

IN THE MATTER between **SCOTT THOMSON AND GINA DANIELS**, Applicants,
and **TERESITA MAYORDO**, 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:

SCOTT THOMSON AND GINA DANIELS

Applicants/Tenants

- and -

TERESITA MAYORDO

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18.1(b) of the *Residential Tenancies Act*, the respondent shall return to the applicants a portion of the retained security deposit and interest in the amount of two hundred dollars and eighty eight cents (\$200.88).

DATED at the City of Yellowknife, in the Northwest Territories this 19th day of
December, 2013.

Hal Logsdon
Rental Officer

IN THE MATTER between **SCOTT THOMSON AND GINA DANIELS**, Applicants,
and **TERESITA MAYORDO**, 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:

SCOTT THOMSON AND GINA DANIELS

Applicants/Tenants

-and-

TERESITA MAYORDO

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: November 6, 2013

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Scott Thomson, applicant
Gina Daniels, applicant
Teresita Mayordo, respondent
Jonaina Mayordo, witness for the respondent

Date of Decision: December 18, 2013

REASONS FOR DECISION

The parties entered into a one-year term tenancy agreement commencing on September 1, 2012 and the applicants provided a security deposit of \$1500 and a pet deposit of \$200 to the respondent. The applicants contacted the respondent on June 23, 2013 and stated that due to their upcoming wedding on August 31, 2013 they would like to terminate the tenancy agreement a month early or extend it for an extra month. The respondent replied, offering a new tenancy agreement for "another year or maybe six months". The applicants stated that they notified the respondent verbally by phone on June 26, 2013 that they planned on moving out on September 15, 2013 and would pay 50% of the September rent.

The applicants vacated the premises on September 15, 2013 and notified the respondent by email that they were ready for a move-out inspection. The respondent did not reply to the request until 8:23 PM on September 25 outlining several areas of damage and required cleaning and agreed to do the inspection that evening. The applicants declined and suggested the inspection be conducted on September 27.

The applicants stated that when they arrived at the premises on September 27 the respondent had already inspected the unit. The applicants stated that there was some discussion about the alleged damage and required cleaning, an argument ensued and they left. The applicants stated that they never received any written check-out report. A check-in report was completed, signed by both parties and a copy provided to the applicants.

An itemised statement of the security deposit and deductions was provided to the applicants along with supporting documents on October 15, 2013 and a copy was filed with the rental officer. The statement outlined the following:

Security deposit	\$1500.00
Pet deposit	<u>200.00</u>
Total deposits	\$1700.00
Bathroom door replacement	(155.37)
Labour	(200.00)
Cleaning	(252.00)
Power overage (May-July, 2013)	<u>(38.51)</u>
Refundable deposit	\$1054.12

The statement indicated that the refundable deposit would be forwarded to the respondents when the September rent of \$1500 was paid. The applicants acknowledged that none of the September rent was paid. The deposit remains with the respondent.

Put in a more conventional format, the respondent has retained the full amount of the deposits and claims the applicants owe her an additional \$445.88. However she has made no application seeking this relief.

Security deposit	\$1500.00
Pet deposit	<u>200.00</u>
Total deposits	\$1700.00
Bathroom door replacement	(155.37)
Labour	(200.00)
Cleaning	(252.00)
Rent Arrears (September/13)	(1500.00)
Power overage (May-July, 2013)	<u>(38.51)</u>
Amount owing landlord	\$445.88

The applicants acknowledged that the bathroom door was damaged but submitted that a repair of

the damage could be more appropriate than replacement. The applicants disputed the labour cost to install the door, stating that it was not supported by a quotation or invoice. The applicants disputed the cleaning costs, stating that they had hired a cleaner and the premises were in a clean condition when they moved out on September 15, 2013.

Section 49 of the *Residential Tenancies Act* sets out the provisions for automatic renewal of a term tenancy agreement.

49. (1) Where a tenancy agreement ends on a specific date, the landlord and tenant are deemed to renew the tenancy agreement on that date as a monthly tenancy with the same rights and obligations as existed under the former tenancy agreement, subject to any rent increase that complies with section 47.

- (2) Subsection (1) does not apply**
- (a) where the landlord and tenant have entered into a new tenancy agreement;**
 - (b) where the tenancy has been terminated in accordance with this Act;**
or
 - (c) to rental premises provided by an employer to an employee as a benefit of employment.**

There was no evidence to suggest that the parties entered into a new tenancy agreement to commence on September 1, 2013. There was no evidence to suggest that the term agreement ending on August 31, 2013 was terminated in accordance with the Act. Therefore the term agreement was automatically renewed as a monthly tenancy effective on September 1, 2013.

Sections 51(1) and 52(1) set out requirements for terminating tenancy agreements by a tenant's notice and section 50 sets out provisions for mutual termination of a tenancy agreement.

- 51. (1) Where a tenancy agreement specifies a date for the termination of the tenancy agreement, the tenant may terminate the tenancy on the date specified in the agreement by giving the landlord a notice of termination not later than 30 days before the termination date.**
- 52. (1) Where a tenancy agreement does not specify a date for the termination of the tenancy agreement, the tenant may terminate the tenancy on the last day of a period of the tenancy by giving the landlord a notice of termination,**
- (a) in the case of a weekly tenancy, not later than seven days before that day; or**
 - (b) in the case of a monthly tenancy, not later than 30 days before that day.**
- 50. A landlord and tenant may agree in writing after a tenancy agreement has been made to terminate the tenancy on a specified date and the tenancy is terminated on the date specified.**

There was no evidence to suggest that the resultant month-to-month tenancy was then terminated by the tenant's notice or that the parties mutually agreed in writing to terminate it on another date. The tenancy was monthly and the tenancy agreement required the monthly rent to be paid in advance. Therefore, the tenants enjoyed the right of possession until September 30, 2013 but elected to give up possession on September 15, 2013. I find rent arrears of \$1500 representing the outstanding rent for September, 2013.

Section 17(5) requires that an exit inspection report be given to the tenant within five days after the inspection and section 18(5) prohibits a landlord from retaining a security report for repairs of damage if the report has not been given to the tenant.

- 17.(5) A landlord shall ensure that a copy of an exit inspection report is given to the tenant within five days after the day of the inspection.**

- 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.**

The exit inspection report was provided to the respondents at the hearing. Although it was acknowledged that the tenants failed to complete the inspection with the landlord, that does not excuse the landlord from providing a copy of the report to the tenants. The landlord was aware of the mailing and email addresses of the respondents as evidenced by her correspondence of October 15 and numerous emails between the parties. I see no reason why the report could not have been provided in a timely manner. The respondent has forfeited her right to deduct the repair and cleaning costs from the security deposit.

The tenancy agreement between the parties sets out the following provision for rent:

“You will pay the amount of \$1500 per month for rent, in advance and without demand; This amount includes water, condominium fees and power charges save and except if the power bill exceeds One Hundred (\$100.00) Dollars. You will be responsible for any amount exceeding \$100.00.”

I find this provision inconsistent with the Act and therefore of no effect. Rent is defined as follows:

"rent" includes the amount of any consideration paid or required to be paid by a tenant to a landlord or his or her agent for the right to occupy rental premises and for any services and facilities, privilege, accommodation or thing that the landlord provides for the tenant in respect of his or her occupancy of the rental premises, whether or not a separate charge is made for the services and facilities, privilege, accommodation or thing.

The definition of services and facilities specifically includes utilities.

"services and facilities" includes furniture, appliances and furnishings, parking and related facilities, laundry facilities, elevator facilities, common recreational facilities, garbage facilities and related services, cleaning or maintenance services, storage facilities, intercom systems, cable television facilities, heating facilities or services, air-conditioning facilities, utilities and related services, and security services or facilities.

Charging the tenants for any electrical cost over \$100 is tantamount to a rent increase and is subject to the restrictions on rent increases set out in section 47 of the Act. Since the landlord can only increase the rent once every 12 months and must give at least three months notice, this provision in the tenancy agreement cannot comply with the Act. The deduction is not permitted.

I find that only the rent arrears may be deducted from the security deposit. Taking into consideration the retained security and pet deposits, I find an amount owing to the applicants of \$200.88 calculated as follows:

Security deposit	\$1500.00
Pet deposit	200.00
Interest	0.88
Rent arrears	<u>(1500.00)</u>
Amount owing applicants	\$200.88

An order shall issue requiring the respondent to return to the applicants a portion of the retained security deposit and accrued interest in the amount of \$200.88.

Hal Logsdon
Rental Officer