File #10-13835 and #10-13913

IN THE MATTER between **Bonnie Webb and Jim Maysenhoelder**, Applicants, and **Jeremy Storvold and Linnea Storvold**, Respondents;

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 town of Hay River in the Northwest Territories.**

BETWEEN:

BONNIE WEBB and JIM MAYSENHOELDER

Applicants/Landlords

- and -

JEREMY STORVOLD and LINNEA STORVOLD

Respondents/Tenants

Office Of The Rental Officer • Bureau du régisseur • FILED MAR 1 8 2014 DÉPOSÉ

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 41(4)(a), 42(3)(e), and 45(4)(d) of the *Residential Tenancies Act*, the respondents must pay to the applicant rental arrears, compensation for repair of damages, and compensation for cleaning costs totalling $625.63 (six hundred twenty-five dollars sixty-three cents);

2. Pursuant to section 30(4)(c) of the *Residential Tenancies Act*, the applicants must pay to the respondents compensation for expenses directly associated with maintenance of the rental premises in the amount of $640.00 (six hundred forty dollars).

DATED at the City of Yellowknife in the Northwest Territories this 17th day of March 2014.

Adelle Guigon
Deputy Rental Officer

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IN THE MATTER between **Bonnie Webb and Jim Maysenhoelder**, Applicants, and **Jeremy Storvold and Linnea Storvold**, Respondents.

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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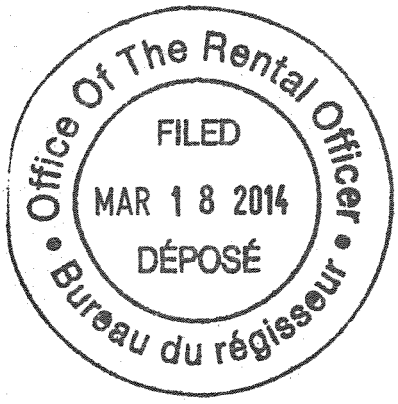
Applicants/Landlords

-and-



JEREMY STORVOLD and LINNEA STORVOLD

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing:	**March 5, 2014**
Place of the Hearing:	**Yellowknife, Northwest Territories, via teleconference**
Appearances at Hearing:	**Bonnie Webb, representing the applicants** **Jim Maysenhoelder, representing the applicants** **Jeremy Storvold, representing the respondents** **Linnea Storvold, representing the respondents**
Date of Decision:	**March 15, 2014**

REASONS FOR DECISION

Rental officer application number 10-13835 made by Bonnie Webb and Jim Maysenhoelder as the applicants/respondents against Jeremy Storvold and Linnea Storvold as the respondents/tenants was filed by the Rental Office November 25, 2013. A copy of the filed application package was served on the respondents by registered mail signed for December 12, 2013. Rental officer application number 10-13913 made by the applicants/landlords against the respondents/tenants was filed by the Rental Office January 14, 2014. A copy of the filed application package was served on the respondents by registered mail deemed served February 3, 2014, and followed by e-mail confirmed received by the respondents February 25, 2014.

The applications were made regarding a residential tenancy agreement for the rental premises known as 136 Wild Rose Drive in Hay River, Northwest Territories. The applicant alleged in file number 10-13835 the tenants had caused damages to the premises; in file number 10-13913 the applicant alleged the tenants had accumulated rental arrears. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled with regard to rental officer application number 10-13835 for January 28, 2014. Both parties were served with notices of attendance by registered mail signed for January 10, 2014. On January 24, 2014, Mr. Jeremy Storvold, the respondent, requested an adjournment of the hearing due to unforeseen work-related travel. After discussion with the applicants and consideration that both applications could be heard together, the adjournment was granted.

A hearing was re-scheduled for March 5, 2014, regarding both rental officer applications. The parties were sent notices of attendance by e-mail February 7, 2014; both sets of parties confirmed receipt of the notices. Ms. Bonnie Webb and Mr. Jim Maysenhoelder appeared representing the applicants; Mr. Jeremy Storvold and Ms. Linnea Storvold appeared representing the respondents.

The applicants testified that the respondents had entered into a two-year fixed-term tenancy agreement starting July 1, 2012. The monthly rent was established at $1,350, and a security deposit of $1,350 was received at the commencement of the tenancy. The security deposit plus interest have not been returned to the respondents.

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The rental premises known as 136 Wild Rose Drive in Hay River, Northwest Territories, is a country home consisting of a large property surrounded by natural forest with a single-family dwelling. Although there is no written entry inspection report, the parties toured the property when the respondents were given possession of the premises during which particular details regarding the maintenance and operation of the home were explained. The applicants were moving to Ontario and anticipated a lease-to-own scenario with the respondents.

Included in the written tenancy agreement was the tenant's obligation to maintain the lawn. The property included an enclosed dog run with a small shelter and lawn maintenance equipment. The home included a wood stove which was not the primary source of heat. The master bedroom and one spare room had been prepared for painting and remained unfinished; the respondents were given authorization to complete the painting in these rooms and could paint the third room as well, which last had been painted approximately three years prior to the respondents' tenancy. The remainder of the house had been painted approximately one year prior to the respondents' tenancy and did not require any maintenance. The respondents were also given permission to use the dog enclosure as a chicken coop, as they expressed an interest in raising chickens.

At the end of September 2013 the applicants received verbal notification of the respondents' intention to move out on October 31, 2013, followed by an e-mail notification. The tenancy agreement specified that any notices regarding termination of the tenancy agreement must be sent to the landlords by registered mail. Being a fixed-term tenancy agreement which does not expire until June 30, 2014, the tenancy agreement was not terminated in accordance with either the written tenancy agreement or the *Residential Tenancies Act* (the Act). The applicants found themselves in the unexpected position of having to return to Hay River in order to ensure the property was maintained for the winter months.

Upon return to the community, the applicants attempted to find new tenants for the rental premises. The responses to their inquiries were not suitable tenants. By December 2013 the applicants had decided not to re-rent their home, choosing to remain there themselves, and removed the premises from the rental housing market. They made application for the respondents to pay the rent for the month of November 2013 of $1,350, plus the electrical bill for the last week of October of $30.75 and the cost of refilling the fuel tank of $499.96. The applicants also requested compensation for a cord of wood in the amount of $240, claiming a cord of wood had been provided at the commencement of the tenancy and had not been replaced at the end of the tenancy.

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On October 31, 2013, an exit inspection was conducted of the rental premises with the respondents from which a written report was made and provided to both parties, although not included in the application packages. The applicants discovered the following:

1. The yard appeared not to have been maintained, with weeds and saplings growing as much as two to three feet tall;
2. The dog enclosure had been converted into an enclosure for turkeys and the dog shelter had been disposed of. Turkey feces had been left throughout the enclosure;
3. An interior window screen had been damaged; and
4. The third bedroom had been remodelled to include wainscotting, an alteration which had not been authorized by the applicants.

The applicants requested compensation for the repairs and cleaning that had to be done as a result of the listed alterations as follows:

Yard maintenance	$60.00
Cleaning of turkey feces from enclosure	$40.00
Repair of damages window screen	$41.52
Removal of wainscotting and repair and re-painting of walls	$414.30

The respondents acknowledged they did not give proper notice of their intention to end the tenancy agreement, indicating they were unaware at the time of the requirements under their specific agreement and the Act, however they were also aware the landlords had an obligation under the Act to attempt to mitigate their losses by finding new tenants as soon as possible. The respondents provided a printout of a screen shot of posts from October 9 to November 13, 2013, on a FaceBook group called "Hay River Property Sales and Rentals" reflecting several requests for rental properties, showing a sampling of potential tenants the applicants could have considered.

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The respondents did not dispute the amount claimed for the electricity bill, but they did dispute the amount requested for filling the fuel tank. They had left approximately one-third of a tank of fuel when they vacated the rental premises, as evidenced by an e-mail conversation submitted by the respondents between Mr. Storvold and a representative of Bluewave Energy in Hay River. The respondents filed a counter claim for the value of the fuel they left in the tank of $400.68. When asked, the applicants confirmed the tank was only partially full when the tenants took occupancy of the premises.

The respondents denied the applicants' claims regarding the yard maintenance, testifying that they had in fact been mowing the lawn and caring for it. The weeds and saplings the applicants referred to were natural growth along the treeline of the yard. The yard is not fenced. A photograph submitted by the respondents of part of the yard taken earlier in the year clearly reflects a mowed lawn. The respondents claimed they in fact made improvements to the yard by building a raised garden (which also appears in the aforementioned photograph), for which they filed a counter claim for costs of $500 as they had left the raised garden there when they vacated the rental premises. The applicants stated they neither requested, authorized, nor desired a raised garden in their yard and disputed the respondents' counter claim for those costs.

With respect to the turkey feces in the enclosure, the respondents admitted to leaving the feces there with the intent that they would naturally decompose into the ground and it would not be necessary to clean them up. The respondents offered to share the costs of cleaning up the turkey feces.

The respondents did not dispute either the damaged window screen or the costs of repairing it.

The respondents confirmed they were given authorization to paint the three bedrooms and in fact painted them and the stairwell. Although they did not have authorization for the wainscotting, they installed it in the third bedroom as they felt it was an improvement to the premises and resulted in a more comfortable room. They were never compensated for any of this work, and filed a counter claim of $800 for the paint and labour for all three rooms and the stairwell. The applicants disputed the claim with relation to the third bedroom as they had not authorized the installation of the wainscotting and it in fact resulted in an additional cost to the applicants to have the wainscotting removed and the walls repaired to return the room to as comparable a condition as possible to when the tenants took possession.

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In October 2012 there was a severe winter storm in Hay River which resulted in the tops of several trees on the property to break off from the weight of the snow, littering the property and partially blocking the access road. The respondents at the time were under the impression that the applicants did not wish to be disturbed except for emergencies and took the initiative to clean up the debris themselves. The respondents testified it took them approximately 16 hours over several weeks after work to complete the job and submitted a claim for compensation in the amount of $640. The applicants agreed storms are an act of God for which the tenant cannot be held responsible for the resulting damages, but they questioned the extent of the landlords' responsibility for picking up the debris that would have been left in the yard as opposed to the debris blocking access to the property.

Tenancy agreement and termination

The residential tenancy agreement entered into evidence by the applicant is between the parties for the rental premises known as 136 Wildrose Drive in Hay River, Northwest Territories. It is for a two-year fixed-term tenancy starting July 1, 2012. The parties did not dispute the tenancy agreement. The tenancy agreement form used is from Alberta; thus there are some elements which are not in compliance with the Northwest Territories *Residential Tenancies Act*. Any non-compliant elements which are part of the disputes claimed will be addressed subsequently. I am satisfied the parties have entered into a residential tenancy agreement for a rental premises in the Northwest Territories.

Section 15 of the residential tenancy agreement specifies the requirements for termination of month-to-month and week-to-week tenancies; it does not speak to fixed-term tenancies. Section 51(1) of the *Residential Tenancies Act* (the Act) states a tenant may terminate a fixed-term tenancy only by giving written notice to the landlord no later than 30 days before the termination date of the tenancy agreement. In this instance, the termination date of the tenancy agreement is June 30, 2014. Alternatively, Section 50 of the Act allows for termination of any tenancy agreement on any specified date if the landlord and tenant agree in writing to terminate the tenancy on a specified date.

Section 5 of the residential tenancy agreement specifies that all notices of termination shall be in writing and served on the landlord by registered mail. Section 71(1) of the Act requires notices to be served or given by personal service, registered mail, fax, or a method set out in the regulations; section 4(2) of the *Residential Tenancies Regulations* permits the service of notices by e-mail if e-mail addresses are provided for that purpose. Section 55 of the Act details the .../7

information required to be included in the notice of termination from a tenant to a landlord. Testimony established the respondents had given notice to the landlords by telephone on or about September 28, 2013, of their intention to vacate the rental premises by October 31, 2013; this telephone call was followed by an e-mail approximately two days later. At no time was a written notice to terminate the tenancy given to the landlord by the tenant in accordance with the residential tenancies agreement, i.e. by registered mail. Neither did the landlords and tenants agree in writing to terminate the tenancy agreement for October 31, 2013. I find the respondents have failed to terminate their tenancy in accordance with the Act and have vacated the rental premises as of October 31, 2013. The keys were returned to the applicants November 1, 2013, at which time they regained possession of the rental premises.

Rental arrears and security deposit

Having failed to terminate their tenancy in accordance with the Act, the respondents remain liable for the rent for the rental premises until the applicants can either re-rent the rental premises or until the end of the term of the tenancy agreement, whichever comes first. Section 5(2) of the Act requires the landlord to re-rent the rental premises as soon as is practicable after a tenant vacates it in order to mitigate any damages that may occur. The applicants have testified to attempting to re-rent the rental premises and were unsuccessful in finding suitable tenants, at which point they made the choice to remove the premises from the rental market and reside there themselves as of December 1, 2013. I find the landlords have met their obligation to mitigate damages and the tenants are responsible for the rent for November 2013 in the amount of $1,350.

Section 1(1) of the Act defines "rent" as including services and facilities provided by the landlord whether or not a separate charge is made for them; "services and facilities" is defined as including heating facilities or services and utilities and related services. The applicants requested compensation for electricity and fuel, providing a Northland Utilities invoice for electricity usage for October 30 to November 6, 2013, in the amount of $30.75 and a Bluewave Energy receipt for fuel delivery on November 1, 2013, in the amount of $499.96, both of which the applicants paid. The applicants also requested compensation for replacement of a cord of wood in the amount of $240, claiming there was a cord of wood on the premises when the tenants took possession and it was not replaced when the tenants vacated. The respondents dispute the applicant's claim that there was a cord of wood on the property when the tenants took possession. As I have no physical or documentary evidence, such as an entry inspection report, to support the existence of the cord of wood at the commencement of the tenancy the applicant's claim for compensation for a cord

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of wood is denied. The tenancy agreement identified the tenants as responsible for the heat and electricity; having determined they are responsible for the rental premises for the month of November 2013 as well, I find the respondents responsible for the heat and electricity bills claimed by the landlord in the total amount of $530.71.

The respondents paid a security deposit at the commencement of the tenancy in the amount of $1,350 which has not been returned to them in accordance with the Act. The total amount of the security deposit plus interest owing to the respondents is $1,350.90. This will be applied in this order against the total rental arrears owing to the applicants. The total rental arrears owing are calculated as follows:

Rent for November 2013	$1,350.00
Fuel	$499.96
Electricity	$30.75
Sub-total	$1,880.71
Less security deposit plus interest	$1,350.90
Total rental arrears	$529.81

Tenant damages and additional obligations

Section 42 of the Act requires the tenant to repair damages caused to the rental premises and residential complex caused by the tenant or persons permitted on the premises by the tenant. The applicants testified to and submitted a receipt for the repair of a broken window screen in the amount of $41.52. The respondents do not dispute this cost or that the damage is their responsibility.

Tenants are required to return a rental premises to a landlord at the end of a tenancy in a comparable condition to how it was received by the tenant at the commencement of the tenancy, barring normal wear and tear and required maintenance. The respondents installed wainscotting with adhesive in the third bedroom which was neither authorized nor necessary. The room prior to the installation had been painted three years prior to the tenants' occupancy and did not require repainting, although the landlords did give permission for the tenants to repaint the room. The

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respondents did not return the room to the same condition it was in when they took occupancy by removing the wainscotting, resulting in the applicants incurring an expense of $414.30 to have a tradesman remove the wainscotting and repair and repaint the walls. In light of the work required, I find the applicants' claim for compensation for this repair work to be reasonable.

The master bedroom and second room were admittedly unfinished at the time the respondents took possession; they had been patched and primed but still required painting. The applicants' could have hired a painter to complete this work or complete it themselves, but they gave the respondents authorization to complete the work on their own and they were not offered compensation for it. To my mind the completion of this work was the landlord's responsibility pursuant to section 30(1) of the Act, which requires a landlord to provide and maintain the rental premises in a good state of repair. The respondents' claim for compensation for completing the painting of these two rooms is a reasonable request and, based on a calculation of eight hours of work at $50 per hour, I find the applicants owe the respondents $400 for the painting of two bedrooms.

Section 45(2) of the Act requires a tenant to maintain the rental premises and all services and facilities in a state of ordinary cleanliness. Although the respondents maintain that the turkey feces would have naturally dissipated into the ground within a couple of weeks, both parties agree that they were left in the dog enclosure and therefore the dog enclosure was not cleaned when the respondents vacated the rental premises. I find the respondents have breached their obligation to maintain the rental premises in a state of ordinary cleanliness. The amount of $40 claimed by the applicants for cleaning the dog enclosure is reasonable in my opinion.

In summary, the respondents owe to the applicants the amount of $95.82 for tenant damages and additional obligations calculated as follows:

Tenant - repair of damaged window screen	$41.52
Tenant - repair of third bedroom	$414.30
Tenant - cleaning of dog enclosure	$40.00
Tenant - sub-total	$495.82
Less Landlord - painting of two bedrooms	$400.00
Tenant - total	$95.82

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Property maintenance

Section 30 of the Act requires a landlord to provide and maintain the rental premises and residential complex in a good state of repair and fit for habitation during the tenancy. Section 31 exempts tenants from responsibility for repairs required as a result of reasonable wear and tear or as a result of fire, water, tempest, or other act of God. In my opinion, the yard and access roads comprise part of the rental premises in a single dwelling premises. Natural storms are an act of God. The breaking of the tree tops as a result of the storm in October 2012 – of which the respondents provided some corroboration in the form of a FaceBook conversation with a neighbour and a newspaper clipping from the local newspaper regarding the local storm damage – resulted in extensive debris throughout the property. Responsibility for the cleaning up of this debris clearly lies with the landlords and would have been done by hired hand if not for the respondents initiative. Their claim for compensation for completing this necessary work on the landlords' behalf is not unreasonable and I find the applicants owe the respondents $640 for it.

An order will issue for the respondents to pay $625.63 to the applicants in compensation for rental arrears, tenant damages, and cleaning, and for the applicants to pay $640 to the respondents in compensation for clearing debris from the rental premises. These amounts are calculated as follows:

Rental arrears	$529.81
Tenant damages and cleaning	$95.82
Total amount tenants owe landlords	$625.63
Clearing debris	$640.00
Total amount landlords owe tenants	$640.00

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Rental Officer File No. 10-13835 Exhibits

Exhibit 1: Residential tenancy agreement signed March 25, 2012

Exhibit 2: Receipt #406398 dated November 14, 2013, from Patterson Sawmill Ltd. for one cord of firewood

Exhibit 3: Work Order #34799 dated November 7, 2013, from Arctic Front Windows for the repair of a screen

Rental Officer File No. 10-13913 Exhibits

Exhibit 1: Residential tenancy agreement signed March 25, 2012

Exhibit 2: Northland Utilities statement dated November 12, 2013, for electricity usage to November 6, 2013

Exhibit 3: Bluewave Energy invoice #10108362SF dated November 4, 2013, for fuel delivery

Exhibit 4: Tenants' summary of costs for improvements to the rental premises

Exhibit 5: "'Too many outages - Heavy snowfall downs trees and knocks out power" article from the October 31, 2012, Hay River Hub

Exhibit 6: Facebook conversation dated October 23, 2012

Exhibit 7: Set of three photographs of repainting of a bedroom

Exhibit 8: Photograph of raised garden bed

Exhibit 9: Facebook conversation dated September 29, 2013

Exhibit 10: Screenshot of text message conversation dated from October 15, 2013, to October 27, 2013

Exhibit 11: Screenshot of Facebook page titled "Hay River Property Sales and Rentals" dated from October 9, 2013, to November 13, 2013

Exhibit 12: E-mail conversation between respondents and Bluewave Energy dated January 2, 2014