

IN THE MATTER between **Fort Smith Housing Authority**, Applicant, and **Margaret McKay**, 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, **Adelle Guigon**, Deputy Rental Officer, regarding a rental premises located within the **Town of Fort Smith in the Northwest Territories**.

BETWEEN:

FORT SMITH HOUSING AUTHORITY

Applicant/Landlord

- and -

MARGARET MCKAY

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the Respondent shall pay to the Applicant rental arrears in the amount of \$488 (four hundred eighty-eight dollars).
2. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the Respondent shall pay to the Applicant reasonable expenses directly associated with repairing the rental premises known as Unit 0009, 61 St. Ann's Street, in Fort Smith, Northwest Territories, in the amount of \$349.42 (three hundred forty-nine dollars forty-two cents).

DATED at the City of Yellowknife in the Northwest Territories this 18th day of June 2014.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Fort Smith Housing Authority**, Applicant, and **Margaret McKay**, 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 **Adelle Guigon**, Deputy Rental Officer,

BETWEEN:

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Applicant/Landlord

-and-

MARGARET MCKAY

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REASONS FOR DECISION

<u>Date of the Hearing:</u>	June 14, 2013
<u>Place of the Hearing:</u>	Fort Smith, Northwest Territories, via Teleconference
<u>Appearances at Hearing:</u>	Kevin Mageean, representing the Applicant
<u>Date of Decision:</u>	June 14, 2013

REASONS FOR DECISION

Application

The application package submitted by the Applicant regarding the rental premises known as Unit 0009, 61 St. Ann's Street, in Fort Smith, Northwest Territories, was received and filed by the Rental Office on April 30, 2013. A copy of the filed application package was served on the Respondent by the Applicant by Registered Mail signed for on May 7, 2013.

In the application the Applicant indicated they were seeking an order for payment of arrears in the amount of \$837.42. In support of this application they submitted the following exhibits:

Exhibit 1: Lease Balance Statement for April 1, 2012, to February 19, 2013

Exhibit 2: Tenant Damage Data Entry Adjustment Form for Work Orders #2450 and #2438

Exhibit 3: Invoice 27998 dated February 27, 2013 for attached Work Order #2438 and photographs

Exhibit 4: Invoice 27997 dated February 27, 2013, for attached Work Order #2450 and photographs

Exhibit 5: Correspondence dated February 27, 2013

Exhibit 6: Residential Tenancy Agreement Fixed Term Lease signed April 1, 2012

Exhibit 7: Exit Inspection Report signed February 19, 2013

Hearing

A hearing was scheduled for June 14, 2013. The Applicant was represented at hearing by Mr. Kevin Mageean. The Respondent was served a notice of hearing by Registered Mail, which she signed for on June 5, 2013. Neither the Respondent nor any representatives for the Respondent appeared at hearing. The hearing proceeded in the Respondent's absence.

Submissions

Prior to the hearing the Applicant submitted, at the request of the Deputy Rental Officer, via e-mail received by the Rental Office on June 13, 2013, the following:

Exhibit 8: Entry Inspection Report signed November 9, 2011

At hearing the Applicant stated the Respondent had vacated the rental premises on February 19, 2013, and reiterated their request for an order for payment of arrears in the amount of \$837.42. The Applicant further clarified that this dollar amount reflected rental arrears in the amount of \$488 and repair of tenant damage costs of \$349.42.

The rental arrears represent rent outstanding for the months of December 2012 and January and February 2013.

The repair of tenant damages represent costs associated with re-painting several walls, re-painting portions of the ceiling, re-painting the basement floor, re-staining the stair handrail, patching and re-painting two doors, replacing two door screens, repairing a storm door frame, replacing a missing storm door knob, and re-installing a storm door window. The Applicant spoke to the necessity of the re-painting and re-staining as being a result of the tenant attempting to repaint these areas herself without properly preparing the walls with a coat of primer and generally doing a poor job, leaving substantial paint stains on the ceilings, floors, and handrail. The Applicant testified that the walls the landlord had to re-paint clearly showed stains and what appeared to be drawings coming through the tenant's paint job. The Applicant further referred to the submitted photographs evidencing the damages throughout the premises. The Applicant did clarify that it was not the entire unit that required re-painting, only specific walls and ceilings, the basement floor, and the handrail.

The Applicant reported that the total cost for the repairs was \$1,050.15. The Applicant applied the security deposit of \$700.43 against the total cost for repairs, bringing the remaining outstanding amount to \$349.72. [Note: At hearing the Applicant testified to the outstanding amount of \$349.42, however, as indicated in my determinations, this is a mathematical error.]

The Applicant further reported that the rental premises had last been painted in full in October 2011, just prior to the Respondent moving in. An entry inspection had been completed showing the unit was in good overall condition, and annual inspections indicated that the majority of the damages occurred in the last year of the tenancy.

Determinations

The Lease Balance Statement is the landlord's accounting of transactions applied against a tenant's rental account. In this case it represents monthly rent assessed, charges for tenant damages, and payments made. This statement was not disputed and I accept that it accurately represents payments made to date by the Respondent. Further, I find that the statement reflects rental arrears in the amount of \$488.

The work orders detail the work performed on the rental premises in question after the Respondent vacated the unit. These documents corroborate the testimony of the Applicant with regard to the tenant damages, as do the attached photographs. These damages were not disputed and I accept that the work orders and photographs accurately reflect the repairs required to be performed. Further, I accept the total cost of repairs as detailed by the invoices and work orders of \$1,050.15 is not unreasonable.

The correspondence dated February 27, 2013, is from the landlord to the tenant regarding the repairs conducted to the unit and requesting payment for them within 30 days of invoice date. The correspondence included copies of the related invoices and work orders. Further, the correspondence gave the tenant the opportunity to enter into a payment plan with the landlord if she is not able to pay the repair costs within 30 days; she was given 10 days to contact the landlord should she wish to take this opportunity.

Section 18 of the *Residential Tenancies Act* speaks to the retention or return of security deposits and requires the landlord to notify the tenant in writing of their intention to retain the security deposit and why within 10 days of the tenant vacating the premises. The Respondent vacated the premises on February 19, 2013. The Applicant provided written notice to the Respondent of the cost of repairs on February 27, 2013. The security deposit (including interest) was applied against the cost of repairs on March 15, 2013. Although the Applicant did not specifically say he was going to retain the security deposit in his correspondence, he did give the Respondent the opportunity to make arrangements to pay the cost of repairs and provided a detailed accounting of the repairs in question. I find it reasonable to apply the security deposit against the cost of repairs.

The Applicant calculated the security deposit interest at \$0.43. Supporting documents did not indicate when the security deposit was actually received from the Respondent, neither was the matter addressed at hearing. Assuming the security deposit had been received on the move-in date of November 9, 2011, and accepting that the security deposit is \$700, would result in interest of \$0.40. As the interest applied by the landlord works in favour of the Respondent I accept the security deposit plus interest of \$700.43.

Applying the security deposit of \$700.43 against the cost of repairs of \$1,050.15 reduces the amount owing for the cost of repairs to \$349.72. I find the Respondent responsible for the balance owing of \$349.72. [Note: The Applicant testified to the total amount owing of \$349.42. My calculations based on the supporting documents reflect a total amount owing of \$349.72.]

Order

An order will issue requiring the Respondent to pay to the Applicant rental arrears in the amount of \$488 and cost of repairs in the amount of \$349.72, for a total amount owing of \$837.72.

Adelle Guigon
Deputy Rental Officer