

IN THE MATTER between **Julie Gauthier**, Applicant, and **Kyle Reid**, 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 town of Hay River in the Northwest Territories**.

BETWEEN:

JULIE GAUTHIER

Applicant/Tenant

- and -

KYLE REID

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18.1(b) of the *Residential Tenancies Act*, the respondent must return to the applicant the security deposit in the amount of \$900.47 (nine hundred dollars forty-seven cents).

DATED at the City of Yellowknife in the Northwest Territories this 28th day of July 2014.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Julie Gauthier**, Applicant, and **Kyle Reid**, 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 **Adelle Guigon**, Deputy Rental Officer.

BETWEEN:

JULIE GAUTHIER

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REASONS FOR DECISION

<u>Date of the Hearing:</u>	July 18, 2014
<u>Place of the Hearing:</u>	Hay River, Northwest Territories
<u>Appearances at Hearing:</u>	Julie Gauthier, applicant
<u>Date of Decision:</u>	July 18, 2014

REASONS FOR DECISION

An application to a rental officer made by Julie Gauthier as the applicant/tenant against Kyle Reid as the respondent/landlord was filed by the Rental Office May 13, 2014. The application was made regarding a residential tenancy agreement for the rental premises known as 19 - 101 Street in Hay River, Northwest Territories. The applicant served copy of the filed application on the respondent by registered mail signed for June 2, 2014.

The applicant alleged the respondent had breached section 18 of the *Residential Tenancies Act* (the Act) by failing to return her security deposit. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for July 18, 2014. Ms. Julie Gauthier appeared as applicant. Mr. Kyle Reid was served a notice of attendance by registered mail deemed served July 3, 2014, pursuant to section 71(5) of the Act. A voicemail was also left for Mr. Reid on July 17, 2014, at the telephone number provided on the application confirming the date, time, and place of the hearing. Mr. Reid did not appear at the hearing, nor did anyone appear on his behalf. The hearing proceeded in his absence pursuant to section 80(2) of the Act.

Ms. Gauthier testified that she had originally been in a tenancy agreement with Mr. Reid at a rental premises known as 17B - 101 Street in Hay River, Northwest Territories, from December 2012 until the end of May 2013. On May 19, 2013, she entered into a new tenancy agreement with Mr. Reid for the rental premises known as 19 - 101 Street in Hay River, Northwest Territories. The new agreement was for a fixed-term from June 1, 2013, to May 31, 2014; Ms. Gauthier took possession of 19 - 101 Street in Hay River, Northwest Territories on May 24, 2013. An entry inspection report was completed and signed by both parties on that date, reflecting the rental premises to be in good condition generally with 10 relatively minor defects recorded. Ms. Gauthier testified that her \$1,000 security deposit from the previous tenancy agreement was transferred to the new tenancy agreement.

On March 31, 2014, the parties agreed in writing to terminate the tenancy on April 30, 2014. Ms. Gauthier testified that she and Mr. Reid did a walk-through of the premises on her last day there during which he noted the following deficiencies: finger prints on the windows and marks on the wall and floor in one corner of the kitchen. Ms. Gauthier told Mr. Reid she would be able to clean those items without difficulty and that a Magic Eraser would get the marks out of the wall and floor tile as they were made with a Crayon washable marker; she indicated they were just items she missed in her cleaning of the premises. Ms. Gauthier testified that Mr. Reid disagreed that these could be cleaned and suggested replacement of the floor tiles and painting of the wall would be required, for which Ms. Gauthier would be responsible.

A statement of account detailing the reasons for retention of her security deposit was not received by Ms. Gauthier until after the application to a rental officer was made. She submitted a copy of the statement into evidence at hearing. It listed the following summarized costs deducted from her security deposit:

cleaned windows and removed Crayon markings where possible	\$100.00
cleaned Crayon on walls and repainted where it could not be removed	\$150.00
marker scribbles on 8 tiles in living were done with permanent markers - stripping and refinishing of floor	\$300.00
supplies	\$100.00
TOTAL	<u>\$650.00</u>

Mr. Reid also claimed \$497.01 owing from the previous tenancy from which the current security deposit accounting deduced Ms. Gauthier owed Mr. Reid \$147.01. Ms. Gauthier disputed all the claims identified in the above table except the \$100 cleaning costs as she had not been permitted to return to the premises to clean the marks and finger prints from the wall, floor, and window.

Mr. Gauthier was adamant that a Magic Eraser would have been able to effect the removal of the marks on the floor and wall without difficulty as the marks were from washable Crayon markers, not permanent markers as Mr. Reid claims. She reiterated that the marks were made by her child, who's drawing table was in that corner of the room, and that the only colouring markers her child is permitted to use are washable. Ms. Gauthier testified that the suggestion that the floor would need to be stripped and refinished to remove the marks was ridiculous.

Ms. Gauthier requested an order that Mr. Reid return her security deposit less \$100 for cleaning costs.

Previous tenancy agreement and related claim of landlord

The tenancy agreement for the rental premises known as 17B - 101 Street in Hay River, Northwest Territories, was terminated May 31, 2013, when the parties entered into a tenancy agreement for a different residence and Ms. Gauthier vacated 17B - 101 Street. Mr. Reid has identified a claim of \$497.01 on Ms. Gauthier's current security deposit statement of account which Ms. Gauthier has confirmed and provided evidence is related to the previous tenancy at 17B - 101 Street. As that tenancy agreement is not being considered in this application and its termination date exceeds the six month time limit for making an application to a rental officer under section 68(1) of the Act I will not consider the assessment of \$497.01 against Ms. Gauthier's current security deposit.

Current tenancy agreement

The residential tenancy agreement submitted into evidence by Ms. Gauthier is dated May 19, 2014, is signed by both parties, and is for the rental premises known as 19 - 101 Street in Hay River, Northwest Territories. I am satisfied a valid tenancy agreement is in place between the parties in accordance with the Act.

Costs claimed

An entry inspection report dated May 24, 2013, was signed by both parties. The claim made by Mr. Reid and confirmed by Ms. Gauthier at the end of the tenancy in April 2014 that there were finger prints on the windows and marks on the wall and floor in one area were clearly not identified as pre-existing in the entry inspection report. Ms. Gauthier is not disputing the

assessment of cleaning costs for these items in the amount of \$100. There is no evidence before me to suggest these damages were of such an extent as to warrant either repainting the walls or stripping and refinishing the floor. I find Ms. Gauthier liable for cleaning costs in the amount of \$100.

Security deposit

Section 17 of the residential tenancy agreement clearly indicates the receipt by the landlord of a \$1,000 security deposit on the date the tenant takes possession of the rental premises. According to Ms. Gauthier's testimony and the entry inspection report, the tenant took possession of the rental premises known as 19 - 101 Street in Hay River, Northwest Territories, on May 24, 2013. It is reasonable to infer that the \$1,000 security deposit was paid – in one fashion or another – on May 24, 2013.

The tenant vacated 19 - 101 Street in Hay River, Northwest Territories, on April 30, 2014, by agreement with the landlord; the landlord confirmed this agreement in his correspondence of March 31, 2014. The interest accrued on the \$1,000 security deposit between May 24, 2013, and April 30, 2014, is \$0.47.

Section 18(5) of the Act specifies that a landlord may not retain any amount of security deposit for repairs of damages unless both an entry and exit inspection report are completed. Evidence has been submitted confirming that an entry inspection report was completed at the commencement of the tenancy. However, there is no evidence that an exit inspection report was completed at the end of the tenancy. The testimony given does indicate a walk-through was conducted at the end of the tenancy, but the Act specifically requires a report be completed. Without that exit inspection report the landlord has no authority to retain any portion of the security deposit for repairs of damages. The landlord's only recourse to compensation for repairs of damages in this type of instance would be to make an application to a rental officer within six months of the end of the tenancy. I find the respondent has failed to comply with section 18(5) of the Act and must return the security deposit less cleaning costs of \$100 to the applicant.

An order will issue requiring Mr. Kyle Reid to pay the balance of the security deposit in the amount of \$900.47 to the applicant.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Applicant's statement dated May 7, 2014
- Exhibit 2: Residential tenancy agreement dated December 2012 for the rental premises known as 17B - 101 Street in Hay River - not signed by either party
- Exhibit 3: Statement of electricity and propane usages for December 8 to May 16 for the rental premises known as 17B - 101 Street in Hay River
- Exhibit 4: Residential tenancy agreement dated May 19, 2013, for the rental premises known as 19 - 101 Street in Hay River
- Exhibit 5: Entry inspection report dated May 24, 2013, signed by both parties
- Exhibit 6: Statement of account dated August 1, 2013
- Exhibit 7: Statement of account of from May 31, 2013, to January 11, 2014
- Exhibit 8: Respondent's correspondence to applicant dated January 14, 2014
- Exhibit 9: Respondent's termination of lease on rental property at 19 - 101 Street correspondence to applicant dated March 31, 2014
- Exhibit 10: Home Building Centre invoice #350066 dated April 29, 2014, for a steel 6-panel door
- Exhibit 11: Correspondence and statement of security deposit account from the respondent to the applicant dated May 6, 2014