

IN THE MATTER between **PHILLIP SPENCER AND PAULA SPENCER**,
Applicants, and **PAUL RIVARD**, Respondent;

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter
R-5 (the "Act") and amendments thereto;

AND IN THE MATTER of a Hearing before, **HAL LOGSDON**, Rental Officer,
regarding the rental premises at **NORMAN WELLS, NT**.

BETWEEN:

PHILLIP SPENCER AND PAULA SPENCER

Applicants/Tenants

- and -

PAUL RIVARD

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18.1(b) of the *Residential Tenancies Act*, the respondent shall return a portion of the retained security deposit to the applicants in the amount of three hundred sixty six dollars and sixty nine cents (\$366.69).

DATED at the City of Yellowknife, in the Northwest Territories this 8th day of October,
2010.

Hal Logsdon
Rental Officer

IN THE MATTER between **PHILLIP SPENCER AND PAULA SPENCER**,
Applicants, and **PAUL RIVARD**, 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:

PHILLIP SPENCER AND PAULA SPENCER

Applicants/Tenants

-and-

PAUL RIVARD

Respondent/Landlord

REASONS FOR DECISION

<u>Date of the Hearing:</u>	October 6, 2010
<u>Place of the Hearing:</u>	Yellowknife, NT via teleconference
<u>Appearances at Hearing:</u>	Phillip Spencer, applicant Paul Rivard, respondent
<u>Date of Decision:</u>	October 8, 2010

REASONS FOR DECISION

This tenancy agreement was terminated on June 30, 2010. The respondent retained the security deposit and accrued interest and issued an estimated statement of the deposit and deductions on July 10, 2010. A final statement was issued on July 29, 2010 in accordance with section 18 of the *Residential Tenancies Act*. The applicants disputed all of the deductions from the security deposit and sought an order requiring the respondent to return the security deposit and accrued interest.

The following deductions from the security deposit are outlined on the final statement as follows:

Repairs to Washer and Dryer - \$179.54

The respondent stated that the door catch on the washer was broken requiring replacement. An invoice for the part and a photograph were provided in evidence. The respondent also alleged that the dryer was filled with lint, causing it to overheat, partially seizing the drum. An invoice for the parts and photographs were provided in evidence. The respondent also charged two hours of his own labour at \$45/hour to make the repairs. The applicant acknowledged that the washer door catch was damaged during the tenancy but claimed that this particular model of washer had a history of this problem and that the breakage amounted to normal wear and tear. He also denied that the dryer had overheated due to any negligence and stated that the washer and dryer had operated satisfactorily during the tenancy.

The washer door latch is plastic. In my opinion, it would not break under normal use.

There was no evidence produced by the applicant that the latch was improperly designed or prone to breakage under normal use. The photographs of the dryer show a heavy build-up of lint in the screen as well as a lot of dust and debris all around the air intake. The back panel of the dryer appears to have a scorch mark. The tenancy agreement between the parties obligates the tenant to maintain the premises during the term of the tenancy. In my opinion, the heavy build-up of lint and debris indicates that the dryer was rarely, if ever, maintained during the term of the tenancy which could have very well led to the partial seizure of the drum. I find these repairs to be the result of the applicants' negligence and find the costs of \$179.54 to be reasonable.

Repair of Window and Door Screens - \$168

The respondent alleged that a number of screens were damaged by the applicants' cat. Photographs of the damaged screens were provided in evidence. The applicant testified that the screens were damaged when the tenancy agreement commenced and noted that there was no inspection report completed at the commencement of the tenancy agreement. The respondent acknowledged that no inspection report had been completed but stated that no former tenants had owned any cats so the damage must have been done by the applicants' cats. I do not find sufficient evidence to conclude that the damage occurred during the term of the tenancy agreement. The respondent's request for relief is denied.

Refinishing of Living Room and Kitchen Window Sills - \$135

The respondent alleged that the wood window sills had been scratched by animal clawing.

Photographs of the sills were provided in evidence showing the scratches. The applicant denied damaging the sills, stating that the damages were done prior to the commencement of the tenancy agreement. The respondent stated that former tenants had a dog but that the dog normally lived outside, except when it had puppies. I do not find sufficient evidence to conclude that the damage occurred during the term of the tenancy agreement. The respondent's request for relief is denied.

Carpet Cleaning - \$330.58

The respondent alleged that the carpet was stained and needed to be cleaned. He stated that after having the carpet cleaned once, there was still staining and an odour so he cleaned the carpet again himself. Photographs of the carpet and invoices were provided in evidence. The photographs indicate numerous stains. The applicant testified that the carpet was stained at the commencement of the tenancy agreement and denied causing any additional staining. The applicant acknowledged that he kept a cat on the premises. In my opinion, regardless of the source of the stains, it is not unreasonable to have a carpet professionally cleaned if a tenant has kept a cat or a dog on the premises. I find the carpet cleaning costs to be reasonable.

General Interior Cleaning - \$756.00

The respondent alleged that the premises required extensive cleaning and provided photographs and an invoice for cleaning in evidence. The invoice outlined 16 hours of cleaning performed. The photographs indicate that the premises were not left in a

reasonably clean condition. Cabinet doors, a ceiling fan, the wood stove, cooking range, laundry room floor, blinds and shelves were all in need of cleaning. In my opinion, however, the charges are excessive. The photographic evidence does not, in my opinion, support the need for 16 hours of labour. In my opinion, half that amount would have been sufficient to bring the premises to a reasonable standard. Relief in the amount of \$378 is reasonable.

Outside Clean-up - \$720.00

The respondent alleged that the applicants had spread birdseed on the snow which had rotted and germinated in the Spring. The respondent also alleged that wood bark and chips from splitting firewood had been left all over the yard, requiring him to clean it up. The respondent stated that he removed eight wheelbarrow loads from the yard. Photographs of the yard were provided in evidence. The costs represent 16 hours of labour at \$45/hour. The applicant acknowledged that he burned wood during the winter but stated that there was already some debris in the yard when he moved in.

In my opinion, the applicants were responsible to keep the yard in a reasonably tidy condition and they failed to do so. However, I find 16 hours of labour to remove eight wheelbarrow loads of debris unreasonable. In my opinion, half that amount is a reasonable amount of labour to restore the yard to a reasonable state. Relief in the amount of \$360 is allowed.

Replacement of Wall Mirror - \$49.99

The respondent alleged that a wall mirror was taken from the premises. An invoice for the cost of replacement was provided in evidence. The applicant acknowledged taking the mirror but claimed it belonged to him. The tenancy agreement between the parties itemizes furniture and appliances included with the premises but does not list a mirror. I do not find sufficient evidence to conclude that the mirror was a fixture provided by the landlord. The respondent's request for relief is denied.

Replacement of Curtains - \$599.98

The respondent alleged that the curtains were clawed by a cat and sought the full replacement value of the curtains. A price for a comparable set of curtains was provided in evidence. The respondent stated that the curtains were approximately twenty years old. Photographs of the curtains were also provided. The applicant testified that the curtains were damaged when they moved in. I do not find sufficient evidence that the curtains were damaged during the term of the tenancy agreement. The respondent's request for relief is denied.

Fuel Oil - \$397.44

The respondent testified that the fuel tank was better than half full at the commencement of the tenancy and that it required 148.5 litres to restore it to that level at the end of the tenancy. The applicant testified that he left the tank with more fuel than it contained at the commencement of the tenancy. The tenancy agreement obligates the tenants to provide

fuel during the term of the tenancy agreement.

A landlord may only deduct rent arrears and the cost of repairs (including cleaning) for a security deposit. Fuel is neither. Therefore the landlord was not entitled to retain any part of the security deposit for fuel. Notwithstanding that the deduction is not permitted, I am not convinced by the testimony that the tenant failed to pay for fuel during the term. The respondent's request for relief is denied.

In summary, I find only the following deductions from the security deposit to be reasonable, resulting in a balance owing the applicants of \$366.69.

Security deposit	\$1500.00
Interest	114.81
Carpet cleaning	(330.58)
Washer/dryer repairs	(179.54)
General cleaning	(378.00)
Yard cleaning	<u>(360.00)</u>
Amount due applicants	\$366.69

An order shall issue requiring the respondent to return a portion of the security deposit to the applicants in the amount of \$366.69.

Hal Logsdon
Rental Officer