

IN THE MATTER between **TIA HANNA AND WARREN BATON**, Applicants, 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 amendments thereto;

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

BETWEEN:

TIA HANNA AND WARREN BATON

Applicants/Tenants

- and -

5655 NWT LTD.

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 fifty five dollars (\$355.00).

DATED at the City of Yellowknife, in the Northwest Territories this 26th day of
November, 2010.

Hal Logsdon
Rental Officer

IN THE MATTER between **TIA HANNA AND WARREN BATON**, Applicants, 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:

TIA HANNA AND WARREN BATON

Applicants/Tenants

-and-

5655 NWT LTD.

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: November 10, 2010

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Tia Hanna, applicant
Lynn Elkin, representing the respondent
Ted Studer, representing the respondent

Date of Decision: November 26, 2010

REASONS FOR DECISION

The tenancy agreement between the parties was terminated on August 31, 2010. The respondent retained the security deposit (\$1650) and accrued interest (\$11.35), applying it against yard restoration (\$200), screens (\$50), kitchen cleaning (\$100), carpet replacement and cleaning (\$308), wood stove trim repair (\$60), chimney cleaning and furnace filter replacement (\$20), wall and window frame repairs (\$65), replacement of a light fixture (\$41), bedroom door repair (\$25), and bedroom door replacement (\$95) resulting in a balance owing to the applicants of \$697.35. The respondent completed an itemized statement in accordance with section 18 of the *Residential Tenancies Act* and returned the balance owing to the applicants.

The applicants disputed a number of the deductions and sought a determination of the matter by filing an *Application to a Rental Officer*. There was no dispute as to the amount of security deposit provided by the applicants or the accrued interest.

Yard restoration

The applicants disputed the \$200 deduction for the removal of a woodpile shelter and the filling of several holes in the yard. The applicants submit that approximately 2.5 cords of firewood were in the yard piled on skids and covered by a shelter at the commencement of the tenancy agreement. This was noted on the check-in inspection report. When the previous tenant returned to pick up the firewood, he instead sold it to the applicants. At the end of the tenancy agreement, the applicants removed the

firewood but did not remove the shelter. The respondent submits that when the applicants purchased the firewood, they also purchased the shelter and assumed the responsibility to remove it at the end of the tenancy agreement.

The applicants also submit that when the tenancy commenced on November 1, 2009 it was not possible to determine the condition of the yard due to the snow cover. The applicants submit that the holes were evident when the snow melted and were not created during the term of their tenancy agreement. The check-in inspection contains no observations concerning the yard except for the firewood.

Section 42 of the *Residential Tenancies Act* sets out the tenant's obligation to repair damages.

42. (1) A tenant shall repair damage to the rental premises and the residential complex caused by the wilful or negligent conduct of the tenant or persons who are permitted on the premises by the tenant.

The shelter was constructed by the previous tenant, not the applicants. I find no evidence that the applicants purchased the shelter or assumed responsibility for the removal of the shelter.

Any holes in the yard should have been observable by both parties at the commencement of the tenancy agreement on November 1, 2009. There was negligible snow accumulation. There is no notation on the check-in report. In my opinion, reasonable compensation for yard restoration is \$25.

Missing screens

The matter of the screens was determined at a previous hearing (file #10-11551, filed on August 6, 2010). At that hearing the tenants' request for compensation for fabricating screens for the premises was denied. The landlord's testimony that screens were not provided as part of the tenancy agreement was accepted. The landlord can not now claim that screens were provided and are now damaged or missing. The deduction from the security deposit is denied.

Kitchen cleaning

The applicants submit that the oven was dirty when the tenancy commenced and that they left it in the same condition. The check-in report notes that one oven rack was dirty. The respondent stated that the stove was not clean, inside or outside and that the refrigerator also required cleaning. The check-out inspection notes these deficiencies.

The tenant is obligated to leave the premises in an ordinary state of cleanliness at the end of the tenancy agreement. If the landlord has failed to provide the premises in an ordinarily clean state, then the tenant should seek a remedy. A breach of the landlord does not entitle the tenant to breach an obligation of the tenant. I find the kitchen was not left in a state of ordinary cleanliness and find the deduction of \$100 for cleaning to be reasonable.

Carpet replacement

The applicants acknowledged that the carpets were stained but disputed that the staining warranted replacement or that they should be charged for both cleaning and replacement. Furthermore, the applicants submit that the cost of replacement should take into consideration the age of the carpets which they estimated as five years old.

The respondents stated that they attempted to have the stains removed but when they proved to be indelible, the carpets had to be replaced as the stains were quite noticeable.

The respondents stated that the living room carpet was 3 years old and the bedroom carpet was 4 years old. The deductions represent 1/8th of the replacement cost of the living room carpet and 1/3 of the replacement cost of the bedroom carpet.

In my opinion, it is not unreasonable to try and remove stains from carpeting rather than replace them. If the stains prove to be indelible then it is not unreasonable to charge both the cleaning costs and the depreciated replacement cost to the tenant. I find the costs deducted from the security deposit to be reasonable considering the age and useful life of the carpets.

Wood stove trim repair

The applicants submit that the damage to the wood stove trim was present at the commencement of the tenancy agreement and provided a photograph of the living room in evidence. I can see no evidence of damage on the photograph and the check-in report

notes no damage. The applicant stated that the check-in was done “quite quickly and superficially.” In my opinion, there is an obligation on both parties to conduct such an inspection carefully. If you sign the inspection report, it indicates that you agree with the noted observations. I find the deductions for the repair to be reasonable.

Clean chimney and replace furnace filter

The applicants disputed this deduction of \$20. They disputed the chimney cleaning on the basis that the landlord inspected the chimney during the check-out and stated that it was acceptable. There is no notation on the check-out inspection concerning the chimney. I find the deduction for cleaning unreasonable.

The applicants disputed the charges for replacement of the furnace filter stating that this was normal wear and tear and not the responsibility of the tenant. It was acknowledged that the filter was dirty and needed to be replaced. Section 31.(1) permits a landlord and tenant to agree to certain maintenance and repair tasks.

31. (1) Notwithstanding section 30, where a residential complex is composed of one rental premises, a landlord and tenant may agree that any or all of the obligations set out in subsection 30(1) may be performed by the tenant except for repairs required as a result of reasonable wear and tear or as a result of fire, water, tempest or other act of God.

The tenancy agreement between the parties obligate the tenants “**to clean or replace [the furnace filter] at least once a year for the duration of your tenancy.**” In my opinion, the replacement of a furnace filter is a maintenance item and not normal wear and tear. I find reasonable costs of \$10.

Wall damage - bedroom and entry

The applicants did not dispute this deduction. I find the costs reasonable.

Light fixture replacement

It appears the respondents understood that the repair costs of this item related to the repair of a ceiling fan, which also contains a light fixture. The respondents submit that they discovered that the fan was not operational when they first tried it in the summer and that if it failed during the tenancy it constituted normal wear and tear. The landlord however, is not claiming repair costs for the fan but the replacement of a light fixture cover on the fan which was allegedly missing.

The check-in inspection does not note any damaged or missing light fixture cover. The check-out inspection indicates that there was damage to the fixture. I find that the damage occurred during the tenancy and find the costs reasonable.

Bedroom door repairs

The applicants submit that the door in one bedroom was damaged when it fell off the hinges which had loosened due to deterioration of the door frame and loosening of the hinge screws. The applicants submit that the other bedroom door was damaged due to the seasonal shifting of the mobile home, causing the door to drag, and not because of any negligence on their part. The damages are noted on the check-out report. A photograph of one of the doors, provided in evidence by the applicants, indicated a very

old hinge assembly with multiple screw holes in both the door and the frame. In an e-mail to the applicants, the landlord acknowledges that the shifting of a trailer is “normal”, causing doors and windows to “stick a bit”.

In my opinion, both of these repairs would have been avoided if the mobile home was levelled seasonally and any deterioration in hinges and doors addressed. These are, in my opinion, the result of normal wear and tear and not damages caused by tenant negligence. It appears that the landlord was made aware of the problems with the doors.

In summary, I find the following deductions from the security deposit to be reasonable:

Yard restoration	\$25.00
Kitchen cleaning	100.00
Carpet replacement	308.00
Wood stove trim	60.00
Furnace filter	10.00
Wall damage	65.00
Light fixture	<u>41.00</u>
Total	\$609.00

An order shall issue requiring the respondent to return a portion of the retained security deposit to the applicants in the amount of \$355 calculated as follows:

Security deposit	\$1650.00
Interest	11.35
Repairs	<u>(609.00)</u>
Total	\$1052.35
Previously returned	<u>(697.35)</u>
Order	\$355.00

Hal Logsdon
Rental Officer