File #10-11985

IN THE MATTER between **TANYA LEE MCLEOD**, Applicant, and **NPR LIMITED PARTNERSHIP**, 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:

TANYA LEE MCLEOD

Applicant/Tenant

- and -

NPR LIMITED PARTNERSHIP

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18.1(b) of the *Residential Tenancies Act*, the respondent shall return the carpet cleaning charges to the applicant in the amount of four hundred fifty two dollars and twenty five cents ($452.25).
2. Pursuant to section 47(3.1) of the *Residential Tenancies Act* the respondent shall return a portion of the October, 2010 rent collected to the applicant in the amount of three hundred ninety five dollars and sixteen cents ($395.16).

DATED at the City of Yellowknife, in the Northwest Territories this 31st day of March, 2011.

Hal Logsdon
Rental Officer

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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:

TANYA LEE MCLEOD

Applicant/Tenant

-and-

NPR LIMITED PARTNERSHIP

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing:	**March 22, 2011**
Place of the Hearing:	**Yellowknife, NT**
Appearances at Hearing:	**Tanya Lee McLeod, applicant** **Maigan Lefrancois, representing the respondent**
Date of Decision:	**March 31, 2011**

REASONS FOR DECISION

The respondent sought an adjournment because the manager was not available to attend the hearing. The applicant objected to the adjournment. The respondent has had the application since March 8, 2011 and was served with a Notice of Attendance on March 9, 2011. The issue is not complex and the respondent has had nearly two weeks to prepare a defence. The dispute has resulted in significant friction between the parties and in my opinion should be resolved without further delay. The adjournment was denied.

The applicant stated that due to water problems in the rental premises, the respondent asked her to move to another unit in the residential complex to enable repairs to be made to the water damaged unit. The applicant stated that she moved from #5438 to #5456 in early October, 2010 and completed the move, with the assistance of the landlord, in a single day. The applicant alleged that the respondent charged her $452.25 for carpet cleaning when the cleaning only cost the respondent $152.25 and that the respondent charged her rent for 38 days in October, 2010 rather than the monthly rent of $1750. The applicant sought an order requiring the respondent to return the carpet cleaning charge and the alleged excess rent charged.

The respondent held a security deposit of $1750. Rather than retain part of the security deposit for the carpet cleaning, the respondent transferred the security deposit and accrued interest in full to the new account for #5456 and debited the account for #5438, which had a credit balance, for the carpet cleaning cost.

Section 18.1 of the *Residential Tenancies Act* sets out a process whereby a tenant may dispute a security deposit deduction.

> **18.1. Where, on the application of a tenant, a rental officer determines that a landlord has breached an obligation under section 18, or has failed to return an amount of a security deposit, pet security deposit or both that is owing to the tenant, the rental officer may make an order**
>
> **(a) requiring the landlord to comply with the landlord's obligation; or**
>
> **(b) requiring the landlord to return all or part of the security deposit, pet security deposit or both.**

By returning the entire security deposit and debiting the account for 5438 for repair costs, the landlord is not only defeating the purpose of a security deposit, they are depriving the tenant of the dispute process pursuant to section 18.1. The tenant's only recourse to dispute the repair costs is to not pay future rent and invite the landlord to take legal action against them. Therefore in the interest of resolving this dispute promptly, I shall treat this matter as if the respondent took the normal course of action and deducted the repair costs from the security deposit, applying the balance to the new security deposit account.

Carpet Cleaning

The applicant disputed the carpet cleaning charges of $452.25. The applicant provided a notice from the respondent dated November 5, 2010 which outlined the transactions that occurred during the move from #5438 to #5456. The letter states that $300 was charged for carpet cleaning and $152.25 was charged for removal of stains. The applicant provided a copy of the cleaner's invoice in evidence which stated that $100 was charged for cleaning and $45 charged for spot removal for a total of $152.25 including GST. The applicant questioned the charges in a e-mail to

the respondent and the respondent replied in a letter dated November 23, 2010 that the additional $300 for the carpet cleaning was, in fact, for stain damage that could not be removed.

The applicant submitted that she should not be held responsible for cleaning the carpet due to the water damage in the apartment. There were no inspection reports made available at the hearing to determine the condition of the carpets at the beginning or the end of the tenancy agreement. In my opinion, there is not sufficient evidence to support the respondent's claim for damages and the $452.25 should be returned to the applicant.

Rent for October, 2010

The resident ledger for #5438 indicates that the applicant moved out on October 14, 2010 and was charged for 14 days of rent for that month ($790.32). The monthly rent for the premises was $1750. The ledger for #5456 indicates that the applicant moved into that unit on October 8, 2010 although the tenancy agreement indicates that the tenancy commenced on October 1, 2010. That ledger shows that the applicant was charged for 24 days rent ($1354.84). The monthly rent for this unit is also $1750. The ledgers suggest that the applicant had possession of both premises between October 8 and October 14 and was therefore charged for two units for those days.

The respondent had agreed to provide assistance for the move and the applicant testified that the landlord provided four men who assisted with the move which was completed in one day. Given the fact that #5438 was scheduled for major repair and the testimony of the applicant that the move was completed in a day, I find no rationale or convincing evidence to charge more than 31

days or $1750 for the month of October, 2010 for the combined rents. The applicant has been charged $2145.16, a difference of $395.16. Regardless of the moving date, this constitutes a rent increase which is not in accordance with the Act.

An order shall issue requiring the respondent to return to the applicant the carpet cleaning costs of $452.25 and the excess of the October, 2010 rent charged of $395.16.

Hal Logsdon
Rental Officer