

IN THE MATTER between **Sibongile Belinda Lusinga**, Applicant, and **Northview Apartment REIT**, 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**, Rental Officer, regarding a rental premises located within the **city of Yellowknife in the Northwest Territories**.

BETWEEN:

SIBONGILE BELINDA LUSINGA

Applicant/Tenant

- and -

NORTHVIEW APARTMENT REIT

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 \$683.05 (six hundred eighty-three dollars five cents).

DATED at the City of Yellowknife in the Northwest Territories this 25th day of April 2016.

Adelle Guigon
Rental Officer

IN THE MATTER between **Sibongile Belinda Lusinga**, Applicant, and **Northview Apartment REIT**, 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:

SIBONGILE BELINDA LUSINGA

Applicant/Tenant

-and-

NORTHVIEW APARTMENT REIT

Respondent/Landlord

REASONS FOR DECISION

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| <u>Date of the Hearing:</u> | April 19, 2016 |
| <u>Place of the Hearing:</u> | Yellowknife, Northwest Territories |
| <u>Appearances at Hearing:</u> | Sibongile Belinda Lusinga, applicant |
| <u>Date of Decision:</u> | April 19, 2016 |

REASONS FOR DECISION

An application to a rental officer made by Sibongile Belinda Lusinga as the applicant/tenant against Northview Apartment REIT as the respondent/landlord was filed by the Rental Office February 26, 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 March 2, 2016.

The applicant alleged the respondent had failed to return the security deposit in accordance with the *Residential Tenancies Act* (the Act). An order was sought for the return of the security deposit.

A hearing was scheduled for April 19, 2016, in Yellowknife, Northwest Territories. Ms. Sibongile Belinda Lusinga appeared as applicant. Northview Apartment REIT was personally served a notice of the hearing on March 31, 2016. No one appeared to represent the respondent. The hearing proceeded in their absence pursuant to section 80(2) of the Act.

Tenancy agreement

The applicant testified that she had entered into a fixed-term tenancy agreement with the respondent for September 1, 2015, to August 31, 2016. On December 31, 2015, she gave written notice to the landlord of her intention to vacate the rental premises on January 31, 2016. An exit inspection was completed with the tenant present on February 1, 2016 – the day after the tenant vacated the rental premises. I am satisfied a valid tenancy agreement was in place between the parties in accordance with the Act and that the tenancy ended January 31, 2016.

Security deposit

The applicant testified that during the exit inspection with the landlord's move-out coordinator that they had agreed there were no issues with regards to damages and cleaning, and that the only costs claimed would be \$4 to replace burned out light bulbs. After 10 days, the applicant had not received either a refund of the remaining security deposit or an itemized statement of account, and called the landlord to inquire after them. Upon the applicant's request, the landlord forwarded by email a move out statement dated February 12, 2016 – 12 days after the applicant moved out of the rental premises.

The move out statement included a \$2 charge to replace the light bulbs and an "improper notice / loss of future rent charge" of \$1,370. The total security deposit of \$685.05 was applied against the \$2 charge and the \$1,370 charge, resulting in an amount alleged owing by the tenant of \$686.95.

Section 51(1) of the Act allows a tenant in a fixed-term tenancy agreement to terminate the tenancy by giving 30 days written notice to the landlord for the end of the fixed-term period only. Should the tenant choose to vacate the rental premises early, they remain responsible for the rent after the day they vacate either until the end of the fixed-term period or until the landlord secures new tenants for the rental premises, whichever comes first.

However, section 5(2) of the Act obligates a landlord to mitigate their losses where a tenant in a fixed-term tenancy vacates the premises early by re-renting the premises again as soon as practicable and at a reasonable rent. Failing to make adequate efforts to secure a new tenant as soon as possible can nullify any entitlement to lost future rent the landlord might otherwise have had.

Section 18(4) of the Act authorizes a landlord to retain a security deposit against rental arrears and repairs. Rental arrears consist of monies due as of the date a tenant vacates the rental premises, not future rent. Rent is not due for a given month until the first of that month.

Sections 18(3) and 18(7) of the Act require a landlord to either return the security deposit in full or provide an itemized statement of account detailing the reasons any portion of the security deposit is being retained within 10 days of the date the tenant vacates the rental premises.

The tenant in this case did end their fixed-term tenancy agreement early, but she gave the landlord 31 days written notice of her intention to do so. No evidence was presented establishing what efforts, if any, the landlord made to secure new tenants for February 1st. No evidence was presented indicating whether or not any tenants had moved into the premises at all in February. At any rate, the rent for February would not have been due until February 1st. The tenant vacated the rental premises January 31st, at which time she did not have any rental arrears. The landlord had no authorization to withhold the security deposit against the rent for February. I find the landlord has breached section 18(4) of the Act.

Having vacated the rental premises on January 31st, the landlord was obligated to return the security deposit with an itemized statement of account to the tenant no later than February 10th. The move out statement – which I accept as the landlord's itemized statement of account – was not prepared until February 12th and was not provided to the tenant until the tenant inquired about it. I find the landlord failed to comply with their obligations under sections 18(3) and 18(7) of the Act.

The tenant did not dispute the \$2 charge for replacement of the light bulb, and that charge applied against the security deposit is appropriate and in accordance with section 18(4) of the Act. An order for the return of the security deposit will take this charge into account.

Order

An order will issue for the respondent/landlord to return the security deposit to the applicant/tenant in the amount of \$683.05.

Adelle Guigon
Rental Officer