

IN THE MATTER between **MARJORIE SIBBALD**, Applicant, and **JODPHUR HOLDINGS LTD.**, 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 **YELLOWKNIFE, NT.**

BETWEEN:

**MARJORIE SIBBALD**

Applicant/Tenant

- and -

**JODPHUR HOLDINGS LTD.**

Respondent/Landlord

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 30(4)(a) of the *Residential Tenancies Act*, the respondent shall comply with their obligation to maintain the premises in a good state of repair by performing the following maintenance and repairs:
  - a) Supply and install drawer for kitchen cabinet.
  - b) Inspect florescent ceiling fixture in kitchen and repair or replace as necessary to ensure proper operation.
  - c) Inspect kitchen and bathroom taps and repair or replace as necessary to ensure proper operation.
  - d) Inspect skylight in master bedroom and repair or replace as necessary to ensure there is no leakage, that unit operates as designed and that screen is

secure.

- e) Repair or replace closet shelf in master bedroom to ensure unit is securely attached to wall.
- f) Supply and install switch cover in master bedroom closet.
- g) Supply and install globe on master bedroom ceiling fixture.
- h) Repair or replace towel rack in bathroom.
- i) Ensure toilet is securely attached to floor.
- j) Replace cracked sealed unit in second bedroom window.
- k) Supply and install screen for second bedroom window.
- l) Repair and re-install closet bifold doors in second bedroom.
- m) Repair or replace right awning window in living room to ensure secure closure and operation.
- n) Supply screens for awning windows in living room.
- o) Supply and install duplex plug cover in living room.
- p) Supply and install ceiling fixture globe in storage room.
- q) Inspect and service fire extinguisher in accordance with National Fire Code, section 6.2.4.1.
- r) Repair entry gate on front porch to ensure proper operation.
- s) Repair or replace exterior porch light and supply globe for fixture.

The repairs listed in k) and n) shall be completed as weather permits. The repairs listed in d), j) and m) shall be completed on or before May 1, 2009. The remaining repairs shall be completed on or before March 31, 2009.

DATED at the City of Yellowknife, in the Northwest Territories this 11th day of February, 2009.

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Hal Logsdon  
Rental Officer

IN THE MATTER between **MARJORIE SIBBALD**, Applicant, and **JODPHUR HOLDINGS LTD.**, 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.

BETWEEN:

**MARJORIE SIBBALD**

Applicant/Tenant

-and-

**JODPHUR HOLDINGS LTD.**

Respondent/Landlord

**REASONS FOR DECISION**

**Date of the Hearing:** February 6, 2009

**Place of the Hearing:** Yellowknife, NT

**Appearances at Hearing:** Marjorie Sibbald, applicant  
Sally Card, representing the applicant  
Sheila Embodo, representing the respondent  
Peter Herridge, representing the respondent (by phone)

**Date of Decision:** February 11, 2009

### **REASONS FOR DECISION**

The applicant alleged that the respondent had breached the tenancy agreement by failing to maintain the rental premises in a good state of repair and by failing to fill the fuel tank at the commencement of the tenancy agreement. The applicant sought an order requiring the respondent to make certain repairs to the rental premises and to pay compensation for fuel that she had purchased.

The applicant contacted the respondent in writing on May 12, 2008 and outlined a number of repairs required. The respondent did not attend to the repairs and the applicant filed an application to a rental officer on January 7, 2009. Prior to the hearing, the rental officer inspected the premises with the applicant and the respondent's representative and provided a report outlining the following observations to both parties.

#### **Kitchen**

1. One kitchen cabinet drawer is missing.
2. The florescent ceiling light is very slow to fully illuminate.
3. The kitchen taps are difficult to shut off completely.

#### **Master bedroom**

1. The skylight shows signs of leakage - screen security and opening mechanism should be checked when weather permits.
2. Closet shelf not properly attached to wall.
3. Switch cover in closet missing.
4. Ceiling light globe missing.

#### **Bathroom**

1. Towel rack missing.
2. Toilet not bolted to floor.
3. Taps are difficult to fully close.

Second bedroom

1. Window cracked - inner pane.
2. Missing screen.
3. Closet doors off track - track slightly bent.

Living Room

1. Right opening window does not close properly - both opening windows in poor condition.
2. No screens on opening windows.
3. Duplex plug outlet cover missing.

Storage Room

1. Light globe missing.
2. Fire extinguisher requires certification - last inspected in 2003.

Front Porch

1. Gate off lower hinge.
2. Porch Light fixture damaged/missing globe.

I also noted that the front entry door and storm door had been replaced and were both in good working order. This repair was undoubtedly the applicant's major item of concern as evidenced by her correspondence with the landlord.

The respondent stated that the damages noted on the inspection report did not appear to him to be normal wear and tear and felt the tenant should bear the responsibility for repair. The applicant testified that all of the damages existed on February 15, 2008 when the tenancy agreement commenced and she took possession of the premises. There is no evidence that an inspection report was completed at the commencement of the tenancy agreement.

The applicant stated that when she took possession of the premises the fuel tank was not full and she had it filled in early March, 2008 and paid for the cost of the fuel. A copy of the invoice was

provided in evidence which indicated that 957.7 litres of fuel was delivered to the premises on March 5, 2008 at a cost of \$1146.37. The respondent acknowledged that the fuel tank was not filled at the commencement of the tenancy and provided a fuel delivery slip in evidence which indicated that the respondent had 179.9 litres of fuel delivered to the premises on February 8, 2008. A notation on the delivery slip states that the tank was "not full". The respondent stated that he assumed the fuel level was low or possibly empty, prompting the fuel order.

The written tenancy agreement between the parties does not specify that a security deposit is required but a document provided in evidence by the respondent indicates a required security deposit of \$1175 and both parties acknowledged that the landlord held a security deposit. Section 15 of the *Residential Tenancies Act*, requires that a condition report be completed when a security deposit is required.

- 15.(1) At the commencement of the tenancy and when a security deposit is requested, a landlord and tenant shall sign a document that sets out the condition and contents of the rental premises.**
- (2) A landlord shall ensure that a signed copy of the document referred to in subsection (1) is delivered to the tenant on receipt of all or a portion of the security deposit, as the case may be.**

The respondent is correct that the required repairs appear to be the result of damage and not normal wear and tear but the issue here is whether the damage was done by the applicant or was already present when the applicant took possession. Neither representative of the respondent/landlord had direct knowledge of the condition of the premises at the commencement of the tenancy agreement. Clearly, the tenant has such direct knowledge. There was no inspection

report completed. I can not conclude from the evidence, that the required repairs have been made necessary due to the negligence of the applicant. The evidence leads me to believe that the damage was done by a previous tenant. The respondent is obligated by section 30 of the Act to repair the premises. An order shall issue requiring the respondent to undertake specific repairs. The order shall also specify the dates that the work shall be completed.

In the matter of the fuel, the tenancy agreement between the parties obligates the applicant to pay for fuel during the term of the agreement. The easy, practical way to implement this is for the landlord to fill the tank at the commencement of the tenancy agreement require the tenant to pay for fuel during the term of the agreement and leave the fuel tank full when they vacate. If a landlord does not fill the tank at the commencement of the tenancy agreement, the tenant is only obligated to leave as much fuel in the tank as there was at the commencement of the agreement. A landlord's failure to fill the tank is not a breach of the tenancy agreement or the Act but it will make it difficult to determine if the tenant has provided the required amount of fuel at the termination of the tenancy. I can only *suggest* that the landlord reimburse the tenant for the volume of fuel that would have been required to fill the tank on February 15, 2008 and require the tenant to fill the tank at the end of the tenancy agreement. The applicant's request for compensation for fuel is denied.

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Hal Logsdon  
Rental Officer