

IN THE MATTER between **CONNIE BLANCHARD AND SARAH SAMOK**,
Applicants, and **GENE HACHEY**, 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:

CONNIE BLANCHARD AND SARAH SAMOK

Applicants/Tenants

- and -

GENE HACHEY

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 interest to the applicant Connie Blanchard in the amount of eight hundred thirty four dollars and eighteen cents (\$834.18).

DATED at the City of Yellowknife, in the Northwest Territories this 3rd day of June,
2010.

Hal Logsdon
Rental Officer

IN THE MATTER between **CONNIE BLANCHARD AND SARAH SAMOK**,
Applicants, and **GENE HACHEY**, 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:

CONNIE BLANCHARD AND SARAH SAMOK

Applicants/Tenants

-and-

GENE HACHEY

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: May 19, 2010

Place of the Hearing: Hay River, NT via teleconference

Appearances at Hearing: Connie Blanchard, applicant
Gene Hachey, respondent

Date of Decision: June 3, 2010

REASONS FOR DECISION

The respondent entered into a tenancy agreement with Connie Blanchard as sole tenant for unit 4C Gaetz Drive on July 1, 2008. Ms Blanchard provided a security deposit of \$800 to the respondent on that date. That tenancy agreement was terminated on October 31, 2008 when the respondent entered into a tenancy agreement with Connie Blanchard as sole tenant for unit 4D Gaetz Drive. The security deposit was not returned nor was there any statement of the security deposit or deductions issued by the respondent. The parties agreed that the \$800 security deposit provided for unit 4C was applied to unit 4D.

The tenancy agreement for unit 4D was terminated on November 30, 2009. The security deposit was not returned and there was no statement of the security deposit or deductions issued by the respondent. The applicants sought an order requiring the respondent to return the security deposit and interest.

The respondent has entered into two subsequent tenancy agreements with Ms Blanchard including a current tenancy agreement with Ms Blanchard and Sarah Samok as joint tenants for unit 4B Gaetz Drive. However a new security deposit was required for these agreements. Therefore Ms Samok is not a party to this matter as the security deposit clearly is with respect to the tenancy agreements for units 4C and 4D.

In response to the application, the respondent defended the retention of the security deposit in a

letter to Ms Blanchard dated May 12, 2010 and filed with the rental officer on May 17, 2010.

The respondent states that there were damages in unit 4C requiring repairs totalling \$1718. The repair costs are itemised. The respondent also notes,

"You subsequently moved to apartment 4D Nov. 1/08 where your damage deposit of \$800 dollars I allowed to be carried with you despite the damage which you caused in 4C."

In the same statement, the respondent confirms that a new security deposit would be required for unit 4B.

"I was quite clear at the time relative to the damage deposit you had placed on apt.4D. I would allow you to move to 4B and you would be charged for the full damage deposit there in 4B to which you agreed and assured me that income support had also agreed. In return I would not submit a claim for damage to the unit 4D and I would allow your nephew to move in to the unit with his girlfriend."

The respondent's evidence suggests that in his opinion, there was damage to both unit 4C and 4D. He has itemised the alleged repair costs for unit 4C but has provided no evidence of any damage to unit 4D.

Section 18 of the *Residential Tenancies Act* sets out provisions regarding the return and retention of security deposits.

- 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**
- (5) Where a landlord fails to return all or part of the security deposit with interest, a landlord or a tenant shall refer the matter to a rental officer who shall inquire into the matter and render a decision on the matter.**

In my opinion, it is not reasonable for a landlord to retain a security deposit without providing the statements required in section 18 and then subsequently produce them as a defence of the tenant's application to return the deposit. The fact that the respondent's itemised list of repair costs relates to the tenancy agreement that terminated in October, 2008 make it all the more unreasonable.

In my opinion, the respondent's failure to document the retention of the security deposit in accordance with the Act is reason enough to order the deposit returned to the tenant. If the respondent wishes to make an application for damages, he may do so, but that application was not before me and it would not be reasonable to consider damages without an application. The applicant should note the time limitation for filing applications.

I find no reason to justify the retention of the security deposit. I find the interest on the deposit to be \$34.18. An order shall issue requiring the respondent to return the security deposit and accrued interest to Connie Blanchard in the amount of \$834.18.

Hal Logsdon
Rental Officer