

IN THE MATTER between **Behchoko Ko Gha K'aodee**, Applicant, and **Norman Mackenzie**, 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, **Adelle Guigon**, Deputy Rental Officer, regarding a rental premises within **the community of Behchoko in the Northwest Territories**.

BETWEEN:

BEHCHOKO KO GHA K'AODEE

Applicant/Landlord

- and -

NORMAN MACKENZIE

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 42(3) and 45(4) of the *Residential Tenancies Act*, the respondent must pay to the applicant compensation for expenses directly related to the repair of tenant damages and cleaning of the rental premises known as 360 Kay Tay Whee Tili in Behchoko, Northwest Territories, in the amount of \$8,321.25 (eight thousand three hundred twenty-one dollars twenty-five cents).

DATED at the City of Yellowknife in the Northwest Territories this 31st day of March 2014.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Behchoko Ko Gha K'aodee**, Applicant, and **Norman Mackenzie**, Respondent.

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

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BEHCHOKO KO GHA K'AODEE

Applicant/Landlord

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REASONS FOR DECISION

<u>Date of the Hearing:</u>	March 17, 2014
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories, via teleconference
<u>Appearances at Hearing:</u>	Michael Keohane, representing the applicant Therese Migwi, representing the applicant Robert McAllum, witness for the applicant Norman Mackenzie, respondent
<u>Date of Decision:</u>	March 17, 2014

REASONS FOR DECISION

An application to a rental officer made by Behchoko Ko Gha K'aodee as the applicant/landlord against Norman Mackenzie as the respondent/tenant was filed by the Rental Office November 5, 2013. The application was made regarding a residential tenancy agreement for the rental premises known as 360 Kay Tay Whee Tili in Behchoko, Northwest Territories. The applicant served a copy of the filed application on the respondent by personal service January 8, 2014.

The applicant alleged the respondent was responsible for damages to and costs associated with the cleaning of the rental premises. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for March 17, 2014. Mr. Michael Keohane and Ms. Therese Migwi appeared representing the applicant; Mr. Norman Mackenzie appeared representing himself as the respondent. Mr. Robert McAllum was also present as a witness for the applicant.

Mr. Keohane testified that Mr. Mackenzie had been in a continuous tenancy for subsidized public housing with the applicant since April 1, 2007. In December 2008, Mr. Mackenzie was transferred from unit 333 to unit 360. Unit 360 was a newly renovated property for which an entry inspection report was completed when Mr. Mackenzie moved in. The deficiencies noted in the entry inspection report were largely attributed to drywall dust, minor wall cracks, and four interior doors which were out of alignment.

On August 30, 2013, the applicant received word that Mr. Mackenzie had been incarcerated the day before. Mr. Keohane contacted Mr. Mackenzie at the detention facility, confirming his incarceration for an indeterminate period of time. Mr. Keohane stated Mr. Mackenzie had agreed at that time that his incarceration effectively meant he had abandoned the rental premises. When the applicant attended the rental premises to re-claim possession, one of Mr. Mackenzie's children was still resident in the home with several friends and refused to leave, claiming she had permission to be there. The RCMP were unable to assist with their removal until confirmation had been received that the occupants were unauthorized. Mr. Keohane drafted a letter dated August 30, 2013, to Mr. Mackenzie confirming the abandonment of the rental premises and requesting Mr. Mackenzie's acknowledgement of the abandonment by signing the letter; Mr. Mackenzie did acknowledge his abandonment of the rental premises on September 6, 2013. Upon receipt of the acknowledgement, arrangements were made with the RCMP to attend the rental premises with the applicant on September 11, 2013, to ensure the occupants left; the rental premises was then boarded up to insure against unauthorized entry.

On September 18, 2013, Mr. Robert McAllum attended the rental premises with a colleague to affect an exit inspection. Photographs were taken throughout the rental premises on that day, which were submitted into evidence. The premises were found to be in significant disarray, the following of which were specifically attributed as Mr. Mackenzie's responsibility to compensate for the repair of:

- two damaged exterior doors
- 8 missing and/or damaged interior doors
- missing and/or damaged switch/outlet plate covers throughout
- holes and gauges in walls and ceilings throughout
- damaged refrigerator
- damaged kitchen and bathroom cabinets and counter tops
- damaged bathroom towel rack
- 5 broken windows
- 1 missing smoke detector
- painting of unit throughout
- cleaning of unit throughout, including appliances

Mr. Keohane submitted into evidence the condition rating report which was completed by Mr. McAllum. This report reflects the repairs required and calculates the cost of those repairs the applicant is requesting compensation from Mr. Mackenzie for. The rental premises was last painted five years ago; the applicant is requesting that Mr. Mackenzie pay 50 percent of the cost of repainting the premises. The total amount of compensation requested for all repairs, cleaning, and painting is \$8,925 (including GST). Mr. Mackenzie did not dispute the condition of the premises, but did dispute that the damages were entirely caused by him or his family. He alleged that the windows were broken by kids throwing rocks at his house at night. He further alleged, as supported by the entry inspection report, that when they moved into the house the doors were not properly aligned, were difficult to close, and the landlord did not attend to realign them. As well, the house had settled making the exterior doors difficult to manage, which the landlord did not address.

In reviewing the photographs and discussion with Mr. McAllum, the following was observed:

- All except one of the of the interior doors had been removed entirely from the door frame; in one instance the spine of the door could be seen still attached to the hinges, suggesting the door had been torn away from the frame. The one interior door remaining on its hinges did have some damage around the latch, however, this damage appears consistent with forcing the door open and closed due to the misalignment of the door in the frame.
- The exterior doors showed gauges in the door itself, and breaking and tearing of the door trim and frame. These damages do not appear consistent with damages related to shifting of the house, but do appear consistent with use of excessive force.
- The majority of the switch and outlet plate covers shown in the photographs were damaged or missing.
- Permanent black marker appears to have been used to write on the refrigerator.
- In the kitchen there are gauges in the counter tops, the front of a drawer is missing, the base of another drawer is missing, and the door of a lower kitchen cabinet is hanging from one hinge.
- Several windows throughout the house are broken.
- There are gauges, holes, and partially patched sections in the walls throughout the house.
- All photographs reflect a premises that was left in a very unclean state, with debris on the floor, scuffs and marks on the floors and walls, un-vacuumed carpets, stains on the carpets, floors, and cabinets, dirty appliances, and dishes, furniture, and garbage bags left behind.

Tenancy agreement

The residential tenancy agreements entered into evidence by the applicant are for subsidized public housing in Behchoko, Northwest Territories, starting April 1, 2007. The applicant's correspondence to the respondent regarding abandonment of the rental premises was also submitted into evidence; the correspondence is dated August 30, 2013, and Mr. Mackenzie signed it acknowledging his abandonment of the rental premises on September 6, 2013. The parties did not dispute that a valid tenancy agreement was in place and I am satisfied this is the case.

The applicant testified they were unable to regain possession of the rental premises until September 11, 2013, and Mr. Mackenzie did not dispute this assertion. I am satisfied that the rental premises was abandoned and the landlord regained possession of the rental premise on September 11, 2013.

Entry and exit inspection reports

Section 17.1(2) of the *Residential Tenancies Act* requires the landlord to conduct an inspection of abandoned rental premises within one week after the day the landlord ascertains the tenant has abandoned the rental premises. Although the landlord had learned of the tenant's incarceration August 30, 2013, and subsequently received confirmation from the tenant that the premises had been abandoned by him on September 6, 2013, the landlord was unable to regain possession of the rental premises until the remaining occupants had been removed from the rental premises on September 11, 2013, at which time the landlord secured the premises from unauthorized entry. I am satisfied that the intent of section 17.1(2) has been met by the landlord conducting the exit inspection on September 18, 2013. The exit inspection report is comprised of the condition rating report submitted into evidence.

The entry inspection section of the report submitted into evidence was signed as being conducted December 22, 2008, for the rental unit 360. The applicant testified that unit 360 had been newly renovated and, aside from minor construction debris (drywall dust) and four unaligned interior doors, was in like-new condition.

Tenant damages and cleaning

Upon joint review as referenced above of the damages and cleaning claimed by the applicant I can find only two items to disallow or vary.

Of all the interior doors, only one – a bedroom door – remains on its hinges. The damages evident in the photograph of that door are primarily centred around the latch or handle. The tenant testified that the four interior bedroom doors and frames had not be aligned properly during the tenancy, which was supported in the entry inspection report, and the applicant did not dispute this. The misalignment of those doors and frames does not warrant the entire removal of all but one of the interior doors from their frames, nor the apparent ripping of the spine from at least one of the doors. The damages to the one bedroom door remaining on its hinges does seem consistent with damages associated with the misalignment of the door and frame, and the costs associated with the repair of this door, valued at \$262.50, are disallowed.

The landlord testified that the painting of the unit was inclusive of the renovations completed prior to Mr. Mackenzie's transfer to unit 360 in December 2008. The entry inspection report corroborates this. The landlord applied a total cost of \$2,500 to the repainting of the rental premises, requesting compensation from the tenant for 50 percent of that cost. Attributing a life expectancy of eight years to interior painting finishes, considering the rental unit was last painted five years ago (2008), the tenant's cost for repainting of the rental premises should be applied at 37.5 percent resulting in a cost of \$937.50.

Mr. Mackenzie's claims that he should not be held responsible for the cost of repairing the windows is without merit. As the tenant of the rental premises he is accountable for damages beyond normal wear and tear. Should the damages in question be committed by another individual's or group of individuals' act of mischief the tenant can seek restitution under the Criminal Code.

I find Mr. Mackenzie is responsible for costs associated with the repair and cleaning of the rental premises as follows:

Replacement of two exterior doors	\$1,600.00
Replacement of seven interior doors	\$1,812.50
Replacement of switch/outlet plate covers	\$180.00
Patching and repairing of walls	\$1,450.00
Repair of appliances	\$65.00
Repair of cabinets and counters	\$380.00
Repair/replacement of five windows	\$850.00
Replacement of smoke detector	\$50.00
37.5 percent of painting walls and ceilings	\$937.50
Cleaning throughout the rental premises	\$600.00
GST	\$396.25
TOTAL COSTS	\$8,321.25

An order will issue for Mr. Mackenzie to pay the costs associated with the repair of damages and cleaning to the rental premises in the amount of \$8,321.25.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Summary of applicant's request dated November 5, 2013
- Exhibit 2: Residential tenancy agreement - indeterminate lease dated June 29, 2007
- Exhibit 3: Residential tenancy agreement - fixed-term lease dated May 28, 2008
- Exhibit 4: Residential tenancy agreement - fixed term lease dated December 22, 2008
- Exhibit 5: Residential tenancy agreement - fixed term lease dated April 14, 2009
- Exhibit 6: Residential tenancy agreement - fixed term lease dated July 8, 2009
- Exhibit 7: Residential tenancy agreement - fixed term lease dated April 1, 2012
- Exhibit 8: Northwest Territories Housing Corporation Unit #360, termination of tenancy for abandonment correspondence to respondent dated August 30, 2013
- Exhibit 9: Applicant's account summary from April 1, 2007, to November 4, 2013
- Exhibit 10: Applicant's damage deposit applied to rental arrears correspondence to respondent dated November 4, 2013, with 26 related attachments
- Exhibit 11: Tenant ledger card for tenant damages between March 31, 2006, and September 18, 2013
- Exhibit 12: Applicant's invoice number 268939 dated January 30, 2006
- Exhibit 13: Applicant's work order dated October 28, 2005
- Exhibit 14: Applicant's invoice number 6747 dated December 1, 2007
- Exhibit 15: Applicant's invoice number 6851 dated October 13, 2010
- Exhibit 16: Applicant's statement dated October 25, 2010
- Exhibit 17: Applicant's invoice number 6962 dated September 18, 2013
- Exhibit 18: Condition rating report for unit 360 dated September 18, 2013
- Exhibit 19: Tenant check-in condition report dated December 22, 2008
- Exhibit 20: Set of 45 photographs of unit 360 taken October 16, 2013
- Exhibit 21: Rental officer order number 10-12024 dated May 3, 2011