

IN THE MATTER between **SHIRLEY MONCKTON-MILNES AND DAN MONCKTON-MILNES**, 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:

SHIRLEY MONCKTON-MILNES AND DAN MONCKTON-MILNES

Applicants/Tenants

- and -

5655 NWT LTD.

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 30(4)(d) of the *Residential Tenancies Act*, the respondent shall pay compensation to the applicants in the amount of sixty dollars (\$60.00).
2. Pursuant to 30(4)(e) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as 545 Catalina Drive, Yellowknife, NT shall be terminated on January 20, 2011 and the applicants shall vacate the premises on that date.

DATED at the City of Yellowknife, in the Northwest Territories this 14th day of January, 2011.

Hal Logsdon
Rental Officer

IN THE MATTER between **SHIRLEY MONCKTON-MILNES AND DAN MONCKTON-MILNES**, 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:

SHIRLEY MONCKTON-MILNES AND DAN MONCKTON-MILNES

Applicants/Tenants

-and-

5655 NWT LTD.

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: January 10, 2011

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Shirley Monckton-Milnes, applicant
Dan Monckton-Milnes, applicant
Lynn Elkin, representing the respondent
Ted Studer, representing the respondent

Date of Decision: January 14, 2011

REASONS FOR DECISION

The applicants filed an application on December 3, 2010 alleging that the respondent had breached their obligation to maintain the rental premises. They sought an order terminating the tenancy agreement and requiring the respondent to pay compensation for loss of full enjoyment of the premises.

The respondent filed an application on January 4, 2011 alleging that the applicants had damaged the premises. The respondent sought only the termination of the tenancy agreement and eviction, stating that they would assess the repair costs, apply the security deposit and make a future application for any remaining repair costs.

The respondent submitted an additional seventeen pages of written evidence at the hearing, most of which is a rebuttal of the applicant's allegations. This evidence had not been filed with the rental officer or served on the other party. Normally, I would adjourn the matter to provide the parties and myself an opportunity to review the material. However, both parties wished to proceed, largely because both wanted the tenancy agreement terminated as soon as practical. Although the parties could quite easily terminate this tenancy agreement by mutual agreement without an order, they seemed unwilling to do so.

It does not appear possible to make a complete determination concerning the landlord's allegations of tenant damages. Therefore I shall not consider the landlord's application, except as

it pertains to their rebuttal of the applicants' allegations.

The tenancy agreement between the parties was made in writing and contains the following provisions concerning maintenance of the rental premises.

- 8.(1) The landlord agrees that the landlord**
- (a) shall deliver the premises to the tenant in a good state of repair and fit for habitation;**
 - (b) shall maintain the premises in a good state of repair and fit for habitation;**
 - (c) shall comply with all health, safety, housing and building standards, and any other legal requirements respecting the rental premises; and**
 - (d) shall keep all common areas in a clean and safe condition.**
- (2) Notwithstanding subsection (1) the landlord or tenant agree that the landlord's responsibility under 1 (a) through (d) shall be performed by the tenant with the exception of repairs required as a result of reasonable wear and tear or as a result of damage by fire, water, tempest or other act of God (the initials of both parties appear)**

The provisions contained in the tenancy agreement are consistent with section 30 and 31 of the *Residential Tenancies Act*.

- 30. (1) A landlord shall**
- (a) provide and maintain the rental premises, the residential complex and all services and facilities provided by the landlord, whether or not included in a written tenancy agreement, in a good state of repair and fit for habitation during the tenancy; and**
 - (b) ensure that the rental premises, the residential complex and all services and facilities provided by the landlord comply with all health, safety and maintenance and occupancy standards required by law.**
- 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 premises consist of a single mobile home. Therefore the provisions of section 31 of the Act and article 8(2) of the tenancy agreement may be applied leaving the respondent free of the responsibility to repair anything except those repairs made necessary due to "reasonable wear and tear" or as a "result of fire, water, tempest or other act of God".

Reasonable wear and tear is the gradual deterioration of a building component even when the component is properly maintained and used in a normal manner. For example, even when a carpet is kept clean and not damaged by burns or stains, it will eventually wear out through normal use. Another example which may serve to contrast "maintenance" from "reasonable wear and tear" is a hot water heater. Hot water heaters should be inspected periodically according to the manufacturer's specifications which usually include checking the pressure relief valve for proper operation and draining any sediment from the tank. This is maintenance. Eventually, even when used in a normal fashion and regularly maintained, the hot water heater will corrode and leak, signalling the end of its useful life. This is reasonable wear and tear.

The wording contained in section 31 is clearly intended to refer only to "acts of God" involving fire, water and tempest, not any damage caused by fire, water or tempest. An act of God is set out in *Tennant v. Earl of Glasgow*, (House of Lords, 1864):

"Circumstances which no human foresight can provide against, and of which human prudence is not bound to recognize the possibility, and which when they do occur,

therefore, are calamities that do not involve the obligation of paying for the consequences that may result from them."

For example, water damage caused by an overflowing sink or tub is negligence, whereas water damage caused by a torrential rain and catastrophic flooding is an Act of God.

Given these definitions and the provisions in the tenancy agreement it is necessary to determine if any of the repairs, allegedly neglected by the respondent, are in fact the responsibility of the respondent.

The applicants have outlined numerous problems with the premises in their application but I need only deal with the ones the applicants feel are deserving of compensation. Most deal with water damage.

The applicants alleged that the roof has been leaking in several areas and this is supported by a report issued by the Environmental Health Officer dated November 17, 2010. He notes that the roof is one of the most obvious sources of moisture entering the premises and his report contains photographs of water staining on one bedroom ceiling and the kitchen ceilings. The applicants have also provided photographs of the bedroom ceiling stains and a dripping leak in the kitchen. The respondent acknowledged plans to replace the roof but stated that it could not be done last summer. In my opinion, this is a repair which is due to reasonable wear and tear. Most roofing, be it shingles, roll roofing or built-up bitumen roofing gradually deteriorates to the point where it

requires replacement. The respondent's acknowledgment that he plans to replace the roof and that it has been leaking (referenced by his letter of November 11, 2010) indicates to me that the roof has reached the end of its useful life and its condition is the result of reasonable wear and tear. Therefore it is the responsibility of the respondent to undertake the necessary repairs. However, the tenant has not requested any compensation regarding the kitchen leakage or the ceiling leakage in the noted bedroom.

The applicants also stated that another source of water damage occurred when the hot water tank ruptured causing water damage in the small (back) bedroom. The applicants stated that the room was uninhabitable for eight days and that Mr. Monckton-Milnes was left to dry the area, clean up and re-install the carpeting. The applicants submit that Mr. Monckton-Milnes spent twenty hours on these tasks and they seek compensation for his labour (\$400) and compensation for loss of use of the room (\$90.32). The respondent acknowledged that the failure of the hot water tank was the result of normal wear and tear. At the hearing the respondent testified that “stuff like helping with the carpet in the bedroom; I would expect to go under section 31(1)”, but in the respondent’s written response, the applicants’ statements concerning the bedroom clean-up were described as “not true”. The respondent also set out in the written response that, “when we were informed the water heater blew we fixed it the next day. Including the mop up using our own equipment.”

In my opinion, the replacement of the hot water heater was made necessary due to normal wear

and tear and the clean-up required was a direct result of the failure of the tank. In my opinion, the respondent is obligated to undertake these repairs. However, the evidence does not, in my opinion fully support the applicants' claim for compensation. It would appear that the applicants re-installed the carpet but the rest of the labour claimed by the applicants is disputed by the respondent. The re-installation of the carpet should not have consumed more than three hours of labour. On the balance of probabilities, I find that Mr. Monckton-Milnes undertook the re-installation of the carpet but there is insufficient evidence to support his statement that all of the clean-up work was performed by him. In my opinion \$60 would be reasonable compensation.

Section 30(6) allows ten days for a landlord to attend to repairs. In my opinion, the applicants were not unreasonably deprived of the use of the room. Certainly a portion of the room could still be used and it is not unreasonable for some space in the rental premises to be unavailable for use by the tenant for short periods of time due to necessary repairs. In this case the repairs were carried out in a timely manner and within the required time set out in section 30(6). In my opinion, compensation for loss of use is not reasonable.

The applicants alleged that the replacement of the electrical panel in the small room has rendered the room unusable since October 7, 2010 because the work was not completed. A photograph was provided in evidence. The applicants sought compensation of \$1008. The respondent disputed that the room was unusable since it is only used for storage. It does not appear from the photographs that the use of the room has been significantly reduced. In my opinion,

compensation for loss of use is not reasonable.

The applicants sought unspecified expenses for moving and the transfer of utilities. They submit that they do not wish to endure any more leaks when the weather becomes warmer. The tenancy agreement term expires on March 31, 2011. Their argument is based on the assumption that they want to purchase a home after the expiration of the tenancy agreement and move from the current premises directly into the new home. Because they do not yet have the necessary down payment to purchase a house, they argue that they will have to move into an interim rental property, therefore incurring expenses of two moves rather than one. Without an offer to purchase, this is purely hypothetical and in my opinion can not be considered to be an expense that is directly related to the respondent's breach. Their request for compensation for moving expenses is denied.

Finally, the applicants claim that an "antique" set of World Book encyclopedias were damaged by water caused by a leaking window. These books were stored in the small room that was used for storage. It appears that the window may have been installed without proper flashing as the applicants remark in their submission that, "the landlord came and put a piece of siding over the upper edge of the window. This did slow the leak..." If that is the case, the leakage would not be a result of normal wear and tear. The respondent disputes the claim on the basis that the applicants did nothing to mitigate their loss by moving the books when the leak was detected. In my opinion, the loss is not a result of normal wear and tear and the respondent is not liable for

any loss. In any case, I seriously doubt that the books have any significant value.

I find the respondent in breach of their obligation to repair the roof and to undertake all of the repairs related to the failure of the hot water heater. I find reasonable compensation for the re-installation of the carpet to be \$60. I find reasonable grounds to terminate the tenancy agreement and note that both parties have also consented to an order terminating the tenancy agreement on January 20, 2011.

An order shall issue requiring the respondent to pay the applicant compensation of \$60 and terminating the tenancy agreement on January 20, 2011. The landlord's application (file #10-11921, filed on January 4, 2011) shall remain active and will be heard following the filing of the security deposit statement and any other supporting evidence and the service of those documents on the tenants.

Hal Logsdon
Rental Officer