

IN THE MATTER between **JOHN WESTERGREEN**, Applicant, and **ROBBIE MACINTOSH**, 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:

JOHN WESTERGREEN

Applicant/Tenant

- and -

ROBBIE MACINTOSH

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 to the applicant in the amount of one thousand six hundred twenty five dollars and nine cents (\$1625.09).

DATED at the City of Yellowknife, in the Northwest Territories this 15th day of February, 2013.

Hal Logsdon
Rental Officer

IN THE MATTER between **JOHN WESTERGREEN**, Applicant, and **ROBBIE MACINTOSH**, 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:

JOHN WESTERGREEN

Applicant/Tenant

-and-

ROBBIE MACINTOSH

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: January 23, 2013

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: John Westergreen, applicant
Robbie MacIntosh, respondent
Elizabeth Taylor, witness for the respondent

Date of Decision: February 15, 2013

REASONS FOR DECISION

The tenancy agreement between the parties was terminated on June 30, 2012. The respondent retained the security deposit (\$2500) and interest (\$30.67) applying it against repairs to the exterior siding (\$770), replacement of the kitchen counter (\$1870.25), painting (\$760) and replacement of a toilet paper holder (\$10.46) leaving a balance owing to the respondent of \$880.04.

The applicant disputed the following deductions:

Exterior siding

The applicant acknowledged that there were damages caused by his subtenant to one area of the siding which was caused by a barbeque. He stated that there were three other damaged areas that were damaged prior to the commencement of the tenancy agreement. He stated that a reasonable cost to repair the damage done by his subtenant would be 25% of the cost or \$192.50. There was no check in report done at the commencement of the tenancy agreement. The respondent argued that it was difficult to repair a single area of the siding. The respondent provided an invoice for the work but it did not include any detail on the areas repaired. There was no photographic evidence provided by the respondent. I can not conclude from the evidence that the repair cost fairly represents the damaged area or if any of the damage occurred before the commencement of the tenancy agreement. In my opinion, the amount put forward by the applicant is reasonable in the light of the available evidence.

Kitchen Counter

The applicant stated that the counter had been damaged to some degree by his subtenant and needed to be replaced. He stated that the counter was quite old and had sustained damage prior to the commencement of the tenancy. He stated that a reasonable cost to compensate for the damage done by his subtenant would be 30% of the replacement cost or \$561.08. The respondent provided invoices for the cost of the counter and installation but as there was no inspection report or photographic evidence, I can not conclude that the applicant's estimate is unreasonable. In my opinion, the amount put forward by the applicant is reasonable in light of the available evidence.

Painting

The applicant acknowledged that there was damage to some wall surfaces that required patching and painting. The applicant provided an inspection report that was prepared for his subtenant indicating the condition of the walls in various areas of the house. Half of the areas required some degree of patching and painting. The applicant provided an invoice for the work he had done which included repairs to the damaged areas and submitted that all of the necessary repairs to the walls had been completed. The respondent provided photographs of various areas that had been patched and painted which clearly showed that the paint did not match the surrounding area. The applicant stated that he was only obligated to repair the affected areas and that some areas had mould or mildew present and could not be painted.

When a tenant is obligated to patch an area of wall, the repaired area must also be repainted so that the patched area blends in with the surrounding area. Sometime this may require the painting of a wall rather than simply the patched area. In my opinion, the painting done by the applicant was not sufficient. Given that the surrounding paint was at least 3 years old and interior paint in a rental property has a useful life of 5 years, half of the areas in the house (the areas that were patched) should have been repainted and that cost depreciated by 60%. I find a reasonable cost to be \$152 calculated as follows:

$$50\% \times \$760 \times 40\% = \$152$$

Toilet paper holder

The respondent provided a photograph that indicated that the toilet paper holder had been removed. The applicant stated that it was missing at the commencement of the tenancy agreement. Without a check-in inspection report, I can not conclude that the toilet paper holder was present and in good condition at the commencement of the tenancy agreement. The deduction is denied.

In summary I find that the respondent must return \$1625.09 of the retained security deposit to the applicant. I calculate that amount as follows:

Security deposit	\$2500.00
Interest	30.67
Siding repairs	(192.50)
Counter	(561.08)
Painting	<u>(152.00)</u>
Amount to be returned	\$1625.09

An order shall issue requiring the respondent to return \$1625.09 to the applicant.

Hal Logsdon
Rental Officer