

IN THE MATTER between **M.L. KENNEDY**, Applicant, and **MATTHEW OUELLETTE AND JOSH OUELLETTE**, Respondents;

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 **YELLOWKNIFE, NT.**

BETWEEN:

M.L. KENNEDY

Applicant/Tenant

- and -

MATTHEW OUELLETTE AND JOSH OUELLETTE

Respondents/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18(5) of the *Residential Tenancies Act*, the respondents shall return to the applicant the remainder of the retained security deposit and accrued interest in the amount of nine hundred twenty two dollars and twenty six cents (\$922.26).

DATED at the City of Yellowknife, in the Northwest Territories this 5th day of February, 2009.

Hal Logsdon
Rental Officer

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BETWEEN:

M.L. KENNEDY

Applicant/Tenant

-and-

MATTHEW OUELLETTE AND JOSH OUELLETTE

Respondents/Landlords

REASONS FOR DECISION

Date of the Hearing: January 28, 2009

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Mimi Kennedy, applicant
Matthew Ouellette, respondent

Date of Decision: February 5, 2009

REASONS FOR DECISION

The tenancy agreement between the parties was terminated on October 31, 2008 when the applicant vacated the premises. A security deposit of \$1600 was provided to the respondents at the commencement of the tenancy agreement on June 16, 2006. The respondents retained \$760 of the deposit at the end of the tenancy, returning \$840 to the applicant. There is no evidence that a statement of the security deposit was issued by the respondents in accordance with section 18(3) of the *Residential Tenancies Act* or that any interest on the security deposit was provided to the applicant. There was no inspection report completed indicating the condition of the premises at the commencement of the tenancy agreement.

The respondent stated that the wallboard in the living room near the hallway was damaged and was replaced with drywall. A quotation of \$787.50 to repair the area was provided to the applicant and provided in evidence. The respondent maintains that the damage could only have been the result of the applicant's negligence and that the wall was not damaged at the commencement of the tenancy agreement.

The applicant stated that the wallboard had a large crack in it when she took possession of the premises. She stated that the crack may have gotten larger during the term of the tenancy agreement but was not caused by any negligent act.

Section 42(1) of the *Residential Tenancies Act* obligates a tenant to repair damage to the premises and Section 18(2) of the Act permits a landlord to retain all or part of the security deposit for the repair of damages.

42.(1) A tenant shall repair damage to the rental premises and the residential complex caused by the wilful or negligent conduct of the tenant or persons who are permitted on the premises by the tenant.

18.(2) A landlord may, in accordance with this section, retain all or part of the security deposit for repairs of damage caused by a tenant to the rental premises and for any arrears of the rent.

If a landlord retains all or part of a security deposit for repairs, they must be prepared, on the balance of probabilities, to show that the repairs were made necessary by the wilful or negligent conduct of the tenant or persons permitted on the premises by the tenant. Obviously, the evidence must also indicate that the damage was done during the term of the tenancy agreement. In this matter, the evidence suggests that there is reason to believe that the wall was damaged prior to the commencement of the tenancy agreement. I have no reason to give the landlord's testimony any more weight than that of the tenant and there is no inspection report, which is required pursuant to section 15 of the Act, to lend support to either testimony.

If the crack in the wall did become more pronounced during the term, it does not, in my opinion, justify compensation. If the wall was damaged at the commencement of the tenancy, the landlord was obligated to repair it. There is no evidence to suggest that the repair costs would have been any more at the end of the tenancy agreement than they would at been at the commencement of the agreement.

I find insufficient evidence to conclude that the damage to the wall occurred during the term of the tenancy agreement. I find the accrued interest on the security deposit to be \$162.26. An order shall issue requiring the respondents to return the balance of the security deposit and the accrued interest to the applicant in the amount of \$922.26, calculated as follows:

Retained portion of security deposit	\$760.00
Interest on deposit	<u>162.26</u>
Amount owing applicant	\$922.26

Hal Logsdon
Rental Officer