

IN THE MATTER between **ANNE CUNNINGHAM**, Applicant, and **SANDRA LESTER**, 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 **HAY RIVER, NT**.

BETWEEN:

**ANNE CUNNINGHAM**

Applicant/Tenant

- and -

**SANDRA LESTER**

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 security deposit to the applicant in the amount of eleven dollars and ninety nine cents (\$11.99).

DATED at the City of Yellowknife, in the Northwest Territories this 1st day of March, 2010.

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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");

AND IN THE MATTER of a Hearing before **Hal Logsdon**, Rental Officer.

BETWEEN:

**ANNE CUNNINGHAM**

Applicant/Tenant

-and-

**SANDRA LESTER**

Respondent/Landlord

**REASONS FOR DECISION**

**Date of the Hearing:** February 17, 2010

**Place of the Hearing:** Hay River, NT via teleconference

**Appearances at Hearing:** Ken Cunningham, representing the applicant  
Sandra Lester, respondent

**Date of Decision:** February 26, 2010

### **REASONS FOR DECISION**

The applicant completed an *Application to a Rental Officer* dated December 19, 2009 which was not filed until January 6, 2010 due to the closure of the rental office over the holidays. The applicant sought an order requiring the respondent to return an unspecified portion of the retained security deposit.

The tenancy agreement between the parties was made in writing and although it indicated a commencement date of August 15, 2006 that appears to be a typographical error. The parties agreed that the commencement date was, in fact, August 15, 2007. The tenancy agreement was month-to-month and set out a monthly rent of \$1300 and a required security deposit of \$1200. The tenant was obligated to pay for all utilities and pets were restricted to two cats unless additional pets were approved by the landlord. The respondent acknowledged that the full security deposit of \$1200 was provided by the applicant on August 15, 2007.

The applicant's representative stated that the applicant had also provided a pet deposit of \$1200 in addition to the security deposit. He stated that the pet deposit was paid in monthly instalments of \$100/month for a year, after which the rent was reduced to \$1200/month. The respondent stated that the applicant offered a pet deposit at the commencement of the tenancy agreement but she refused to accept one because pet deposits were not permitted in the NWT. She stated that the monthly rent for the premises remained at \$1300 for the duration of the tenancy agreement.

The tenancy agreement between the parties was terminated on or about November 30, 2009 when the applicant vacated the premises. The respondent provided an itemised list of repairs and fuel costs dated December 11, 2009.

Steam cleaning	\$110.00
Fuel fill up	131.78
Paint	119.60
Closet door	59.99
Grate cover	7.99
Kincade Contracting	1134.60
Cleaning (Dave)	60.00
Cleaning (Sandra)	<u>n/c</u>
	\$1623.96

Copies of invoices including an itemised invoice from Kincade Contracting were provided in evidence by the respondent. There was no statement of the security deposit principal and interest. A cheque, payable to the applicant for \$826.44 was issued by the respondent on December 11, 2009. The stamp on the reverse of the cheque indicates that it was deposited by the applicant on December 22, 2009. However a stop payment had been ordered by the respondent and the funds were recovered from the applicant's account.

The applicant's representative submitted that the cheque for \$862.44 was evidence that a pet deposit was agreed upon by the parties. He submitted that a refund of \$862.44 would not be possible with deductions of \$1623.96 from a security deposit of \$1200 whereas those deductions from combined security deposit and pet deposit of \$2400 would result in a refund of "about" \$862.44.

The respondent submitted that the applicant objected to the deductions from the security deposit leading her to simply deduct \$400 from the \$1200 security deposit and interest and return the balance which, considering the interest as she calculated it, resulted in a \$862.44 refund. The respondent stated that when she learned that the applicant still objected to the deductions and intended to file an *Application to a Rental Officer*, she decided to let the rental officer decide the issue and stopped payment on the cheque.

In my opinion, neither the \$1200 security deposit testimony nor the \$2400 security testimony is supported by the existence of the \$862.44 cheque. Even when considering the interest on the deposit, the result in either case would not be a \$862.44 refund. There is no other evidence to support the existence of a \$2400 security deposit. It is not unreasonable, in my opinion, when the terms of a tenancy agreement are set down in writing to rely on that writing as the terms intended by the parties. If the parties did orally agree to terms which directly contradict their written agreement, a matter on which I express no opinion, they did so at their own risk. I find no evidence of any additional deposit and find the security deposit to be \$1200.

Of the eight items on the respondent's list of deductions, the applicant's representative disputed only three.

#### Steam Cleaning

The applicant's representative did not dispute the requirement for steam cleaning but stated that he had previously rented a steam cleaner for about \$50 and felt the cost claimed was excessive. The respondent stated that she was unable to handle

the machine herself and the additional \$60 cost was for labour. In my opinion, this is a reasonable cost.

#### Fuel Fill-up

Notwithstanding the amount of fuel in the tank at the end of the tenancy agreement, a matter on which I express no opinion, the applicant was obligated to pay for fuel herself. It was not a payment made to the landlord and is therefore not rent. Only rent and repairs of damages are permitted to be deducted from a security deposit. Therefore the respondent must seek compensation through an *Application to a Rental Officer*.

#### Kincade Contracting

The applicant's representative did not dispute that the repairs done by Kincade Contracting were required due to the applicant's negligence or normal wear and tear but stated that the costs were unreasonable. The applicant's representative stated that, in his opinion, the costs should only be 50-60% of the charges shown on the invoice. The respondent provided photographs of the rental premises which indicated some but not all of the damages addressed by the Kincade invoice. In my opinion, the costs of the repairs are not unreasonable.

The deductions for the paint and painting should be reduced somewhat to take into consideration that the premises have not been painted for at least 2.3 years and the landlord has enjoyed almost

half of the useful life of the paint. Reducing the charges for the paint and labour for the painting accordingly would reduce the deductions from the security deposit by \$205.65 calculated as follows:

Paint costs claimed	\$119.60
Depreciated paint costs (\$119.60 x .466)	<u>55.73</u>
Difference	\$63.87

Painting labour (3 hrs@ \$88.50)	\$265.50
Depreciated labour (\$88.50 x .466)	<u>123.72</u>
Difference	\$141.78

Taking into consideration the depreciated cost of the painting and the interest on the security deposit, I find an amount owing to the applicant of \$11.99 calculated as follows:

Security deposit	\$1200.00
Interest (Aug.15/07 to Nov.30/09)	98.52
Steam cleaning	(110.00)
Paint	(55.73)
Closet door	(59.99)
Grate cover	(7.99)
Kincade Contracting (\$1134.60-141.78)	(992.82)
Cleaning (Dave)	<u>60.00</u>
Amount owing applicant	\$11.99

An order shall issue requiring the respondent to return a portion of the security deposit in the amount of \$11.99.

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Hal Logsdon  
Rental Officer