

IN THE MATTER between **BRYAN SUTHERLAND**, Applicant, and **CARL MALMSTEN**, 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:

BRYAN SUTHERLAND

Applicant/Tenant

- and -

CARL MALMSTEN

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18(5) of the *Residential Tenancies Act*, the respondent shall return the retained security deposit and accrued interest to the applicant in the amount of two thousand seven hundred ninety nine dollars and seventy nine cents (\$2799.79).

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

Hal Logsdon
Rental Officer

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AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

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BETWEEN:

BRYAN SUTHERLAND

Applicant/Tenant

-and-

CARL MALMSTEN

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: April 22, 2009

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Bryan Sutherland, applicant
Carl Malmsten, respondent

Date of Decision: May 4, 2009

REASONS FOR DECISION

The application was filed by the respondent naming himself and Venture Canada North Ltd. As joint tenants. The written tenancy agreement entered in evidence by the applicant names Bryan Sutherland and Miki Yamada as joint tenants although Miki Yamada is not a signatory to the agreement. Therefore I consider the tenancy agreement to be between the Mr. Sutherland as sole tenant and Mr. Malmsten as landlord and the style of cause of the order shall reflect those names as parties.

The tenancy agreement between the parties commenced on October 15, 2004 and the applicant provided the respondent with a security deposit in the amount of \$2450 on that date. At the termination of the tenancy agreement on October 1, 2008 the respondent retained the security deposit and accrued interest and provided an estimated statement of the security deposit. A copy of the statement was provided by the applicant in evidence. The statement is dated October 9, 2008 and reads in part,

"As per Section 18 of the Landlord Tenant Act, I have attached an itemized accounting of the unpaid utilities, damages and other costs relating to your tenancy.

The costs indicated are conservative estimates and may change."

"Payment is required within 30 days of final notification. Failure to do so may result in further action being taken."

The statement sets out \$5222.68 as the amount owing to the respondent.

The applicant disputed the amount owing, stating that he disputed all of the deductions as well as the repair costs associated with the alleged damages.

Section 18 of the *Residential Tenancies Act* requires a landlord to produce an itemized statement of the security deposit and deductions within 10 days of the termination of the tenancy agreement. However if accurate costs of repairs can not be determined within that time frame, the landlord may provide an estimated statement and provide a final statement within 30 days.

- 18.(1) Subject to this section, where a landlord holds a security deposit the landlord shall, within 10 days after the tenant vacates or abandons the rental premises,**
 - (a) return the security deposit to the tenant with interest; and**
 - (b) give the tenant an itemized statement of account for the security deposit.**
- (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.**
- (3) Where a landlord objects to returning all or a part of the security deposit on the grounds that a tenant has caused damage to the rental premises and repairs to the rental premises are necessary or the tenant is in arrears of the rent, the landlord shall, within 10 days after the tenant vacates or abandons the rental premises,**
 - (a) send a notice to the tenant and a rental officer of the intention of the landlord to withhold all or part of the security deposit;**
 - (b) give the tenant an itemized statement of account for the security deposit;**
 - (c) give the tenant an itemized statement of account for the repairs or arrears of the rent; and**
 - (d) return the balance of the security deposit with interest to the tenant.**
- (4) Where the landlord objects to returning all or part of the security deposit, but is unable to determine the correct amount of the repairs**

within 10 days after the tenant vacates or abandons the rental premises, the landlord shall

- (a) deliver to the tenant, within 10 days after the tenant vacates or abandons the rental premises,**
 - (i) an estimated itemized statement of account for the repairs, and**
 - (ii) the estimated balance of the deposit; and**
- (b) within 30 days after the tenant vacates or abandons the rental premises**
 - (i) deliver a final itemized statement of account for the repairs, and**
 - (ii) return the final balance to the tenant.**

Clearly, the respondent's October 9, 2008 statement was intended to be an estimated statement.

There is no evidence that a final statement was issued in accordance with section 18(4)(b).

The respondent stated that he conservatively estimated the repair costs and other deductions and since the total was well in excess of the retained security deposit and interest, felt the retention of the security deposit was justified.

In my opinion, section 18(4) does not relieve the landlord from issuing a final statement even if the estimated statement indicated a balance owing to the landlord. The section simply gives a landlord who is faced with multiple repairs more time to obtain accurate costs. It is not acceptable, in my opinion, for a landlord to simply claim that the estimated amounts owed to them so greatly outweigh the security deposit and interest held that they should be relieved of their duty pursuant to section 18 to reasonably account for the deductions. That is the landlord's obligation. Over six months have elapsed since the tenancy agreement was terminated. Surely the landlord has had ample opportunity to assemble accurate costs.

By failing to produce a statement in accordance with the Act, the respondent forfeits his right to retain the security deposit and accrued interest. The failure to provide the required statement does not, however, mean that the landlord may not file an application for compensation.

I find no grounds to retain the security deposit and accrued interest. The respondent has not calculated the interest correctly. I find the accrued interest to be \$349.79. An order shall issue requiring the respondent to return the security deposit and accrued interest to the applicant in the amount of \$2799.79 calculated as follows:

Security deposit	\$2450.00
Interest	<u>349.79</u>
Amount owing applicant	\$2799.79

Hal Logsdon
Rental Officer