

IN THE MATTER between **JAMES LEMAY AND LISA LEMAY**, Applicants, and
TRITON PROPERTY MANAGEMENT, Respondent;

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

AND IN THE MATTER of a Hearing before, **HAL LOGSDON**, Rental Officer,
regarding the rental premises at **YELLOWKNIFE, NT.**

BETWEEN:

JAMES LEMAY AND LISA LEMAY

Applicants/Tenants

- and -

TRITON PROPERTY MANAGEMENT

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18.1(b) of the *Residential Tenancies Act*, the respondent shall return the security deposit and accrued interest in the amount of two thousand three hundred one dollars and eleven cents (\$2301.11) to the applicants.

DATED at the City of Yellowknife, in the Northwest Territories this 4th day of
November, 2015.

Hal Logsdon
Rental Officer

IN THE MATTER between **JAMES LEMAY AND LISA LEMAY**, Applicants, and
TRITON PROPERTY MANAGEMENT, 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:

JAMES LEMAY AND LISA LEMAY

Applicants/Tenants

-and-

TRITON PROPERTY MANAGEMENT

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: **October 7, 2015**

Place of the Hearing: **Yellowknife, NT**

Appearances at Hearing: **James Lemay, applicant**
 Lisa Lemay, applicant
 Paula Smith, representing the respondent

Date of Decision: **October 27, 2015**

REASONS FOR DECISION

The tenancy agreement between the parties was terminated on August 31, 2015 although the applicants gave up possession on August 19, 2015. The applicants alleged that the respondent had failed to return the security deposit or provide them with a statement of the deposit and deductions. The applicants sought the return of the security deposit and the accrued interest.

The parties agreed that a security deposit of \$2300 was paid in full in three installments and that the payments were remitted by the *Government of the NWT* through the *Income Security Program* on behalf of the applicants.

The applicants acknowledged that a check-out inspection was done with the respondent. They stated that they were led to believe that there were no damages to the premises and no deductions from the security deposit would be made.

The respondent was unsure if a copy of the check-out inspection report had been provided to the applicants but testified that the check-out inspection report was signed by them. No inspection reports were provided in evidence by either party. The respondent acknowledged that no statement of the security deposit and deductions had been completed or provided to the applicants.

The respondent alleged that there were damages to the premises and they were still waiting for

one invoice related to repair costs. The respondent stated that they had simply forgotten to prepare the necessary statements. The respondent stated that in any case they intended to return the deposit to the *Income Security Program* in accordance to the direction provided to them by a regional manager of the program. An email, dated August 19, 2015 from Matthew Greyeyes was provided in evidence by the respondent.

Hi Paula,

The Damage Deposit was issued to you by ECE on their behalf and should be returned to us. As per our Policies and Procedures.

The rental officer contacted Ms Meghan Penton, Manager of Income Security Programs prior to the hearing and was informed that there was no policy in place regarding the return of security deposits paid on behalf of their clients. This information was provided to both parties at the hearing. The respondent stated that they had not returned the security deposit to the *Income Security Program*. The applicants testified that they had returned the security deposit to the *Income Security Program*.

Section 18 of the *Residential Tenancies Act* requires a landlord to resolve a security deposit within a set time frame.

18. (3) Subject to this section, a landlord who holds a security deposit, a pet security deposit or both shall, within 10 days after the day a tenant vacates or abandons the rental premises, ensure that
(a) the deposit is returned to the tenant; and
(b) the tenant is given an itemized statement of account for the deposit or deposits.

18. (7) A landlord who intends to withhold all or a portion of a security deposit, a pet security deposit or both shall, within 10 days after the day a tenant vacates or abandons the rental premises,

- (a) give written notice to the tenant of that intention; and
- (b) subject to subsection (9), return the balance of the deposit or deposits to the tenant.

18. (8) A notice must include

- (a) an itemized statement of account for the deposit or deposits;
- (b) a final itemized statement of account for any arrears of rent that the landlord is claiming; and
- (c) subject to subsection (9), a final itemized statement of account for any repairs that the landlord is claiming.

18. (9) A landlord who is unable to determine the correct amount of the cost of repairs within 10 days after the day a tenant vacates or abandons the rental premises, shall

- (a) include with the notice referred to in subsections (7) and (8) an estimated itemized statement of account for any repairs; and
- (b) within 30 days after the day the tenant vacates or abandons the rental premises,
 - (I) give the tenant a final itemized statement of account for any repairs that the landlord is claiming, and
 - (ii) return the balance of the deposit or deposits to the tenant.

18.(10) Notwithstanding paragraphs (7)(b), (8)(c) and (9)(b), if there is significant damage to the rental premises and the landlord is unable to determine the correct amount of the cost of repairs within 30 days after the tenant vacates or abandons the rental premises, the 30-day period under paragraph (9)(b) is extended to 45 days.

Section 18.1 sets out remedies for a tenant where an obligation pursuant to section 18 is breached.

- 18.1. Where, on the application of a tenant, a rental officer determines that a landlord has breached an obligation under section 18, or has failed to return an amount of a security deposit, pet security deposit or both that is owing to the tenant, the rental officer may make an order**
- (a) requiring the landlord to comply with the landlord's obligation; or
 - (b) requiring the landlord to return all or part of the security deposit, pet security deposit or both.

Even considering the later date of August 31, 2015 as the date that the tenant vacated the premises, the respondent was obligated to provide at least an estimated statement of the security deposit and deductions on or before September 10, 2015. The respondent has failed to return the security deposit or provide any statement within the required time frame and is therefore in breach of section 18(7) of the Act.

Section 18 refers only to the tenant as the party to whom the security deposit should be returned. In my opinion, unless there is an assignment to another party of the proceeds of a security deposit, the deposit should be returned to the tenant. There is no evidence of any assignment of the security deposit proceeds made by the applicants.

I have not considered any allegations of damages to the premises made by the respondent and offer no opinion or make any finding on their validity. I did not have any application from the landlord before me. I have considered only the tenant's application pursuant to section 18. The landlord may file an application pursuant to section 42 provided it is filed within the statutory limitation imposed by section 68 of the Act.

I find the accrued interest on the security deposit to be \$1.11. An order shall issue requiring the

- 6 -

respondent to return the security deposit and accrued interest in the amount of \$2301.11 to the applicants.

Hal Logsdon
Rental Officer