

IN THE MATTER between **LOREN MCGINNIS**, Applicant, and **JUDITH ZIMMERMAN**, 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:

LOREN MCGINNIS

Applicant/Tenant

- and -

JUDITH ZIMMERMAN

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18(5) of the *Residential Tenancies Act*, the respondent shall return a portion of the retained security deposit to the applicant in the amount of three hundred thirty seven dollars and seventeen cents (\$337.17).

DATED at the City of Yellowknife, in the Northwest Territories this 9th day of July, 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:

LOREN MCGINNIS

Applicant/Tenant

-and-

JUDITH ZIMMERMAN

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: **July 7, 2009**

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Loren McGinnis, applicant
Judith Zimmerman, respondent

Date of Decision: **July 9, 2009**

REASONS FOR DECISION

The tenancy agreement between the parties was terminated on April 30, 2009. The respondent retained the security deposit of \$900 and issued an estimated statement of repair costs. There was no final statement of repair costs provided to the applicant as required by 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.**

At the hearing, the respondent produced a document outlining expenses to repair damages to the premises which also included two estimates and a charge for lost rent while the repairs were being made. I shall deal only with the actual expenses here as the time limit has long passed for the final cost statement. I shall not consider the lost rent as it is not an item that may be deducted from a security deposit.

The respondent's deductions from the security deposit are as follows:

Labour to Reconnect Smoke Detector - \$99.75

The applicant acknowledged disconnecting the smoke detector stating that it sounded an alarm frequently. He did not object to the cost. I find the applicant liable for the cost of this item.

Carpet Cleaning - \$131.25

The applicant acknowledged that the carpet in the living room needed cleaning but disputed the need for cleaning the bedroom carpet, stating that it was reasonably clean. He agreed to pay 50% of the cost. The respondent stated that it was her normal practice to have tenants shampoo the carpets at the end of their tenancy agreement. There is no evidence to indicate that the carpet in the bedroom was not reasonably clean. The obligation of the tenant is to return the premises to the landlord in an "ordinary state of cleanliness". An obligation to professionally clean or shampoo the carpets is not enforceable. I find the applicant liable for 50% of the cost or \$65.63.

Replacement of Shower Fixture - \$543.03 plus unspecified labour cost to access fixture

The applicant stated that the shower fixture was loose at the commencement of the tenancy agreement and that he had told the landlord about the problem. He stated that any malfunction of the unit was a result of normal wear and tear. There was no evidence of an inspection report outlining the condition of the premises at the commencement of

the tenancy so it is not possible to ascertain if the fixture was loose at that time. I can not conclude from the evidence that the fixture was damaged by the tenant's wilful or negligent conduct.

Peel's Construction Invoice - \$500

The respondent stated that she paid \$500 to Peel's Construction to make various repairs which she outlined. There was no itemized invoice from Peel's Construction and the respondent provided no itemization of the costs for the various repairs. The repairs included,

Repair of kitchen window swollen by moisture and removal of mould

Repaired living room picture window damaged by moisture

Repaired broken towel holder in bathroom

Repaired base of vanity due to water damage

Replace drawer pull on kitchen drawer

Carpentry work to access the shower faucet

Install curtain rod that had been removed.

Repair of Kitchen Window, Removal of Mould and Repair of Living Room
Picture Window.

The respondent stated that the repairs to the windows and the mould were the result of extreme humidity in the house caused by the applicant using a humidifier as well as boiling water on the stove for additional moisture. She

stated that she had seen the windows, which were triple-glazed, completely fogged. The respondent stated that the excessive moisture had caused the windows to swell, the paint to peel and mould to grow. The respondent stated that she had rented the premises for many years and had never experienced mould growth in the unit. The applicant denied boiling water for increased humidity and stated that they used a humidifier only at night in the bedroom. The respondent stated that the drip pans on the stove were rusted from boiling water.

The northern climate is particularly dry in the winter. Adding some humidity to the interior of a house using a humidifier is not unreasonable and will cause little or no damage to a reasonably constructed house. However, even a well constructed house will suffer from excess humidity in the winter when water vapour condenses on cool surfaces such as windows, exterior walls and exterior doors. It is not uncommon, even with triple-glazed windows, to experience a narrow band of condensation or ice on the lower edge of the pane during periods of very cold weather but a window that is entirely covered in condensation indicates an extreme humidity level. In my opinion, a tenant who creates such a condition on an ongoing basis is damaging the premises and is liable for the costs of repairs made necessary by creating the condition.

There are an number of signs that the applicant was creating an excessive

amount of humidity in the premises. The respondent brought a set of curtains to the hearing from the front door which were stained from condensation dripping off the door. The window sills were soggy and took three weeks to dry before they could be refinished. The applicant's complaints about the smoke detector were probably caused by condensation on the sensor. In my opinion, the repair of the kitchen window, removal of mould and the repair of the living room picture window were all due to excessive humidity caused by the applicant. Because the Peel's Construction costs are not itemised, I estimate the portion of costs required to complete the window repair and mould removal to be \$150.

Repaired Broken Towel Bar in Bathroom

The applicant stated that the towel bar became loose and as a consequence he did not use it any more. The respondent stated that it came loose from the wall requiring some repair to the wall as well as the re-attachment of the towel bar. The respondent also stated that she spent \$4.71 to buy new drywall anchors. A towel bar anchored in drywall and used responsibly does not fall off. The evidence supports the respondent's deduction for the repair. Again, there is no breakdown of costs except for the drywall anchors but this is a relatively straightforward job which in my opinion should cost no more than \$50, including the anchors.

Repair of Vanity Base Due to Water Damage

The respondent alleged that the base of the bathroom vanity was damaged by water which she believes was the result of allowing the water from the shower to escape from the shower enclosure. She described the bottom of the vanity as being “rotted due to long exposure to water” and noted that the bathroom “smelled a lot better after the rotted wood was replaced.” The respondent also stated that she had seen the shower curtain “hanging in jagged fashion with many of the hooks broken”. The applicant denied that the damage to the vanity was caused by the careless use of the shower. I note that this tenancy continued for only eleven months. I am not convinced that the bathroom floor under the vanity could have stayed so wet for eleven months to cause the bottom of the vanity to rot. In my opinion, there is insufficient evidence to determine if this damage was caused by the applicant’s negligence.

Replace Drawer Pull on Kitchen Drawer

The applicant stated that the screws holding the drawer pull on were stripped. I presume he meant that the screws had been pulled out of the wood and could no longer be tightened. In my opinion, a drawer pull that has been damaged by pulling the screws out of the wood has been mistreated. The cost to repair this however is minimal. In my opinion, a reasonable repair cost is \$10.

Carpentry Work to Access the Shower Faucet

This work was part of the shower fixture repair which was covered above.

Re-install Curtain Rod

The applicant stated that the opening and closing mechanism for the curtains was inoperative at the commencement of the tenancy. He stated that he took the curtains down. Regardless of whether the curtains worked or did not work, they should have been reinstalled as they were found at the commencement of the tenancy. I find reasonable installation costs to be \$25.

Landlord's Labour - \$175

The respondent stated that she spent 5 hours getting material for the contractors and removing mould from various parts of the premises. In my opinion, the applicant should pay for this labour as it was a direct result of the excess humidity caused by the applicant. The cost of \$175 is reasonable.

Cost of Brushes to Apply Bleach to Mouldy Areas- \$18

This cost is associated with the mould problem. In my opinion the cost is reasonable.

The respondent has not applied interest to the security deposit. I calculate the interest due to be \$30.55. Applying the security deposit to the allowed repair costs I find a balance owing to the applicant of \$337.17 calculated as follows:

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Security deposit	\$900.00
Interest	30.55
Smoke detector	(99.75)
Carpet cleaning	(65.63)
Window repair	(150.00)
Towel bar	(50.00)
Drawer pull	(10.00)
Curtain installation	(25.00)
Labour	(175.00)
Brushes	<u>(18.00)</u>
Amount due applicant	\$337.17

An order shall issue requiring the respondent to return a portion of the retained security deposit to the applicant in the amount of \$337.17.

Hal Logsdon
Rental Officer