

IN THE MATTER between **HELEN MILLS (MALMSTEN)**, Applicant, and **DEREK WHITE**, 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:

HELEN MILLS (MALMSTEN)

Applicant/Landlord

- and -

DEREK WHITE

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 45(4)(c) of the *Residential Tenancies Act*, the respondent shall pay the applicant costs of fuel paid on his behalf in the amount of one thousand two hundred fifty one dollars and fifty nine cents (\$1251.59).

DATED at the City of Yellowknife, in the Northwest Territories this 20th day of January, 2012.

Hal Logsdon
Rental Officer

IN THE MATTER between **HELEN MILLS (MALMSTEN)**, Applicant, and **DEREK WHITE**, 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:

HELEN MILLS (MALMSTEN)

Applicant/Landlord

-and-

DEREK WHITE

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: January 11, 2012

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Helen Mills (Malmsten), applicant

Date of Decision: January 20, 2012

REASONS FOR DECISION

The respondent was served with a Notice of Attendance sent by registered mail and confirmed delivered. The applicant believed that the respondent could be working out of town but the respondent did not contact the rental officer to make any alternate arrangements or seek an adjournment. Therefore the matter was heard in the absence of the respondent.

The tenancy agreement between the parties commenced on November 12, 2010 and was terminated on November 30, 2011. The written tenancy agreement between the parties requires a security deposit of \$1600 but the applicant stated that she only asked for and received \$200.

There was no inspection report completed at the commencement of the tenancy agreement nor was there any inspection report done at the end of the tenancy. The applicant continues to hold the \$200 security deposit but has not completed a statement of the security deposit and deductions.

The applicant sought relief for the cost of carpet cleaning (\$370.55), fuel costs of an unspecified amount, costs to bleed the fuel lines (\$89.25) and costs to change the locks (\$147). The applicant provided invoices and the written tenancy agreement in evidence.

Section 18 of the *Residential Tenancies Act* sets out provisions for the return and retention of security deposits. The relevant sub-sections are as follows:

- 18.(4) A landlord may, in accordance with this section, retain all or a part of a security deposit, a pet security deposit or both for arrears of rent owing from a tenant to the landlord in respect of the rental premises, and for repairs of damage to the premises caused by the tenant or a person permitted on the premises by the tenant.**
- 18.(5) A landlord may not retain any amount of a security deposit or pet security deposit for repairs of damage to the rental premises if the landlord or his or her agent**
- (a) fails to complete an entry inspection report and an exit inspection report; or**
 - (b) fails, without a reasonable excuse accepted by a rental officer, to give a copy of each report to the tenant.**
- 18.(7) A landlord who intends to withhold all or a portion of a security deposit, a pet security deposit or both shall, within 10 days after the day a tenant vacates or abandons the rental premises,**
- (a) give written notice to the tenant of that intention; and**
 - (b) subject to subsection (9), return the balance of the deposit or deposits to the tenant.**
- 18.(8) A notice must include**
- (a) an itemized statement of account for the deposit or deposits;**
 - (b) a final itemized statement of account for any arrears of rent that the landlord is claiming; and**
 - (c) subject to subsection (9), a final itemized statement of account for any repairs that the landlord is claiming.**

Because the applicant has failed to comply with the provisions contained in section 18(5) and 18(7), she is not entitled to retain the security deposit. The security deposit of \$200 and the accrued interest which I find to be \$ 0.11 must be returned to the respondent.

The Act does not prevent a landlord who has failed to meet the requirements of section 18 to make an application for repair or cleaning costs pursuant to section 42 of the Act. Relief for fuel cost requires an application pursuant to section 45. The applicant's request for relief may therefore be considered pursuant to these sections.

CARPET CLEANING COSTS

The written tenancy agreement sets out the tenant's obligation to have the carpets professionally cleaned at the end of the tenancy. This is not an enforceable obligation as it is inconsistent with the Act. Section 45(2) of the Act sets the standard of cleanliness as "a state of ordinary cleanliness". In some cases where there is staining of the carpets or where the tenant has kept a dog or cat in the premises, professional cleaning may be required to meet that standard. In other cases, the standard may be met with ordinary vacuuming. Because the applicant failed to provide any inspection reports or any other evidence indicating the condition of the carpets at the end of the tenancy, the request for carpet cleaning expenses is denied.

FUEL SYSTEM BLEEDING

The applicant stated that the fuel tank was low at the end of the tenancy on November 30, 2011. She stated that the fuel "almost ran out" and she had 400 litres of fuel oil delivered on December 5. The applicant stated that debris in the bottom of the tank entered the system and made it necessary to have the fuel system bled. In my opinion, the introduction of the foreign matter into the fuel system was due to the applicant's failure to mitigate the problem by promptly filling the tank when it was apparent that the respondent had failed to do so or the applicant's failure to properly maintain the system by draining the sediment and changing the fuel filter. The applicant's request for relief is denied.

LOCK CHANGES

The applicant testified that the respondent failed to return the keys at the end of the tenancy which required changing the locks in the premises. I find the cost of \$147 to be reasonable.

FUEL

The applicant testified that the 1100 litre fuel tank was full at the commencement of the tenancy. Rather than fill the tank when the respondent failed to do so, the applicant waited until December 5, 2011 when the tank was nearly empty and put 400 litres of fuel in the tank. The applicant filled the tank on December 21, 2011 with 960.4 litres of fuel.

It is possible to estimate the daily fuel consumption and thereby estimate how much fuel was in the tank at the end of the tenancy. Since the tank holds 1100 litres and it took 960.4 litres to fill it on December 21, 2011, there were 139.6 litres in the tank before it was filled ($1100 - 960.4 = 139.6$). Assuming the tank was empty or very close to empty on December 5, 2011 when the applicant put in 400 litres, there were therefore 260.4 litres consumed between December 5 and December 21 ($400 - 139.6 = 260.4$). That amounts to 16.3 litres/day ($260.4 \text{ litres} / 16 \text{ days} = 16.3 \text{ litres/day}$).

Therefore, assuming the tank was empty or nearly empty on December 5, 2011 there were approximately 81.5 litres of fuel in the tank at the end of the tenancy ($5 \text{ days} \times 16.3 \text{ litres/day} = 81.5 \text{ litres}$). The amount of fuel that would have been required to fill the tank

at the end of the tenancy is estimated to be 1018.5 litres (1100 litres - 81.5 litres = 1018.5 litres).

The price of fuel on December 1, 2011 as supplied to me by the fuel distributor was \$1.22/litre. Therefore the cost to fill the tank on that day would have been \$1242.57 plus \$62.13 for GST for a total of \$1304.70. In my opinion this is fair compensation for fuel.

Taking into consideration the return of the security deposit due to the respondent and applying that credit first to the lock changes, I find an amount owing to the applicant of \$1251.59 calculated as follows:

Compensation for fuel	\$1304.70
Lock changes	147.00
Less security deposit due respondent	<u>(200.11)</u>
Amount due applicant	\$1251.59

An order shall issue requiring the respondent to pay the applicant fuel costs of \$1251.59.

Hal Logsdon
Rental Officer