

IN THE MATTER between **Neil Bjornstad**, Applicant, and **Chris Shave**, 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:

NEIL BJORNSTAD

Applicant/Landlord

- and -

CHRIS SHAVE

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent must pay to the applicant rental arrears in the amount of \$4,694.58 (four thousand six hundred ninety-four dollars fifty-eight cents).
2. Pursuant to sections 42(3)(e) and 45(4)(d) of the *Residential Tenancies Act*, the respondent must pay to the applicant expenses for cleaning and repairs to the rental premises in the amount of \$2,040.87 (two thousand forty dollars eighty-seven cents).

DATED at the City of Yellowknife in the Northwest Territories this 7th day of March 2016.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Neil Bjornstad**, Applicant, and **Chris Shave**, Respondent.

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BETWEEN:

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REASONS FOR DECISION

<u>Date of the Hearing:</u>	February 3, 2016
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories, by teleconference
<u>Appearances at Hearing:</u>	Neil Bjornstad, applicant Chris Shave, respondent
<u>Date of Decision:</u>	March 3, 2016

REASONS FOR DECISION

An application to a rental officer made by Neil Bjornstad as the applicant/landlord against Chris Shave as the respondent/tenant was filed by the Rental Office September 9, 2015. 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 September 10, 2015.

The applicant alleged the respondent had accumulated rental arrears, abandoned the rental premises, and caused damages to the rental premises. An order was sought for payment of rental arrears and costs for repairs and cleaning. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for February 3, 2016, by teleconference. Mr. Neil Bjornstad appeared as applicant. Mr. Chris Shave appeared as respondent.

Tenancy agreement

The parties entered into a written fixed-term tenancy agreement by assignment commencing May 17, 2015, to March 31, 2016. Copies of the tenancy agreement and the assignment were entered into evidence. The monthly rent was established at \$2,500. I am satisfied a valid tenancy agreement was in place between the parties in accordance with the *Residential Tenancies Act* (the Act).

Rental arrears

On September 1, 2015, the RCMP executed a raid on the rental premises, arresting eight people including the respondent. Upon conclusion of their immediate search of the rental premises, the RCMP secured the premises by blocking the back door with a chair from the inside and locking the front door. A set of keys for the premises were handed by the RCMP to a third party claiming to be an occupant of the rental premises (not a named tenant).

Upon learning of the raid, the landlord returned to the community, confirmed the tenant was incarcerated, and ensured the security of the rental premises against unauthorized parties. Attempts were made by the tenant's parents to gain access to the premises to commence cleaning and repairs on behalf of the tenant, however, the landlord did not receive authorization from the tenant to permit his parents access until September 24th. The parents accessed the premises on September 26th. The premises was deemed abandoned by the tenant upon the parents' departure from the rental premises on September 27th. The tenant verbally confirmed his abandonment of the rental premises.

The rental premises required repairs and cleaning, which will be discussed later in these reasons. The immediate repairs and cleaning were not completed until October 10th. The landlord posted advertisements in YKTrader.com commencing September 25th seeking new tenants. Advertising continued until November 29th. The landlord was successful in his search and new tenants took occupancy November 24th.

The tenancy agreement with the respondent was for a fixed-term to March 31, 2016. Tenants in fixed-term tenancy agreements are liable for the rent either until the end of the term of the tenancy agreement or until the landlord secures new tenants, whichever comes first. The landlord is obligated under the Act to mitigate his losses by re-renting the rental premises as soon as possible after a tenant vacates. The tenant in this case vacated the rental premises September 27th. The rental premises was not available for new tenants until October 10th, but the landlord began advertising it for rent September 25th. The landlord testified he received two phone calls from prospective tenants; the second call resulted in securing new tenants for November 24th. I am satisfied the landlord made appropriate efforts to re-rent the rental premises as soon as possible after the premises was vacated, thereby mitigating his losses. I find the respondent/tenant liable for the rent up to November 24th.

The parties agreed the rent for September had not been paid by the tenant. The landlord pro-rated the rent for November to the amount of \$1,916.67. The parties agreed the propane heating fuel was the responsibility of the tenant and the tank required filling at the end of the tenancy in accordance with the terms of the tenancy agreement. The landlord presented an invoice from Superior Propane for this purpose in the amount of \$278. This amount was not disputed.

The security deposit of \$2,500 was held by the landlord against rental arrears. Calculating interest from the date of assignment of the tenancy to the respondent, the total security deposit payable is \$2,500.09. This will be applied against the rental arrears.

I find the respondent has accumulated rental arrears as follows:

September	\$2,500.00
October	\$2,500.00
November	\$1,916.67
Propane	\$278.00
Sub-total	\$7,194.67
Less Security Deposit w/Interest	\$2,500.09
Total Remaining Rental Arrears	\$4,694.58

Cleaning and repairs

The rear door had been damaged when the RCMP breached the premises. The door itself was dented, the frame was busted, and the deadbolt was broken. The landlord provided an invoice supporting his claim of \$425.24 for the door and jamb (pre-hung steel door). He also provided an invoice in support of his claim of \$153.20 for the deadbolt, however, that invoice and amount reflects the purchase of two deadbolts; the price for one deadbolt is \$76.60. The tenant did not dispute the deadbolt and frame required repair, but did dispute that the door was damaged to any degree requiring replacement. Photographs entered into evidence show a significant dent in the door consistent with being broken into. It seems to me that if the damage caused was significant enough to compromise the security of the entry, then the entire system would require replacement. I am satisfied this is the case and that the landlord's claim for replacement of the door, jamb, and deadbolt is reasonable.

The front door was not breached when the RCMP entered the premises, therefore no damage occurred at that point. The landlord claimed that when he conducted the exit inspection after the tenant's parents departed that the front door had dents in it; this was noted in the written exit inspection report. He claimed costs to replace the front door in the same amount as for the rear door, \$425.24, but did not submit an invoice for the purchase of the second entry door. The landlord confirmed by written submission that he has not, in fact, replaced the front door to date. The tenant disputed that there were any dents in the front door, or that the front door was damaged to any extent to justify replacement. Photographs were entered into evidence which included views of the front door, both opened and closed, but neither of them support the landlord's allegation of dents in the front door. I am not satisfied there were damages caused to the front door. The landlord's claim for this repair is denied.

The landlord provided photographic evidence of the damage to the second bedroom door which justified its replacement. The landlord submitted into evidence an invoice for \$146.99 for a new door. Also provided was a receipt for \$17.83 claimed for a door latch; however, the receipt is actually for \$15.74 for the door latch and \$2.09 for lamp parts. The tenant did not dispute the claim for replacing the bedroom door. I am satisfied the damages caused to the bedroom door are the tenant's responsibility and that the landlord's claim for replacement of the bedroom door is reasonable.

The den was being used as another bedroom and the landlord claimed repair costs for a hole in the wall. The significance of the hole necessitated replacing the panelling with drywall and painting all four walls of the room to match. The landlord's only claim in this regard was for the cost of primer, paint, and labour. The labour will be addressed later. Receipts were provided for the cost of the primer and paint totalling \$117.50. The tenant did not dispute this claim. I am satisfied the hole in the den wall is the tenant's responsibility and that the landlord's claim for repairs is reasonable.

Some discussion was had regarding damages to the interior door trim in the den, however, no actual monetary claims were made for the matter.

The landlord claimed costs associated with repairing a hole in the living room wall. His contractor was able to repair this hole without having to replace the entire panel, incurring costs only for paint (plus labour, to be discussed later). A receipt was provided into evidence for the paint in the amount of \$28.30. The tenant did not dispute this claim. I am satisfied the hole in the living room was the tenant's responsibility and that the landlord's claim for repairs is reasonable.

The landlord alleged the refrigerator door was dented and made note of this in the exit inspection report. He claimed a depreciated estimate of \$200 to replace the door. The tenant disputes that the refrigerator door was either dented or damaged. No photographic evidence was presented to support the landlord's allegation. No invoice or receipt was provided supporting that the door or fridge was replaced. I am not satisfied of any damage to the refrigerator for which the tenant could be held accountable. The landlord's claim for replacement of the refrigerator door is denied.

The landlord alleged that the finish to one pair of upper kitchen cabinet doors had been scratched, requiring refinishing. A claim was made of \$200 to refinish the cabinets, \$150 for "cabinet door touchup", and \$75 for cabinet door material. No invoices or receipts were submitted to support the landlord's monetary claims. The tenant disputes that the claimed damages are real and that any repair is necessary. However, a photograph provided into evidence does support that a pair of kitchen cabinet doors were scratched. I am satisfied that the scratches exist and that the tenant is liable for them. I am satisfied the scratches reduce the value of the cabinet doors, but I am not satisfied that the scratches are of any significance to compromise the functionality of the cabinet doors or to require replacement. I am not satisfied that the landlord's monetary claim totalling \$425 is either substantiated or justified. I am prepared to grant compensation for the devaluation of the cabinet doors caused by the scratches in the amount of \$50.

The carpeting was acknowledged by both parties as requiring vacuuming and steam cleaning. The landlord claimed \$220.50 for steam cleaning the carpet, and provided an invoice in support of this claim. The tenant did not dispute the claim. I am satisfied that steam cleaning the carpet was necessary and that the landlord's claim for costs is reasonable.

All except two stains were successfully removed from the carpet with the steam cleaning. A red stain in the second bedroom and an ink stain in the master bedroom remain. The landlord claimed the full replacement cost of the carpets for the two bedrooms and the hallway, quoted by Aurora Decorating Centre in the amount of \$1,926.83. In total, the stains comprise less than a square foot area. Neither photographs nor submissions were made from which it can be established where in the respective rooms the stains are located. The tenant did not dispute that the stains remained, but he did dispute that they were of such significance to justify replacement of the entire carpet areas claimed. The landlord confirmed in his written submissions that the carpets have not in fact been replaced yet, citing financial considerations preventing him from completing the task at this time. In consideration that the landlord in the meantime has successfully obtained new tenants, it suggests the carpets may remain in an entirely serviceable condition, as indicated by the respondent. The average useful life of residential carpeting is 10 years; six years of this carpet's useful life remain, and the landlord is still benefiting from that use. Certainly the remaining two stains represent a loss in value of the carpet, and for that the tenant should be held accountable. I am satisfied the stains are the tenant's responsibility and I am prepared to grant compensation to the landlord for the devaluation of the carpet in this regard in the amount of \$50.

The landlord submitted into evidence an invoice for labour related to replacing the rear door and bedroom door, repairing and painting the bedroom and living room walls, and replacing the locks in the amount of \$700. I have found the tenant liable for each of these repairs and I am satisfied the amount of \$700 claimed for labour is reasonable.

The parties agreed that although the tenant's parents had done a significant amount of cleaning of the premises, including rehanging lower kitchen cabinet doors, items which remained to be cleaned included: refrigerator, stove, washer, dryer, interior of the cupboards, and the carpet. The carpet has been previously addressed. It was further agreed that some garbage bags and other items had been left in the premises, although there was some dispute as to how much. The landlord claimed \$250 for cleaning and \$85 for truck rental and dumping fees. The tenant disputed that enough garbage had been left over to justify the truck rental and dumping fees.

Photographs were provided substantiating that there was some disposable items left in the premises, and the landlord indicated there were some items in the yard that required disposing of as well. Regardless of the amount of actual garbage, enough required dumping to justify the \$75 rental of a truck by the landlord to transport the items to the dump; the City of Yellowknife dumping fee itself is \$10. The \$250 claimed for cleaning represents five hours of work at \$50 per hour for one person (the landlord). In my experience, the average hourly rate for housecleaning per person is between \$20 and \$25. I am satisfied the identified cleaning is a cost for which the tenant is liable and I am prepared to grant the landlord compensation for five hours of cleaning at \$25 per hour for a total of \$225. I am also satisfied the truck rental and dumping fee are reasonable costs associated with necessary disposal of garbage and I am prepared to grant the landlord compensation for this in the amount of \$85.

In summary, the total cleaning and repairs costs granted to the landlord are:

Materials:	
Rear door, lock, and jamb	\$501.84
Bedroom #2 door and latch	\$162.73
Den wall	\$117.50
Living room wall	\$28.30
Labour:	\$700.00
Loss of Value:	
Carpet	\$50.00
Kitchen cabinet doors	\$50.00
Steam cleaning	\$220.50
Cleaning and garbage removal	\$210.00
TOTAL	\$2,040.87

Order

An order will issue requiring the respondent/tenant to pay to the applicant rental arrears in the amount of \$4,694.58 and costs for cleaning and repairs in the amount of \$2,040.87.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Set of seven photographs submitted as part of application
- Exhibit 2: Tenancy agreement dated March 24, 2014
- Exhibit 3: Assignment agreement effective May 17, 2015
- Exhibit 4: September 2, 2015, news article entitled "Yellowknife RCMP Charge Eight Following Three Drug Busts" from myyellowknifenow.com
- Exhibit 5: BMO account transaction history printed September 7, 2015
- Exhibit 6: Entry inspection report signed May 20, 2015
- Exhibit 7: Email from the applicant to the Rental Office dated September 28, 2015
- Exhibit 8: Written statement from Wanda Shave and Randal Shave dated September 28, 2015
- Exhibit 9: Exit inspection report signed October 6, 2015
- Exhibit 10: Email from the applicant to the Rental Office dated January 8, 2016
- Exhibit 11: Set of 23 digital photographs received from Wanda Shave on February 1, 2016
- Exhibit 12: Email to Rental Office from Wanda Shave dated January 31, 2016, with type-written copy of Wanda Shave and Randal Shave's written statement dated September 28, 2015
- Exhibit 13: YKTrader.com sales receipts dated September 25, 2015, and November 1, 2015
- Exhibit 14: Email to Rental Office from Neil Bjornstad dated February 1, 2016
- Exhibit 15: Applicant's damages list received February 1, 2016
- Exhibit 16: Home Hardware invoice number 273273 dated September 9, 2015
- Exhibit 17: Home Hardware invoice number 273615 dated September 10, 2015
- Exhibit 18: Diamond Glass invoice number 64668 dated September 11, 2015, with attached sales receipt
- Exhibit 19: Home Hardware invoice number 321136-00 dated September 11, 2015
- Exhibit 20: TJ Contracting invoice number 107100 dated October 10, 2015
- Exhibit 21: Yellowknife True Value cash invoice number 1144370 dated October 6, 2015; Aurora Decorating Center sales receipt dated October 8, 2015; Aurora Decorating Center sales receipt dated October 7, 2015
- Exhibit 22: SimplyDaBest Carpet Cleaning & Janitorial Services invoice number 100915 dated October 9, 2015
- Exhibit 23: Aurora Decorating Center quotation number Y0112026 dated October 10, 2015
- Exhibit 24: Superior Propane invoice number 8365694 dated October 15, 2015

Exhibit 25: Exit inspection report signed by Neil Bjornstad October 6, 2015

Exhibit 26: Set of four photographs submitted by Neil Bjornstad February 2, 2016

Exhibit 27: Applicant's amended damages list received February 3, 2016

Exhibit 28: Respondent's 18-page written submission received by fax February 19, 2016

Exhibit 29: Applicant's 10-page written submission received by fax February 23, 2016