

IN THE MATTER between **TRITON PROPERTY MANAGEMENT**, Applicant, and
LISA LEMAY AND JAMES LEMAY, Respondents;

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:

TRITON PROPERTY MANAGEMENT

Applicant/Landlord

- and -

LISA LEMAY AND JAMES LEMAY

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondents shall pay the applicant cleaning and repair costs in the amount of four hundred four dollars and twenty five cents (\$404.25).

DATED at the City of Yellowknife, in the Northwest Territories this 9th day of March,
2016.

Hal Logsdon
Rental Officer

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LISA LEMAY AND JAMES LEMAY, Respondents.

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

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TRITON PROPERTY MANAGEMENT

Applicant/Landlord

-and-

LISA LEMAY AND JAMES LEMAY

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	January 21, 2016 continued on January 27, 2016
<u>Place of the Hearing:</u>	Yellowknife, NT via teleconference
<u>Appearances at Hearing:</u>	Paula Smith, representing the applicant Trisha DaCorte, witness for the applicant (January 27, 2016) James Lemay, respondent Lisa Lemay, respondent (January 21, 2016)
<u>Date of Decision:</u>	March 8, 2016

REASONS FOR DECISION

The tenancy agreement between the parties was terminated in August, 2015. The landlord retained the security deposit but following an application by the tenants was ordered to return it with the accrued interest because no statement of the deposit or deductions was completed (file #10-14866, filed on November 4, 2015). The parties agreed that the previous order was satisfied.

This application, filed by the agent of the landlord, alleges that there were damages to the rental premises and seeks an order requiring the respondents to pay for repairs pursuant to section 42 of the *Residential Tenancies Act*. The previous order did not consider the alleged damages or repairs contained in this application. The previous decision was based solely on the fact that the landlord failed to complete the required statement and does not preclude the consideration of the alleged damages and repairs contained in the landlord's application pursuant to section 42.

The matter was scheduled for hearing on January 21, 2016 but adjourned when it became evident that photographs of the premises, taken by the landlord, were not made available at the hearing. Both parties agreed to the adjournment so that the photographs could be considered.

The hearing resumed on January 27, 2016. In addition to the photographs, the applicant filed the inspection reports which outlined the condition of the premises at the commencement and at the end of the tenancy agreement. Both inspection reports were signed by the landlord and the tenants.

The applicant's witness, the former agent for the landlord, reviewed her observations, contained on the check-in inspection report. She had no direct knowledge of the condition of the premises at the end of the tenancy.

In order for an application pursuant to section 42 of the Act to succeed, a landlord must, on the balance of probabilities, demonstrate that

- a) the repairs were made necessary due to the tenant's negligence or the negligence of persons permitted on the premises by the tenant and,
- b) the repairs were not the result of normal wear and tear and,
- c) the cost of the repairs were reasonable.

The applicant provided two invoices in evidence to support the request for repair costs. The first invoice sought \$846.98 and set out the following repairs and costs:

Labour for the replacement of two sets of blinds, repair of door stop, replacement of toilet seat, replacement of window latch and window crank, repair of cabinet door and a missing door knob. (3.5 hours @\$65/hour - costs not itemised)	\$227.50
Yard clean-up, removed tires, cut grass/weeds, cleared out crawl space of garbage (3 hours x 2 persons@\$45/hour)	\$270.00
General cleaning (2 hours @\$40/hour)	\$80.00
Supplies (not itemized, no receipts provided)	\$229.14
GST	\$40.34

At the hearing, the applicant withdrew their request for costs related to the clean-up of the crawl space and reduced the number of hours for yard clean up to two and repair costs sought to \$180.

The second invoice was from a cabinet maker for the construction of one drawer and drawer front in the amount of \$262.50.

The total amount sought by the applicant was \$1019.48.

The applicant stated that the labour cost noted on the first invoice (\$227.50) did not list all of the repairs undertaken and represented only a portion of the repairs. As I understand her testimony, the applicant paid a total of \$227.50 to repair damaged items in the premises, only some of which are noted on the invoice. Similarly, the cost of supplies (\$229.14) represent a total cost and are not allocated to any particular repairs. The lack of itemization or any information linking specific costs to specific repairs makes it difficult to determine if the compensation is reasonable unless one accepts that all of the noted damages on the inspection reports are in fact due to the tenants' negligence and that the total repair cost, both labour and materials, is reasonable to effect all of the repairs. The applicant submitted that this was in fact the case, and that the repair costs to address all of the alleged damages indicated on the inspection report, as well as some that were not, were actually more than the relief sought.

There is very little correlation between the inspection reports, the items listed on the invoice as labour costs and the photographs provided in evidence by the applicant. The respondents

disputed the labour and material costs listed on the invoice. In my opinion, the applicant has not provided sufficient information to meet the criteria previously mentioned. For example, there is a notation on the check-out inspection that one set of blinds was missing and another set was broken but there is no cost associated with either the repair or the replacement of the blinds.

There is no evidence to support that other items, such as the door stop, window latches or window cranks were damaged. The check out report does not note any of these items, nor do the photographs. The cabinet door photographs and the testimony of the respondents that the door was dragging, lead me to believe that the repair was made necessary due to normal wear and tear. The applicants request for labour costs (\$227.50) and material costs (\$229.14) is denied.

The first invoice also sets out a cost for general cleaning of \$80, representing 2 hours of labour at \$40/hour. The check out inspection report notes that some cleaning needed to be done and the photographic evidence supports this, showing some debris in cabinets, around door thresholds and portions of flooring as well as some lint around the washer. In my opinion, the cleaning costs are reasonable.

The applicant also seeks costs for the yard clean-up, representing 4 hours of labour at \$45/hour. The check out inspection notes garbage to be removed, removal of tires and pallets and mowing of the yard. The photographic evidence shows only two sheets of old plywood in the yard. The respondents stated that the tires were left by previous tenants and denied there was any garbage. However, neither the check-in inspection nor the check-in photographs indicate any tires at the commencement of the tenancy and the respondents signed both reports indicating their

acceptance. While the ground cover around the premises is mostly weeds, the photographic evidence indicates that the yard has been allowed to grow wild. In my opinion, the costs sought by the applicant are reasonable.

The second invoice (\$262.50) was for the construction of a drawer for a cabinet. The photographic evidence indicates that the drawer was intact at the commencement of the tenancy and missing at the termination of the agreement. The respondents claimed that the drawer fell apart and was reported to the landlord. The tenant noted that some parts of the drawer were shown in one of the check-out photos and were left on the premises. The respondent stated that other parts of the broken drawer had been left outside and were discarded when they vacated.

Since the majority of the broken drawer parts have been discarded, it is not possible to determine if the drawer failed due to the respondents' negligent use or normal wear and tear. However it is clear that the respondent intentionally destroyed the remaining parts of the drawer making it impossible to repair. In my opinion the respondents were negligent in destroying the damaged drawer thus preventing the landlord from possibly repairing the damage at a lower cost, regardless of how the drawer was originally damaged. I shall give the respondents the benefit of doubt and assume the drawer was damaged by normal wear and tear but the ultimate destruction of the drawer was intentional and negligent. In my opinion, it is reasonable for the parties to split the costs of repair, each paying \$131.25.

I find the respondents in breach of section 42 of the *Residential Tenancies Act* and find

reasonable costs of cleaning and repair to be \$404.25 calculated as follows:

General cleaning	\$80.00
Yard clean-up	180.00
GST	13.00
Drawer repair	<u>131.25</u>
Total	\$404.25

An order shall issue requiring the respondents to pay the applicant repair and cleaning costs of \$404.25.

Hal Logsdon
Rental Officer