

IN THE MATTER between **HEATHER ADJUN**, Applicant, and **YELLOWKNIFE HOUSING AUTHORITY**, 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:

HEATHER ADJUN

Applicant/Tenant

- and -

YELLOWKNIFE HOUSING AUTHORITY

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 21st day of November, 2013.

Hal Logsdon
Rental Officer

IN THE MATTER between **HEATHER ADJUN**, Applicant, and **YELLOWKNIFE HOUSING AUTHORITY**, 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:

HEATHER ADJUN

Applicant/Tenant

-and-

YELLOWKNIFE HOUSING AUTHORITY

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: **October 17, 2013**

Place of the Hearing: **Yellowknife, NT**

Appearances at Hearing: **Heather Adjun, applicant**
 Luc Lamassee, witness for the applicant
 Ella Newhook, representing the respondent
 Terrence Cassell, witness for the respondent

Date of Decision: **October 17, 2013**

REASONS FOR DECISION

The premises are subsidized public housing. The applicant accepted a transfer and was moved from one unit to another on or about July 22, 2013. An inspection was conducted and numerous damages were noted. The applicant was sent an itemized list of repair costs and an invoice for repairs. The security deposit and accrued interest remained in trust and were not applied to the costs.

The applicant objected to a number of the repair costs on the grounds that they related to normal wear and tear.

Had the respondent retained all or part of the security deposit, applying it to the repair costs, the applicant could dispute the deductions via an application pursuant to section 18(1) of the *Residential Tenancies Act*.

- 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.**

However, in this matter the landlord has not retained the security deposit. The deposit remains in trust. This raises the question whether a landlord providing subsidized public housing may transfer the security deposit to new premises if the tenant is transferred or must they comply with

section 18 of the Act and either return the security deposit or provide an itemised statement of the deposit and deductions.

The written tenancy agreement between the parties obligates the tenant to accept a transfer to other premises when, in the landlord's opinion, the premises are no longer suitable. Such a provision would not be reasonable in other forms of rental housing but appears quite reasonable in subsidized public housing as it is often necessary to move families in order to obtain the most efficient use of the housing units and consequently public funding. The form of the tenancy agreement utilized in subsidized public housing permits the landlord to simply amend the Schedule A of the tenancy agreement when this occurs, without executing a new tenancy agreement. Therefore, the tenancy agreement is not terminated, it is simply amended by changing the premises to which it applies. The parties to the agreement, the term and all obligations of the parties remain the same. In my opinion, it is reasonable for the security deposit to remain in trust in these circumstances as the tenancy agreement has not ended.

Section 42 obligates tenants to repair damages to the premises and provides remedies to landlords.

- 42. (1) A tenant shall repair damage to the rental premises and the residential complex caused by the wilful or negligent conduct of the tenant or persons who are permitted on the premises by the tenant.**
- (2) Ordinary wear and tear of rental premises does not constitute damage to the premises.**
- (3) Where, on the application of a landlord, a rental officer determines that a tenant has breached the obligation imposed by this section, the rental officer may make an order**
 - (a) requiring the tenant to comply with the tenant's obligation;**

- (b) prohibiting the tenant from doing any further damage;**
- (c) requiring the tenant to compensate the landlord for loss suffered as a direct result of the breach;**
- (d) authorizing any repair or other action that is to be taken by the landlord to remedy the effects of the tenant's breach;**
- (e) requiring the tenant to pay any reasonable expenses directly associated with the repair or action; or**
- (f) terminating the tenancy on the date specified in the order and ordering the tenant to vacate the rental premises on that date.**

Section 42 provides no avenue for a tenant to file an application disputing allegations of damage.

How then may a tenant who disagrees with an invoice for repairs dispute some or all of the charges during the term of a tenancy agreement?

In my opinion, a tenant who objects to a landlord's demand for repair costs during the term of the tenancy agreement should simply refuse to pay the invoice, forcing the landlord to make an application pursuant to section 42. The onus of proof that the repairs were the result of the tenant's negligence should rightfully belong to the landlord as applicant.

A rental officer may only consider remedies which are set out in the Act. Since there are no remedies set out for these circumstances on the application of a tenant, I can not consider a remedy on the application of the applicant. For these reasons, the application is dismissed.

Should the tenant wish to dispute any or all of the invoice presented to her by the landlord, I suggest she notify the landlord and pay for only those repairs she considers to be her responsibility.

Hal Logsdon
Rental Officer