File #10-10825 and #10-10856

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

JODPHUR HOLDINGS LTD.

Landlord

- and -

MARJORIE SIBBALD

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 twenty one dollars and twenty three cents ($221.23).

DATED at the City of Yellowknife, in the Northwest Territories this 24th day of June, 2009.

Hal Logsdon
Rental Officer

File #**10-10825 and #10-10856**

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

BETWEEN:

JODPHUR HOLDINGS LTD.

Landlord

-and-

MARJORIE SIBBALD

Tenant

REASONS FOR DECISION

Date of the Hearing:	**June 3, 2009**
Place of the Hearing:	**Yellowknife, NT**
Appearances at Hearing:	**Sheila Embodo, representing the applicant** **Peter Herridge, representing the applicant (by telephone)** **Marjoie Sibbald, respondent** **Marion Cox, representing the respondent**
Date of Decision:	**June 24, 2009**

REASONS FOR DECISION

The tenant moved out of the premises on March 4, 2009 but another person remained in the premises until March 16, 2009 when the landlord took possession. The landlord retained the security deposit of $1200 and issued an estimate of damage repairs on March 27, 2009. The estimate of repair costs was $9643.60. The landlord also sought compensation for use and possession from March 4 to March 16, 2009 ($575), compensation for fuel and water costs during that period ($67.44) and NSF charges (estimated at $130). The landlord failed to prepare a final security deposit statement in accordance with section 18(4) of the *Residential Tenancies Act.*

> **18.(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.**

The landlord stated that they were in a position to provide actual costs of repair and supporting documents and wished to proceed with their submission for compensation in excess of the retained security deposit. The tenant agreed to the landlord's submission of the evidence at the hearing and wished to proceed with her application requesting the return of the security deposit and accrued interest.

The landlord alleged that the carpet was damaged and required replacement. An invoice for the replacement of the carpet in the amount of $2583 and two photographs of the carpeting were provided by the landlord in evidence. The photographic evidence indicates a badly stained carpet in the living room area. The landlord did not know the age of the carpet nor could he provide any inspection report or other direct evidence which outlined the condition of the carpet at the commencement of the tenancy. The landlord questioned why the tenant did not mention the very poor condition of the carpet in her previous application (file #10-10641, filed on February 11, 2009) which sought an order for repair of various items in the premises. The landlord also noted that the carpet was professionally cleaned just prior to the commencement of the tenancy agreement and there was no notation on the invoice, which was presented in evidence, that the carpet was stained or damaged. The tenant stated that she had cleaned the carpet twice during the term of the tenancy agreement and had put an area rug over the carpeting in the living room. She also stated that she had kept a dog on the premises during the term.

There is no doubt that the carpet was damaged to the point it had to be replaced. Two questions need to be addressed however. Was the damage done during the term of the tenancy agreement and what is reasonable compensation given the age and useful life of the carpet?

The evidence suggests that the damage was done during the term. In my opinion, if the carpet was so badly stained prior to the tenant taking possession she surely would have noted it in her previous application which sought repairs to a number of items much less serious than the ruined carpet. As well, I would have expected the carpet cleaner who did the work prior to the tenancy

agreement to contact his client to tell him that the carpet was in such poor condition that he could not restore it to a reasonable state. There is also the possibility that the full extent of the damage was not known by the tenant as she left the premises in the care and control of another person when she left and may not have been aware of any damage that was done after she left.

Carpeting in rental premises has a useful life of approximately ten years. There is no evidence to indicate the age of the carpet. My estimate, based on my earlier inspection of the premises in February, 2009 is five years.

Considering the depreciated replacement cost, I find compensation of $1291.50 to be reasonable. I calculate that amount as follows:

$2583 x 50% = $1291.50

The landlord alleged that the stove and refrigerator were damaged beyond repair. The bottom drawer of the stove was allegedly kicked in, preventing it from closing and the stove top was allegedly damaged by “cooking cocaine”. The landlord’s agent stated that the previous tenants most likely damaged the stove top and that the stove was old. A photograph of the stove was entered in evidence but shows only the top half of the appliance which appears to be in reasonable condition. The landlord stated that the refrigerator leaked and that he was told that it was damaged by neglect and beyond repair. The landlord did not know the age of either appliance.

Kitchen stoves have a useful life of approximately fifteen years. The photograph of the stove provided in evidence indicates that the stove, regardless of condition is at least fifteen years old. Notwithstanding any damage that may or may not have been done by the tenant, the landlord has enjoyed the full useful life of this appliance and compensation for it's replacement is not reasonable.

The tenant stated that the refrigerator had always leaked. The landlord questioned why the problem did not form part of her previous application. In my opinion, regardless of whether the refrigerator leaked or did not leak at the commencement of the tenancy, the evidence does not support the allegation that the leakage was caused by any wilful or negligent act of the tenant. There is no evidence to suggest that the advice to replace the appliance was provided by a person competent to conclude that the refrigerator was damaged by the tenant. In my opinion, compensation for the replacement of the refrigerator is not reasonable.

The landlord sought compensation for painting the premises and estimated the cost of painting to be $1500. The landlord submitted an invoice totalling $4377.97 which included painting but the invoice was not itemised and the cost of the painting alone could not be determined. The landlord suggested that a reasonable cost would be the amount paid to paint the premises the last time it was painted on February 13, 2008 and referred to a list of disbursements indicating painting costs of $1417.50. Two photographs, submitted as evidence to indicate the condition of the carpet also show a portion of the living room walls. There do not appear to be any marks, scratches or other damage to the walls. It is curious that the landlord, having a camera at their disposal did not

document this damage. Although, the tenant did not seek re-painting in her previous application, I do not recall observing any significant damage to the wall or ceiling surfaces during my inspection of the premises in February, 2009. I do not find sufficient evidence to support the landlord's allegations of damage to the walls or ceilings that would warrant re-painting of the premises.

The landlord alleged that the premises were not clean at the termination of the tenancy agreement and sought compensation for cleaning costs in the amount of $120. The landlord provided an invoice and several photographs in evidence. The tenant disputed the allegations, stating that the premises were left in a clean condition but later acknowledged that she missed cleaning some cabinets under the kitchen counter. I also note again that the tenant vacated the premises herself but allowed another person to stay in the premises for another twelve days. The tenant did not have direct knowledge of the cleanliness of the premises when her guest finally left the premises. I find the cleaning costs to be reasonable.

The landlord alleged that the entry door to the premises was broken and had to be replaced at a cost of $1923.60. The tenant disputed the allegations stating that the door was damaged at the commencement of the tenancy agreement and she was told by the landlord's agent to fix it herself. The tenant sought an order to repair the door in her previous application but prior to the matter being heard, the landlord replaced the door and the issue became moot. As previously mentioned, there was no inspection report done at the beginning of the tenancy agreement and neither the landlord or his current agent had any direct knowledge of the condition of the door

when the tenancy commenced.

The landlord argued that he would not have rented the premises if the door had been broken and he doubted that the tenant would have entered into the tenancy agreement with the door in that condition. The landlord's previous agent, who most likely had direct knowledge of the condition of the door, was not produced as a witness by the landlord. The landlord stated that the damage to the door was obviously not normal wear and tear. I must agree, but the issue here is whether the damage was done by the tenant or a previous occupant. Unless I find the testimony of the tenant to be not credible, I can not conclude, on the balance of the evidence, that the door was damaged by the tenant. I have no reason to doubt the credibility of the tenant or the landlord in this matter. I can not find the tenant responsible for the repair costs of the door.

The landlord sought compensation for the repair of cupboards and faucets. Both of these items were included in the tenant's previous application for repairs and determined to be the landlord's responsibility to repair. The landlord now wishes to revisit these items. There is no provision in the *Residential Tenancies Act* for a rental officer to re-hear a matter that has already been considered or alter a fact that has already been established through a previous hearing and decision. These two issues must be the subject of an appeal if the landlord seeks a further review. I do not have the jurisdiction to reconsider these items.

In addition to the repair costs, the landlord seeks compensation for the days that the tenant's guest remained in the premises in the amount of $575 and for a number of NSF and stop payment

fees in the amount of $130. The landlord estimated the number of NSF cheques presented by the tenant as eleven or thirteen. A statement of the landlord's bank account was provided in evidence but indicated only three NSF charges totalling $15. I find sufficient evidence to support compensation for only $15.

As stated previously, although the tenant left the premises on March 4, 2009 she permitted someone else to stay in the premises until March 16, 2009 when the landlord took possession. Since the tenant did not provide vacant possession of the premises until March 16, 2009 she is liable for compensation for overholding in the amount of $575. It appears that the tenant provided two cheques of $575 for March, 2009 rent, then stopped payment on both. I find compensation of $575 to be reasonable.

The tenant was obligated to pay for electricity and fuel during the term of the agreement. She transferred the electrical account to the landlord when she left the premises and filled the oil tank. When the landlord finally got vacant possession on March 16, 2009 electrical costs of $40.75 had accrued on his account. The landlord also topped off the oil tank when he gained possession costing $26.69. Invoices were provided by the landlord in evidence. I find the respondent liable for these costs as she had not given the landlord vacant possession and was still responsible for the utilities.

Finally, following the previous hearing, I denied the tenant any compensation for fuel but suggested a practical solution to the fuel dispute between the parties which involved a payment

from the landlord to the tenant of $1035.87 for fuel purchased by the tenant to fill the tank at the commencement of the tenancy and the tenant's obligation to fill the tank at the end of the tenancy. A detailed accounting of the solution was sent to both parties and both parties have agreed to it, although no payment has yet been made by the landlord to the tenant. The landlord agreed that the fuel adjustment should form part of this order.

In summary, taking into account the fuel adjustment, I find an amount owing to the tenant of $221.23, calculated as follows:

Security deposit	$1200.00
Interest	54.30
Adjustment for fuel	1035.87
Carpet replacement	(1291.50)
Cleaning	(120.00)
Compensation for overholding	(575.00)
Electricity	(40.75)
Fuel	(26.69)
NSF charges	(15.00)
Amount owing tenant	$221.23

An order shall issue requiring the landlord to return a portion of the retain security deposit to the tenant in the amount of $221.23.

Hal Logsdon
Rental Officer