

IN THE MATTER between **Morag Macpherson**, Applicant, and **NPR Limited Partnership**, 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, regarding a rental premises located within the **city of Yellowknife in the Northwest Territories**.

BETWEEN:

MORAG MACPHERSON

Applicant/Tenant

- and -

NPR LIMITED PARTNERSHIP

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18.1 of the *Residential Tenancies Act*, the landlord must return to the tenant part of the security deposit in the amount of \$1,107.64 (one thousand one hundred seven dollars sixty-four cents).

DATED at the City of Yellowknife in the Northwest Territories this 29th day of February 2016.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Morag Macpherson**, Applicant, and **NPR Limited Partnership**, 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:

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NPR LIMITED PARTNERSHIP

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REASONS FOR DECISION

<u>Date of the Hearing:</u>	February 10, 2016
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	Morag Macpherson, applicant Metslal Mesgun, representing the respondent
<u>Date of Decision:</u>	February 10, 2016

REASONS FOR DECISION

An application to a rental officer made by Morag Macpherson as the applicant/tenant against Northern Property as the respondent/landlord was filed by the Rental Office January 4, 2016. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The applicant personally served a copy of the filed application on the respondent January 4, 2016.

The applicant alleged the respondent had withheld a disproportionate amount of the security deposit and requested the return of part of the security deposit. Evidence submitted is listed in Appendix A attached to this order.

A hearing was held February 10, 2016, in Yellowknife, Northwest Territories. Ms. Morag Macpherson appeared as applicant. Ms. Metslal Mesgun appeared representing the respondent.

Preliminary matters

The application to a rental officer identified the landlord as Northern Property. The written tenancy agreement identified the landlord as NPR Limited Partnership. Judicial recognition was accepted acknowledging that NPR Limited Partnership is often commonly referred to as Northern Property. The style of cause in this matter going forward will identify the landlord as NPR Limited Partnership.

Tenancy agreement

The parties agreed and evidence was submitted establishing a tenancy agreement between them for the rental premises known as #205, 5720 - 50 Avenue, in Yellowknife, Northwest Territories. The tenancy commenced September 2, 2011, and ended October 30, 2015. I am satisfied a valid tenancy agreement was in place between the parties in accordance with the *Residential Tenancies Act* (the Act).

Security deposit

The tenant paid a security deposit of \$1,395 upon moving into the rental premises. A written entry inspection report was completed and signed by both parties on September 2, 2011. The landlord and tenant were unable to make mutually agreeable arrangements which would have permitted the tenant to be present for the exit inspection. The landlord prepared an exit inspection report in the tenant's absence on November 2, 2015. The security deposit plus interest amounting to \$1,397.44 was retained by the landlord against cleaning and repairs to be discussed below. I am satisfied the interest calculated against the security deposit is in accordance with the Act and *Residential Tenancies Regulations* (the Regulations).

Although the issue was not raised at hearing, I would take this opportunity to point out that the landlord failed to comply with their obligation pursuant to section 18(7) of the Act to give written notice to the tenant of their intention to withhold any part of the security deposit, including providing an itemized statement of account, within 10 days of the tenant vacating the rental premises. The landlord's move-out statement was not issued to the tenant until December 11, 2015 - 42 days after the tenant vacated the rental premises.

Disputed costs of repairs

In the move-out statement, the landlord claimed costs associated with cleaning the rental premises, including steam cleaning, in the amount of \$640 and full costs for re-painting the rental premises in the amount of \$1,300. The tenant disputes that she should be responsible for any of the painting. She acknowledges she was physically unable to do a full move-out cleaning of the rental premises and notified the landlord at the time that this would be the case. However, she disputes that the amount of cleaning that would have been necessary would amount to \$640.

Repair and painting

The landlord claimed that the painting was necessary due to the number of 'screw' holes in the walls (20) and 'staining' left behind on the walls. The landlord submitted four photographs presumably of the walls and living room of the rental premises, however, they were all out of focus and deemed to be inadmissible.

The tenant did not dispute that there were approximately 20 holes in the walls, but did dispute that they were 'screw' holes. She acknowledged hanging several paintings and pieces of art on the walls during her tenancy which only required picture hanging nails. The tenant further identified the 'staining' left behind on the walls as fading resulting from the long-term placement of the pictures, art, and a shelving unit. She provided nine colour photographs of the rental premises taken throughout her tenancy which corroborate the type of pictures and art which was hanging from the walls, and show the shelving unit. These photographs were in focus and clear, and deemed admissible.

The entry inspection report identified the rental premises as having been newly painted just prior to the tenant taking occupancy.

Section 42(2) of the Act indicates that ordinary wear and tear of a rental premises does not constitute damage to the premises.

Section 17 of the landlord's rules and regulations specifies that picture nails are permitted but screws or drive nails are not. This seems reasonable to me.

Based on the evidence presented to me, I am not satisfied that the nails used to hang any of the respondent's paintings or art on the walls were anything other than those which can be defined as picture nails. I have received no direct evidence to substantiate the landlord's allegation that the holes in the walls were created with screws. As such, I find the holes in the walls to be within the realm of ordinary wear and tear, and responsibility for their repair lies with the landlord.

Based on the evidence presented to me, I am satisfied the 'staining' on the walls is fading caused by the long-term placement of paintings, art, and shelving against the walls. There was no evidence to suggest gouges, scratches, or deep marks in the walls. The fading of paint is natural progression which can appear to be emphasized when materials are placed over the paint for long periods of time. The tenant resided in this premises for four years. The average useful life of interior painted walls is five years. Even if I were to accept the fading as damages, the tenant would only be liable for one-fifth of the costs of repainting. But I am not making that finding today. In my opinion, the fading of the paint was caused by ordinary use and constitutes normal wear and tear. The respondent is not liable for the costs to repaint the rental premises.

Cleaning

The exit inspection report identifies the rental premises required cleaning, which the tenant does not dispute. The extent of cleaning required and whether or not steam cleaning was necessary are the issues in dispute. The photographs provided by the tenant, as previously indicated and accepted as admissible, give an indication of the condition the tenant kept the rental premises during her tenancy. They depict a well kept, clean premises.

The tenant testified that any spills to the carpet were immediately steam cleaned with her Bissell unit, and she confirmed that there were no stains to the carpet which were not there before she moved in. The entry and exit inspection reports corroborate the tenant's statement in this regard. The tenant did not keep pets and did not smoke in the rental premises. The tenant disputed she should be held responsible for the costs associated with steam cleaning the carpet.

The landlord argued that the tenant agreed to comply with the landlord's rules and regulations, which state under section 21 that the carpets must be professionally cleaned and if not there would be a minimum charge of \$300 for the landlord to do it.

The rules and regulations attached to the written tenancy agreement do state at their start that "all Tenants cooperate and comply with" them, and are signed by the tenant as having "read and agree to abide by the regulations." The rules and regulations are not a mutual agreement or contract in the context of the written tenancy agreement. Section 12 of the Act acknowledges that additional rights and obligations may be agreed to by the landlord and tenant where they are not inconsistent with the Act and *Residential Tenancies Regulations* (the Regulations). It even goes on under section 12(3) to permit rules to be established by the landlord but only as long as the rules are reasonable in all circumstances, in writing, and made known to the tenant. Certainly the landlord in this instance has established a set of rules in writing which were clearly made known to the tenant. However, the reasonableness of section 21 of the rules has been brought into question: Is it reasonable to require a tenant to professionally clean (or steam clean) a carpet at the end of a tenancy?

Section 45(2) of the Act requires a tenant to maintain the rental premises in a state of ordinary cleanliness. Ordinary cleanliness is not specifically defined in the Act, but is generally recognized as surface cleaning: cleaning the appliances; wiping the cupboards, counters, floors, windows; vacuuming; dusting; cleaning the bathroom; etcetera. The requirement to steam clean the carpet may be necessary where the tenant's actions or inactions have caused stains, or if they have kept pets from which dander and hair has embedded in the carpet, or if the tenant smoked in the premises from which odours remain, or other evident damage has occurred for which the tenant is liable. If none of these type of incidents have occurred, the tenant has been regularly vacuuming and picking up after herself, and the only use the carpet has experienced has been in day-to-day living, then the tenant has complied with their obligation to keep the premises in a state of ordinary cleanliness and the condition of the carpet is reflective of ordinary wear and tear. The blanket requirement to professionally clean (steam clean) the carpets without cause is unreasonable. I find no cause in this case to justify costs associated with steam cleaning the carpet being charged against the tenant.

The tenant confirmed that she was unable to do a final clean of the premises prior to moving out due to her medical condition at the time. She confirmed that the appliances had not been cleaned, the walls, doors, and windows had not been wiped down, the bathroom had not been wiped down, and the floors had not been swept/mopped/vacuumed. However, she noted the premises was regularly kept in an ordinary state of cleanliness and the move-out cleaning would have been relatively minimal in nature. Upon arranging for her move out with the landlord, the tenant offered to hire Molly Maid to do the move out cleaning. She was told by the landlord's move-out coordinator they would likely do that themselves and not to worry about it. The tenant subsequently contacted Molly Maid and was advised the standard rate charged for a move-out cleaning of a one-bedroom apartment ranged anywhere from \$190 to \$250, depending on the size and condition of the apartment. My own experience with Molly Maid supports this estimate, and further informs me that they pay their staff approximately \$20 per hour.

The landlord claimed the required cleaning took two of their in-house cleaners eight hours to clean this one-bedroom apartment, including steam cleaning. The landlord charged the tenant \$80 per hour (\$40 per cleaner), resulting in a cleaning bill for \$640. Having already denied the steam cleaning costs of \$300, the remaining costs specific to cleaning is \$340, which represents 4.25 hours of work (at \$80 per hour). In light of the admitted amount of ordinary cleaning that was necessary, including that of the appliances, I am satisfied the amount of time required to effect the cleaning, not including steam cleaning, was likely around six hours. However, the per hour rate of \$40 per cleaner seems unreasonable when considering the average hourly rate for the position is approximately half that. Even considering the costs for cleaning supplies (i.e. bleach, cleaners, rags, etcetera), the difference would be negligible. I am satisfied a fair hourly rate to charge the tenant for cleaning per person is \$20, and in this case I am satisfied the amount of cleaning required would likely have taken approximately six hours. Using the \$20 per hour rate per cleaner and two cleaners to clean for six hours, I find the tenant liable for costs to clean the rental premises in the amount of \$240.

Order

The tenant did not dispute retaining a portion of her security deposit against the reasonable costs for cleaning the rental premises. I have found the reasonable costs for cleaning the rental premises to be \$240. I have denied the landlord's claim for painting the walls and steam cleaning the carpets. Deducting the \$240 for cleaning the total security deposit results in an amount of \$1,107.64 returnable to the tenant.

An order will issue requiring the landlord to return to the tenant part of the security deposit in the amount of \$1,107.64.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

Exhibit 1: Statement of repairs

Exhibit 2: Move out statement dated December 11, 2015

Exhibit 3: Move out inspection and acceptance report dated November 2, 2015

Exhibit 4: Landlord's correspondence to tenant dated September 2011

Exhibit 5: Lease made August 4, 2011

Exhibit 6: Set of 10 photographs submitted by tenant

Exhibit 7: Move in inspection and acceptance report dated September 2, 2011

Exhibit 8: Email from Debbie Angasuk to Morag Macpherson dated December 11, 2015

Exhibit 9: Emails from Morag Macpherson to Debbie Angasuk dated October 27 and October 30, 2015

Exhibit 10: Emails between Morag Macpherson and Debbie Angasuk dated October 27 and October 28, 2015

Exhibit 11: Emails between Morag Macpherson and Debbie Angasuk dated October 27 and October 28, 2015

Exhibit 12: Set of six photographs submitted by landlord