

IN THE MATTER between **LIRIC CONSTRUCTION LTD.**, Applicant, and **PEARL LISKE AND WALDON KOTCHILEA**, Respondents;

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:

**LIRIC CONSTRUCTION LTD.**

Applicant/Landlord

- and -

**PEARL LISKE AND WALDON KOTCHILEA**

Respondents/Tenants

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 18(5) of the *Residential Tenancies Act*, the applicant shall return a portion of the retained security deposit and interest to the respondents in the amount of five hundred forty one dollars and eighty nine cents (\$541.89).

DATED at the City of Yellowknife, in the Northwest Territories this 23rd day of July, 2010.

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Hal Logsdon  
Rental Officer

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**LIRIC CONSTRUCTION LTD.**

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-and-

**PEARL LISKE AND WALDON KOTCHILEA**

Respondents/Tenants

**REASONS FOR DECISION**

**Date of the Hearing:** July 7, 2010

**Place of the Hearing:** Yellowknife, NT

**Appearances at Hearing:** Arie Keppel, representing the applicant  
Pearl Liske, respondent  
Waldon Kotchilea, respondent

**Date of Decision:** July 23, 2010

### **REASONS FOR DECISION**

The applicant alleged that the respondents abandoned the rental premises on June 1, 2010. The applicant retained the security deposit (\$1850) and accrued interest (\$19.66) applying it against the repair of a kitchen cabinet panel (\$12.50), carpet cleaning (\$240), wall repair (\$200), replacement of a missing door stop (\$6), replacement of a missing light fixture (\$85), cleaning of screens (\$20), the replacement of a closet door (\$145), replacement of a radiator cover (\$85), replacement of a broken shelf (\$100), replacement of a broken toilet seat (\$25), general cleaning (\$70), lost rent for June (\$1850), and electricity costs from June 1-10 (\$49.93), resulting in a balance owing to the applicant of \$1018.77. In addition, the applicant also sought the remainder of the June electrical costs estimated to be \$75.

The applicant has deducted compensation for lost rent and electrical costs for June, 2010 from the security deposit. Section 18(2) of the *Residential Tenancies Act* permits only rent arrears and repairs of damages to be deducted from a security deposit.

**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.**

Compensation for lost rent is not arrears of rent nor are electrical costs in this case. The applicant should have deducted the repair costs from the security deposit and interest, refunded the balance to the respondents and filed an application for compensation for the lost June rent pursuant to section 62(2) of the Act.

Although an inspection report outlining the condition of the premises at the commencement of the tenancy agreement was provided in evidence by the applicant, neither the check-in inspection nor the check-out inspection is signed by the applicant in accordance with section 15 of the Act. It appears the inspections were completed by the respondents. The security deposit statement and photographs were also provided in evidence by the applicant.

In the matter of the alleged damages and repair costs I find the following:

Repair of a kitchen cabinet panel

The respondents disputed that the damage was caused during the term of the agreement stating that the panel was damaged when they moved in. There is a notation on the check-in inspection report concerning the damage to the panel. On the balance of probabilities, I find the panel was not damaged during the term of the agreement and the applicant's request for relief is denied.

Carpet cleaning

The photographic evidence supports the requirement for carpet cleaning. The respondents did clean the carpets but the inspection report notes that several stains could not be removed. The applicant stated that he had the carpets cleaned again using a stain removal technique which did remove the stains. I find the cost of \$240 to be reasonable.

Wall repair

The photographic evidence indicates several small areas of wall damage. The respondents acknowledged the damage but disputed the costs of \$200 to repair the damaged areas. In my opinion, the damage is quite minor and could be easily and quickly repaired for \$100. I find relief of \$100 to be reasonable.

Door stop and light fixtures

The photographic evidence supports the requirement for these repairs and they were not disputed by the respondents. I find the repair costs of \$6.00 and \$85 to be reasonable.

Cleaning of screens and general cleaning

The photographic evidence supports the need for some light cleaning. The respondents acknowledged that the cleaning they had contracted was not for the entire apartment but only the kitchen, bathroom and the carpets. The respondents disputed the \$20 charge for cleaning the screens and provided a photograph in evidence. It is difficult to determine from either the landlord's photograph of the screens or the tenant's photograph just what amount of screen cleaning was necessary. In my opinion, the general cleaning costs of \$70 sought by the applicant should be sufficient compensation for the cleaning that was necessary, including the screens.

Closet door

The respondents disputed the replacement costs of the closet door stating that it worked

fine throughout the tenancy. The inspection report indicates that the door was sticky to open and close due to height of the carpet. The applicant's photograph indicates that the bottom frame of the door is cracked. In my opinion damage was the result of forcing the door rather than having it repaired by the landlord. I find the replacement costs of \$145 are reasonable.

#### Radiator cover

The respondents disputed the cost to repair the radiator cover stating that it must have been damaged at the commencement of the tenancy agreement. The inspection report does not note any damage however. I find the replacement cost of \$85 to be reasonable.

#### Shelf in laundry room

The applicant was previously ordered to repair this shelf as the corner attachment was damaged and noted at the commencement of the tenancy. The applicant stated that the shelf fell down and is now damaged more. In my opinion, this is the result of the applicant's failure to do the repair and not the result of the tenant's negligence. The relief for this repair is denied.

#### Broken toilet seat

The applicant testified that he had noticed that the toilet seat was cracked. The respondents disputed the requirement for the repair, stating that the seat was not cracked when they vacated the premises. There is not further evidence to support the allegation.

The request for compensation is denied.

In the matter of electrical costs for June, 2010 the *Residential Tenancies Act* limits compensation on abandonment to lost rent.

**62.(1) Where a tenant abandons a rental premises, the tenancy agreement is terminated on the date the rental premises were abandoned but the tenant remains liable, subject to subsection 9(2), to compensate the landlord for loss of future rent that would have been payable under the tenancy agreement.**

**(2) Where, on the application of a landlord, a rental officer determines that a tenant has abandoned a rental premises, the rental officer may make an order requiring the tenant to pay to the landlord the compensation for which the tenant is liable by reason of subsection (1).**

The payment of electricity is not rent unless it is paid to the landlord. This tenancy agreement required the respondents to pay the cost of electricity directly to the supplier. The cost of electricity after a tenant has abandoned premises is the responsibility of the landlord. The request for relief for the cost of electricity is denied.

In the matter of compensation for the loss of the June rent, the applicant testified that he had advertised and shown the apartment to prospective tenants for some time because he knew the respondents wished to terminate or assign the tenancy agreement. The applicant provided a series of e-mails which indicated that he contacted Ms Liske on May 28, 2010 advising her that he had a prospective tenant who would like to view the apartment on May 30 at 1:00 PM. Ms Liske replied refusing to grant access until May 31.

On May 31 the applicant advised the respondents that he had a prospective tenant who was ready to sign a tenancy agreement that day if she could take possession on June 1. The applicant suggested they do a check-out inspection at 8:00 PM and mutually agree to terminate the tenancy agreement effective at midnight, May 31. He did not receive a response but arrived at the premises and waited until 8:15 PM. No one answered the door and the applicant did not enter the premises.

In the afternoon of June 1, the applicant received an e-mail from the respondents stating that the apartment was vacant. The applicant stated that the prospective tenant was no longer interested in the apartment and that he was able to re-rent the premises commencing July 1, 2010.

The electricity bill provided in evidence was in the applicant's name and was for the period June 1 - 10, 2010. The applicant testified that the account "may" have been transferred to another party on June 11, a fact that the electrical supplier confirmed. The applicant acknowledged that he permitted the new tenants to move some of their personal belongings into the apartment before the tenancy agreement commenced on July 1, 2010. It appears that the new tenant had possession on June 11 and began to pay for electricity on that date. I question why no rent was charged.

I also question why the applicant did not enter the premises on May 31 to determine if the premises had been abandoned. Certainly, the respondents had given him a strong indication that they intended to abandon the premises. The applicant may have found the premises vacant or perhaps not, but in my opinion, he had the right to enter to make that determination and might



have been able to re-rent the premises commencing June 1.

Given the interest in the premises by prospective tenants, I question why the applicant did not continue to seek a tenant who would rent the apartment earlier than July 1.

Although, I acknowledge that the applicant took efforts to assist the respondents in finding another tenant when he had no obligation to do so, it appears to me that the applicant could have started to collect rent from his new tenants earlier than July 1 or continue to advertise the premises to find a tenant who would rent the premises before July 1. In my opinion, the compensation for lost rent should be limited to the ten days in June, after which the applicant permitted possession and required the new tenants to pay for electricity. I calculate that amount to be \$596.77.

I find the retained security deposit and interest more than adequate to cover the allowed repair costs and the compensation for lost rent. I find an amount to be returned to the respondents of \$541.89, calculated as follows:

Security deposit	\$1850.00
Interest	19.66
Less allowed repair/cleaning costs	<u>(731.00)</u>
Subtotal	\$1138.66
Compensation for lost rent	<u>(596.77)</u>
Amount returned to respondents	\$541.89

An order shall issue requiring the applicant to return a portion of the retained security deposit to the respondents in the amount of \$541.89.

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Hal Logsdon  
Rental Officer