

IN THE MATTER between **TYLER JANZ**, Applicant, and **5655 NWT 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:

TYLER JANZ

Applicant/Tenant

- and -

5655 NWT LTD.

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 in the amount of one thousand one hundred one dollars and thirty cents (\$1101.30).

DATED at the City of Yellowknife, in the Northwest Territories this 12th day of January,
2010.

Hal Logsdon
Rental Officer

IN THE MATTER between **TYLER JANZ**, Applicant, and **5655 NWT 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:

TYLER JANZ

Applicant/Tenant

-and-

5655 NWT LTD.

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: January 6, 2010

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Tyler Janz, applicant
Lynn Elkin, representing the respondent
Ted Studer, representing the respondent

Date of Decision: January 12, 2010

REASONS FOR DECISION

The tenancy agreement between the parties was terminated on November 1, 2009 when the tenant gave up possession of the premises. The respondent applied the security deposit (\$1600) and interest (\$24.01) against rent for November 1-14 (\$825), repair to the counter (\$200), electricity costs from November 1-14 (\$71.30) and costs associated with re-renting (\$260), returning the balance of \$267.71 to the applicant. The applicant disputed the deductions and sought an order requiring the respondent to return the balance of the retained deposit.

The applicant stated that he gave up possession of the premises on November 1, 2009 which was not disputed by the respondent. The applicant stated that he didn't think the burn on the counter was serious enough to warrant a \$200 deduction and added that he did not smoke. The applicant also stated that he did not think he should have to pay for the electricity after he left or pay the landlord's re-renting costs.

The respondent stated that he was unable to re-rent the premises until November 15, 2009 and was entitled to lost rent due to the failure of the applicant to give proper notice.

There was no photographic evidence of the burn but the respondent stated that it was not a small cigarette burn but looked more like a hot pan had been placed on the counter. The respondent noted that the \$200 did not cover the replacement cost of the counter but only the loss of value due to the burn. The respondent defended the deductions for electricity and the re-renting costs

stating that they represented damages and therefore could be deducted from the security deposit.

Section 18(2) of the *Residential Tenancies Act* limits deduction from a security deposit to rent arrears and repairs of damages to the premises.

18.(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.

The rent was paid to October 31, 2009. The applicant gave up possession on November 1, 2009. Therefore the respondent is owed rent for one day, November 1, 2009. The relief requested by the respondent to November 15, 2009 is not rent, it is compensation for lost rent and it can not be deducted from a security deposit. The landlord must apply for compensation for lost rent with an application to a rental officer. I find rent arrears of \$55 representing unpaid rent for November 1, 2009.

I find the \$200 loss to the value of the counter to be reasonable. It is only a small portion of the replacement value. The applicant did not dispute that the burn was caused by himself but disputed the cost of repair.

The parties agreed that the tenancy agreement obligated the applicant to pay for electricity during the term of the agreement directly to the supplier. It is not rent because it is not payable to the landlord. Because it is not rent, it can not be deducted from the security deposit. While it may be a damage claim it is clearly not a cost to repair damage to the rental premises. The landlord must make an application seeking relief.

The costs associated with re-renting the premises are neither rent arrears nor costs to repair damages to the rental premises and therefore can not be deducted from a security deposit.

I find the respondent should have returned \$1369.01 of the security deposit and interest to the applicant. Taking into consideration the \$267.71 already returned, an order shall issue requiring the return of an additional \$1101.30 calculated as follows:

Security deposit	\$1600.00
Interest	24.01
One day rent for Nov. 01/09	(55.00)
Counter repairs	<u>(200.00)</u>
Total	\$1369.01
Less amount returned	<u>(267.71)</u>
Amount due applicant	\$1101.30

An order shall issue requiring the respondent to return a portion of the retained security deposit in the amount of \$1101.30.

Hal Logsdon
Rental Officer