

IN THE MATTER between **LIRIC CONSTRUCTION LTD.**, Landlord, and **SONJA BOUCHER**, Tenant;

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:

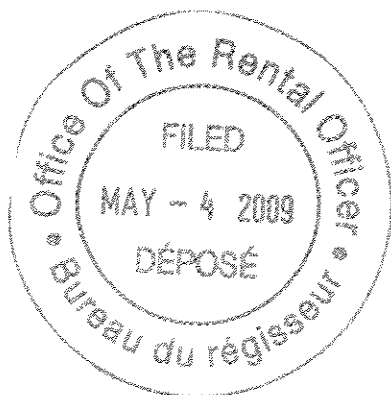
**LIRIC CONSTRUCTION LTD.**

Landlord

- and -

**SONJA BOUCHER**

Tenant

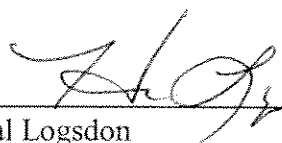


**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 18(5) of the *Residential Tenancies Act*, the landlord shall return a portion of the retained security deposit to the tenant in the amount of two hundred twelve dollars and ninety five cents (\$212.95).

DATED at the City of Yellowknife, in the Northwest Territories this 4th day of May,  
2009.

  
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Hal Logsdon  
Rental Officer

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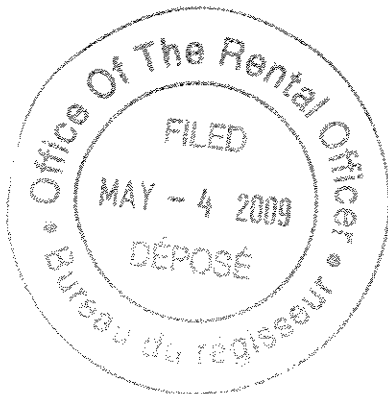
**LIRIC CONSTRUCTION LTD.**

Landlord

-and-

**SONJA BOUCHER**

Tenant



**REASONS FOR DECISION**

<b><u>Date of the Hearing:</u></b>	<b>April 22, 2009</b>
<b><u>Place of the Hearing:</u></b>	<b>Yellowknife, NT</b>
<b><u>Appearances at Hearing:</u></b>	<b>Arie Keppel, representing the Landlord Sonja Boucher, Tenant</b>
<b><u>Date of Decision:</u></b>	<b>May 4, 2009</b>

### **REASONS FOR DECISION**

The landlord's application was filed on March 13, 2009 seeking costs of repair and compensation for lost rent in excess of the retained security deposit. The tenant's application was filed on March 16, 2009 and sought the return of a portion of the retained security deposit. As both applications relate to the same premises and tenancy agreement, both matters were heard at a common hearing.

The tenancy agreement was terminated on or about February 14, 2009 when the tenant gave up possession of the premises. The landlord retained the security deposit (\$1475) and interest (\$259.94), applying it against repair costs (\$1298), electrical costs (\$36.83) and compensation for lost rent (\$1311.25) leaving a balance owing to the landlord of \$911.14. The landlord sought an order requiring the tenant to pay that amount.

The tenant disputed a number of the repair costs and the compensation for lost rent.

The landlord sought \$135 for the replacement of a bifold door in the master bedroom. He stated that the door was cracked and had to be replaced. He also stated that the hardware for the door had been removed and replacement hardware was unavailable. The tenant denied that the door was damaged and stated that it had simply come off the track. She stated that she had notified the landlord that it required repair but he had not attended to it. A photograph of the door was provided in evidence by the landlord. The photograph does not indicate any damage to the door

but simply shows it off the track. The track hardware is available locally. If the door was actually damaged, I would have expected the landlord to provide a photograph of the damaged area of the door. In my opinion, the replacement of the door hardware and the labour to re-install the door should be no more than \$75.00.

The tenant acknowledged that the carpet had been damaged by a hot iron. The landlord stated that carpet was nine years old and has depreciated the replacement cost by 75% . In my opinion, the useful life of carpeting in residential premises should be depreciated based on a ten year useful life. Using that method, the depreciated value of the carpet would be \$84, not \$210 as the landlord has claimed.

The landlord has charged a total of \$135 to fill several wall holes used to hang curtain rods and a pot holder hanger. There were also several scuff marks caused by furniture being placed against the wall. Photographs of these areas were provided in evidence by the landlord. The landlord acknowledged that the premises had not been painted during the term of the tenancy agreement which commenced in 2004. The useful life of paint is usually considered to be five years. That being the case, the premises were due to be repainted. The holes and scuffs are typical of those usually filled and sanded as part of repainting. In my opinion, the tenant should not be liable for these costs as the premises are now due to be repainted and minor filling of nail holes and scuffs are considered part of that work.

The landlord also charged \$375 to re-paint the bathroom which the tenant had painted a dark

brown at her own expense. The landlord provided photographs of the bathroom and stated that it took three coats of paint to cover the dark brown paint. The tenant stated that she had sought and obtained the landlord's approval to paint the bathroom but the landlord stated that he had not given permission to paint it in that colour and assumed it would be a more neutral tone. While I agree with the landlord regarding the colour, it must also be recognized that the landlord had not painted the bathroom for five years and that the tenant painted it at her expense. In my opinion, the tenant should pay only for the one extra coat required to fully cover the dark colour or \$125.

The landlord deducted \$180 for the repair of a "Phantom" door screen which he claimed was damaged. The tenant stated that the screen was damaged prior to the tenancy agreement but the landlord stated that it was installed during the term and did not exist prior to the commencement of the tenancy. He stated that the screen was damaged and the spring closing mechanism broken due to improper use. In my opinion, the screen was damaged by the tenant during the term and the repair costs of \$180 are reasonable.

The tenant disputed the cleaning charges of \$80, stating that she hired a professional cleaner to clean the entire premises at a cost to her of \$345. The landlord stated that the charges were for cleaning the stove and the windows, frames and sills. In my opinion, a professional cleaner would bring the premises to a reasonable state of cleanliness including these areas. There is no photographic evidence to the contrary. The landlord's claim is denied.

I find the remainder of the landlord's claimed repair costs to be reasonable and find no evidence

to rebut them.

It would appear from the evidence that the tenancy agreement between the parties was originally made for a term of one year but reverted to a monthly tenancy on March 1, 2005. That being the case, the required notice to terminate the tenancy agreement would be 60 days in accordance with section 52(1)(c).

**52.(1) Where a tenancy agreement does not specify a date for the termination of the tenancy agreement, the tenant may terminate the tenancy on the last day of a period of the tenancy by giving the landlord a notice of termination,**

- (a) in the case of a weekly tenancy, at least seven days before the termination date stated in the notice of termination;**
- (b) in the case of a monthly tenancy that has continued for less than 12 months, at least 30 days before the termination date stated in the notice of termination;**  
**or**
- (c) in the case of a monthly tenancy that has continued for 12 months or more, at least 60 days before the termination date stated in the notice of termination.**

The tenant does not appear to have given written notice until February 2, 2009 to terminate the tenancy agreement on February 15, 2009. This is not in accordance with the Act because the termination date is not the last day of a rent period and the notice was not given 60 days before that date. Therefore the tenant abandoned the premises by leaving on or about February 14, 2009 and remains liable, subject to the landlord's efforts to mitigate loss, for the landlord's loss of rent.

**62.(1) Where a tenant abandons a rental premises, the tenancy agreement is terminated on the date the rental premises were abandoned but the tenant remains liable, subject to subsection 9(2), to compensate the landlord for loss of future rent that would have been payable under the tenancy agreement.**

The compensation available to a landlord is for rent only. It does not cover utilities such as electricity, unless they are payable to the landlord. The tenant established and maintained her own electrical account with the supplier. Therefore the electrical charges from February 16 to February 27, 2009 claimed by the landlord are denied.

The tenant acknowledged that she had only paid \$870 for rent in February, 2009. The landlord sought compensation for the remaining February rent and one week's rent in March. The landlord stated that he permitted his daughter to occupy the premises in the second week of March, 2009 because he had only a prospective tenant for a three-bedroom unit. By moving his daughter from her three-bedroom unit to these premises (a two-bedroom unit) he was able to rent the three-bedroom unit and reduce his loss of rent to \$2615. It is often difficult to rent premises in mid-month even with the low vacancy rate currently in effect in Yellowknife. It would appear to me that the landlord could have easily offered the premises to his daughter on March 1, 2009 when he discovered he had only a prospective tenant for a three-bedroom unit. In my opinion, the landlords efforts to mitigate loss entitle him to only the reminder of the February, 2009 rent, or \$875.

I also note that the total repair costs on the landlord's security deposit statement do not exceed the retained security deposit and accrued interest. Since only rent arrears and repair costs may be deducted from a security deposit, the landlord should have returned the balance to the tenant and made an application for the compensation and electrical costs.

Applying the repair costs to the retained security deposit and interest and considering the compensation for lost rent, I find an amount owing to the tenant in the amount of \$212.95, calculated as follows:

Security deposit	\$1475.00
Interest	259.95
Repair costs	<u>(647.00)</u>
Subtotal	\$1087.95
Less compensation for lost rent	<u>(875.00)</u>
Amount to be returned to tenant	\$212.95

An order shall issue requiring the landlord to return a portion of the security deposit to the tenant in the amount of \$212.95.

  
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Hal Logsdon  
Rental Officer