

IN THE MATTER between **THERESA ROSS**, Applicant, and **EDITH WEBER**,  
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,  
regarding the rental premises at **FORT SMITH, NT**.

BETWEEN:

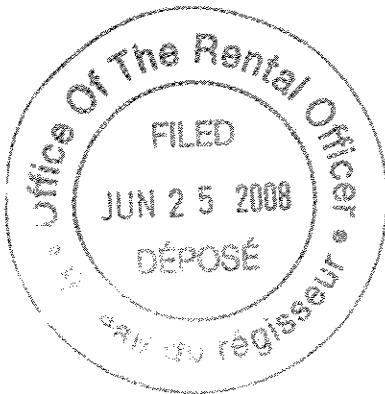
**THERESA ROSS**

Applicant/Tenant

- and -

**EDITH WEBER**

Respondent/Landlord



**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 18(5) of the *Residential Tenancies Act*, the respondent shall return a portion of the retained security deposit to the applicant in the amount of two hundred eighty one dollars and eighty five cents (\$281.85).

DATED at the City of Yellowknife, in the Northwest Territories this 25th day of June,  
2008.

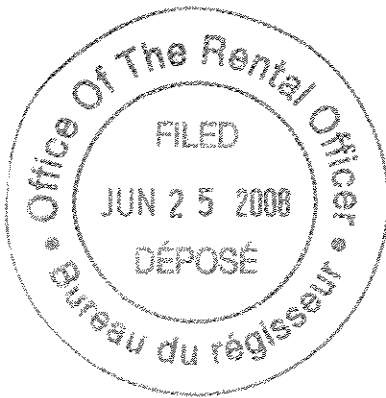
  
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Hal Logsdon  
Rental Officer

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BETWEEN:



**THERESA ROSS**

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-and-

**EDITH WEBER**

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**REASONS FOR DECISION**

**Date of the Hearing:**

**June 25, 2008**

**Place of the Hearing:**

**Fort Smith, NT via teleconference**

**Appearances at Hearing:**

**Theresa Ross, applicant**

**Date of Decision:**

**June 25, 2008**

### **REASONS FOR DECISION**

The respondent was served with a Notice of Attendance sent by registered mail and confirmed delivered. The respondent contacted the rental officer stating that she would be unable to attend the hearing because she would be travelling on that day. The respondent stated that she wished the hearing to proceed in her absence and wished her defence to be based on the written submission she filed with the rental officer on April 25, 2008. The hearing was held in her absence.

The tenancy agreement was terminated on January 31, 2008. The respondent retained part of the security deposit (\$1100) and accrued interest (\$21.45), applying it against costs of chimney cleaning (\$150), patching and painting walls (\$200), replacing light bulbs (\$50) and costs of propane paid in behalf of the applicant (\$700). The balance of \$21.45 was returned to the applicant.

The applicant disputed the deductions for chimney cleaning, patching and painting and light bulb replacement and sought an order requiring the respondent to return \$400 of the retained security deposit. The applicant acknowledged the charges for propane and did not dispute that deduction.

#### **Chimney Cleaning**

The applicant stated that the wood stove was only used several times and that she did not think the chimney required cleaning at the termination of the tenancy agreement. The applicant stated

that there was no agreement between the parties, verbal or written that the tenant was responsible for cleaning the chimney. Section 30(1) of the *Residential Tenancies Act* obligates the landlord to maintain the premises in a good state of repair.

**30.(1) A landlord shall**

- (a) provide and maintain the rental premises, the residential complex and all services and facilities provided by the landlord, whether or not included in a written tenancy agreement, in a good state of repair and fit for habitation during the tenancy; and**
- (b) ensure that the rental premises, the residential complex and all services and facilities provided by the landlord comply with all health, safety and maintenance and occupancy standards required by law.**

Section 31(1) permits a tenant to assume some of the obligations included in section 30(1) if included in a tenancy agreement.

**31.(1) Notwithstanding section 30, where a residential complex is composed of one rental premises, a landlord and tenant may agree that any or all of the obligations set out in subsection 30(1) may be performed by the tenant except for repairs required as a result of reasonable wear and tear or as a result of fire, water, tempest or other act of God.**

The obligation to maintain the chimney in a good state of repair is the landlord's obligation unless the tenancy agreement between the parties states other wise. The written tenancy agreement between the parties does not contain anything that would serve to transfer this obligation to the tenant. Therefore the on-going maintenance of the chimney was the obligation of the landlord and the applicant should not be charged for any cost related to the cleaning of the chimney.

Patching and Painting - Bedroom Walls and Closet

The applicant testified there were no more holes in the walls at the end of the tenancy agreement than there were at the commencement of the agreement.

An inspection was done at the commencement of the tenancy agreement and a written inspection report prepared. Although it is unsigned by either party it is clear from the testimony of the applicant that she was made aware of the contents of the inspection report and had an opportunity to comment on it. The inspection of each bedroom at the commencement of the tenancy agreement noted holes in the walls; holes in two walls in bedroom one, holes by window and in ceiling in bedroom two and two holes in bedroom three. There is no reference to any holes in any closet. In my opinion, there is insufficient evidence to establish that any additional holes were created by the applicant in any walls. There appears to have been some scrapes and a hole in a closet that were not present at the commencement of the tenancy agreement. In my opinion, the respondent was entitled to repair costs but \$200 is not a reasonable cost for the repair of one hole. In my opinion, \$75 is reasonable compensation.

Replacement of Light Bulbs

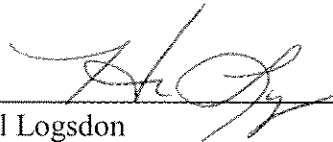
The applicant testified that there were just as many burnt out light bulbs at the commencement of the tenancy agreement than there were at the end of the agreement and that many of the burnt out bulbs were too high for her to replace. In my opinion, the replacement of bulbs is the obligation of the tenant. The inspection report done at the commencement of the tenancy agreement indicates one burnt out bulb. The respondent's statement indicates that sixteen bulbs were

replaced. In my opinion, the respondent's deduction of \$50 is not an unreasonable cost to replace fifteen bulbs and the respondent is entitled to the compensation.

The respondent has calculated interest on the security deposit at 3% in accordance with the tenancy agreement. The interest rate is set by the *Residential Tenancies Act* at 4.33% for 2007 and 4.59% for 2008. I find the interest payable to be \$28.30.

An order shall issue requiring the respondent to return a portion of the retained security deposit and interest to the applicant in the amount of \$281.85 calculated as follows:

Security deposit	\$1100.00
Interest	28.30
Light bulbs	(50.00)
Patching/painting	(75.00)
Propane	<u>(700.00)</u>
Amount due applicant	\$303.30
Previously refunded	<u>21.45</u>
Amount of order	\$281.85

  
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Hal Logsdon  
Rental Officer