File #10-13919 and #10-13961

IN THE MATTER between **EDWIN SHU**, Tenant, and **TAMARA DEGROW**, Landlord;

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:

EDWIN SHU

Tenant

- and -

TAMARA DEGROW

Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18.1(b) of the *Residential Tenancies Act*, the landlord shall return the retained security deposit and interest to the tenant in the amount of three hundred seventy five dollars and twenty four cents ($375.24).

DATED at the City of Yellowknife, in the Northwest Territories this 27th day of March, 2014.

Hal Logsdon
Rental Officer

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Tenant

-and-

TAMARA DEGROW

Landlord

REASONS FOR DECISION

Date of the Hearing:	**March 12, 2014**
Place of the Hearing:	**Yellowknife, NT**
Appearances at Hearing:	**Edwin Shu, tenant** **Tamara Degrow, landlord**
Date of Decision:	**March 25, 2014**

REASONS FOR DECISION

The tenant filed an application on January 24, 2014 alleging that the landlord disturbed his lawful possession of the rental premises and failed to return the security deposit. The landlord filed an application on February 7, 2014 alleging that the tenant had failed to leave the premises in a reasonably clean state and had failed to repair damages to the rental premises. As both applications pertain to the same tenancy agreement and rental premises, both applications were heard at a common hearing.

The tenancy agreement was oral in nature and commenced on or about September 1, 2012. The tenant provided a security deposit at the commencement of the tenancy of $375. The rental premises consisted of a room in the landlord's home with shared facilities and was rented inclusive of all utilities for $750/month. There was no inspection report done at the commencement of the tenancy agreement.

Email and text correspondence between the parties indicate that the parties were having differences in the fall of 2013 and the landlord gave notice to the tenant that the tenancy agreement would be terminated on November 17, 2013. The tenant requested that the termination date be extended to December 12, the parties orally agreed on that date and the tenant paid a prorated rent for December of $290.

On December 10, 2013 at 2:49 PM the landlord sent an email to the tenant stating that,

> "based on the context of your messages, I am no longer comfortable with you being in my house. Due to this fact, I am giving you until 9PM to remove yourself (and all personal effects) from my house."

The landlord called the RCMP who attended the premises and the tenant left the premises that evening. There was no check-out inspection completed.

The tenant sought relief in the amount of $48.52 representing the return of rent for December 11 and 12 which had been prepaid. This amount was offered by the landlord at the hearing and accepted by the tenant. The tenant also sought the return of his security deposit of $375 plus applicable interest.

The landlord retained the security deposit and accrued interest. She did not issue a statement or estimated statement in accordance with section 18 of the *Residential Tenancies Act*. Instead, she filed an application pursuant to section 42 of the Act seeking compensation of $1842.64 for repairs and cleaning.

The landlord sought relief for the following:

Replacement of BBQ	$595.34
Replacement of ceramic stove top	632.30
Cleaning of kitchen walls, cupboards and windows	400.00
Living room table refinishing	150.00
Replacement of coat hangers	30.00
Replacement of large flower pot	35.00
Total	$1842.64

Section 34 of the *Residential Tenancies Act* prohibits a landlord from disturbing a tenant's

possession of the rental premises.

> **34. (1) No landlord shall disturb a tenant's possession or enjoyment of the rental premises or residential complex.**

Clearly the tenant was in possession of the premises on the evening of December 10 and the landlord initiated the action that disturbed that possession. The RCMP provided the following written synopsis of the incident:

> On December 10th, 2013, Cst C. Hipolito and Cst C. Picknell were dispatched to an assistance call involving a landlord (Tamara Degrow) and tenant (Edwin Shu). Degrow advised that Shu was supposed to be out of the residence at the start of the month and was extended to the morning. Edwin denied any knowledge of this, Tamara provided supporting emails. Members kept the peace while Edwin moved his belongings out of the residence.

I note that the landlord submitted at the hearing (and presumably to the police) that the tenancy agreement had been terminated by her notice. There is no provision in the Act that permits this type of tenancy agreement to be terminated by the landlord's notice. Furthermore, a tenant may not be evicted without an eviction order and writ of possession, even if the tenancy agreement has been terminated in accordance with the Act.

In what capacity the RCMP were acting is unclear but in my opinion moot. It is not the police who are party to this application and I express no opinion on their actions or jurisdiction. It is clear to me that the landlord initiated the action to put the tenant out of possession. I find the landlord in breach of section 34. The tenant sought only compensation for the two days of prepaid rent and it has been provided to him by the landlord.

The landlord submitted that the statement of cleaning and repair costs filed with her application constituted a statement of the security deposit as required pursuant to section 18 of the Act. I disagree. No statement or estimated statement was provided until February 11, 2014 which is two months after the tenant left the premises. The Act requires that a statement or estimated statement be provided within ten days. As well, the statement makes no mention of the security deposit principal or interest. If the list of cleaning and repair costs are considered to be a security deposit statement, all of the deductions must be disallowed pursuant to section 18(5).

> **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.**

Therefore I find no justification for the landlord's retention of the security deposit and accrued interest. The landlord shall return the security deposit ($375) and accrued interest ($0.24) to the tenant.

Normally, I would not consider the landlord's application pursuant to section 42 until the security deposit is returned to the tenant. However, since the landlord's evidence was heard and the tenant has provided his defence, I shall make an exception in the interest of expediency.

REPLACEMENT OF THE BBQ

The landlord alleged that the BBQ had been destroyed when she instructed the tenant as to how to burn off the excessive grease, lit the BBQ and left the tenant to watch over the cleaning process. The landlord alleged that it was the tenant's constant use of the

BBQ which resulted in the build up of grease and his failure to watch the BBQ and the resultant grease fire that caused it to be damaged beyond repair. A photograph of the BBQ was provided in evidence. The tenant stated that he was unaware that it was his responsibility to monitor the BBQ after it was lighted by the landlord.

The BBQ was used by everyone in the residential complex. Maintenance of the BBQ can not be considered to be the exclusive duty of the tenant nor can the build up of cooking grease be considered to be the result of negligent use. The extent of damage is questionable. The landlord stated that two control knobs were missing which is indicated by the photograph. Other damage is not evident and one must question how a BBQ, which is routinely subjected to propane-fuelled flame would be totally destroyed by a grease fire. In my opinion there is not sufficient evidence that the tenant's use of the BBQ was negligent or that he was responsible to monitor the BBQ after it was lighted by the landlord or that the resultant grease fire caused the total destruction of the BBQ. The relief sought by the landlord is denied.

CERAMIC STOVE TOP

The landlord alleged that the finish on the ceramic stove top had been damaged by the tenant who failed to use appropriate cleaners or use the correct cookware. A photograph of the stove top was provided in evidence. There was no check-in inspection report to indicate the condition of the appliance at the commencement of the tenancy. It appears from the photographs that the rings indicating the location for the

burners have been partially worn away. In my opinion, this is normal wear and tear and there is no evidence that the tenant's use was negligent or exacerbated the wear. The relief sought by the landlord is denied.

CLEANING COST

The landlord alleged that the kitchen had to be throughly cleaned due to the tenant frying food. The tenant was entitled to use the kitchen as were other occupants and to cook as he wished. It is clear from the correspondence that the landlord did not like anything fried in the house, including eggs. In my opinion, there is no evidence that the tenant's cooking was in any way negligent. The kitchen was not for the exclusive use of the tenant. I find the cleaning costs unreasonable.

LIVING ROOM TABLE

The tenant acknowledged that while he was moving a bed frame, it fell and scratched the table. He stated that he had repaired the scratch as best as he could. A photograph was provided by the landlord in evidence. The scratch has not been repaired by the landlord nor is there any quotation regarding the cost of repair. In my opinion, there is not sufficient evidence to determine if the cost of $150 is reasonable. The relief is denied.

HANGERS

The landlord alleged that there were approximately 50 coat hangers missing from the room. The tenant stated that all the hangers that had been supplied to him were left in the premises. There is no additional evidence to support the landlord's allegations. The relief sought by the landlord is denied.

LARGE FLOWER POT

The landlord stated that a large flower pot outside the premises was damaged by the tenant, most likely while he was looking for his lost keys. The tenant acknowledged the lost keys but denied damaging the flower pot. There is no additional evidence to support the landlord's allegations. The relief sought by the landlord is denied.

In summary, the relief sought by the landlord for alleged damaged is denied and there is no justification to retain the tenant's security deposit and interest. An order shall issue requiring the landlord to return the security deposit and interest to the tenant in the amount of $375.24.

Hal Logsdon
Rental Officer