.

## **2. Cleaning Windows and Lamp Fixtures**

The witness for the tenant testified that he cleaned the windows and most or all of the lamp fixtures. The evidence does not support the allegation that these items were not reasonably clean. The compensation for these items is denied.

## **3. Outside Cleaning**

The tenant argued that because the premises were located in a rowhouse of four units, the yard mess could belong to any of the neighbours. The landlord stated that most of the mess was under the porch of the tenant's premises and included dog faeces. In an e-mail to Barb Chalmers, who cleaned the house for the tenants, the landlord complained about having to spend 3 hours cleaning up the outside mess and hauling 2 loads to the dump. I find the landlord's evidence credible and costs of \$60 reasonable.

## **4. Carpet in Entrance**

The tenant stated that they had nailed a piece of plywood at the door threshold to prevent persons from tripping over the carpet which had become frayed. The photograph of the area indicates that two different carpets join at that area. The landlord stated that she had been told that the dog did the damage but the tenant's representative stated that the dog was not permitted in the premises. In my opinion, the evidence suggests that the damage is due to normal wear and tear. The landlord's request for compensation is denied.

**5. Toilet repair**

The flush handle of the toilet was broken and the landlord claimed repair costs of \$10.

The tenant's representative felt the damage was normal wear and tear. I disagree.

These handles do not break with normal use. The landlord's cost of \$10 is reasonable.

**6. Washing Machine Repair**

One of the plastic dials on the washer was replaced and labour costs of \$50 claimed.

No material cost was requested. These dials simply push on the washer control and the requirement of 2.5 hours to install it is completely unreasonable. The labour cost to install such an item is negligible. The landlord's request for compensation is denied.

**7. Patching Walls**

Although the landlord has claimed costs for the filling and sanding of numerous pin holes in several walls, I note that Barb Chalmers states in a letter, submitted in evidence by the landlord, that she was hired by the tenant to clean the premises. In the letter she states that the "tenant did provide spackle and I patched holes (mostly tiny pin holes) in walls." If the tenant hired Ms Chalmers to undertake this work, I fail to see why the landlord is claiming any compensation. If the holes were tiny pin holes, there would be little or no sanding required. The landlord's request for compensation is denied.

## 8. **Painting**

If patching is done, there is an obvious need to paint, The landlord has submitted that the painting required took 33 hours to complete and required \$168.94 in material cost.

Receipts were provided for the materials purchased. The inspection report indicates small holes in all of the bedrooms, the den, the landing and upper hall, the lower hall and entrance and the living-dining room. The photographic evidence shows patching on several walls. The tenant stated that there were small holes created by thumb tacks used to hang children's art work and stated that in his opinion, it should be considered normal wear and tear. Judging from the number of patched areas, I can not agree.

Assuming a helper was utilized to paint the affected areas, the amount of time spent, does not seem unreasonable. However, the premises were last painted in 2003.

Assuming a life expectancy of five years for interior paint, the landlord has already enjoyed 2 years of service. In my opinion, the tenant should be responsible for the damage to the remaining life of the paint or 60% of the cost. Taking into consideration the rates charged I find that cost to be \$325. The material cost of \$168.94 is reasonable.

In summary, I find reasonable repair and cleaning costs to be \$583.94 calculated as follows:

Closet door repair	\$20.00
Outside cleaning	60.00
Toilet repair	10.00
Painting	325.00
Paint and supplies	<u>168.94</u>
Total	\$583.94

I find the interest on the security deposit to be \$35.61.

Taking into account the retained security deposit and accrued interest, I find the amount owing to the landlord to be \$630.73, calculated as follows:

Security deposit	\$1500.00
Interest	35.61
Repairs and cleaning	(583.94)
Water costs	(82.40)
Lost rent	<u>(1500.00)</u>
Amount due landlord	\$630.73

An order shall issue requiring the tenant to pay the landlord costs of water paid on her behalf and lost rent in the amount of \$630.73.

Hal Logsdon  
Rental Officer