File #20-10854

IN THE MATTER between **BUENA VISTA PROPERTIES LTD.**, Applicant, and **WYMAN CONWAY**, 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, regarding the rental premises at **INUVIK, NT.**

BETWEEN:

BUENA VISTA PROPERTIES LTD.

Applicant/Landlord

- and -

WYMAN CONWAY

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 42(3)(c) and 42(3)(e) of the *Residential Tenancies Act*, the respondent shall pay the applicant repair costs and compensation for costs related to the repairs in the amount of three thousand one hundred three dollars and forty six cents ($3103.46).

DATED at the City of Yellowknife, in the Northwest Territories this 18th day of June, 2009.

Hal Logsdon
Rental Officer

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BETWEEN:

BUENA VISTA PROPERTIES LTD.

Applicant/Landlord

-and-

WYMAN CONWAY

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing:	**June 16, 2009**
Place of the Hearing:	**Inuvik, NT via teleconference**
Appearances at Hearing:	**Barb Kiely, representing the applicant** **Dave Tyler, representing the applicant** **Wyman Conway, respondent** **Melani Adams representing the respondent** **Jennette White, witness for the respondent**
Date of Decision:	**June 18, 2009**

REASONS FOR DECISION

The tenancy agreement between the parties was terminated on March 31, 2009 when the respondent vacated the premises. The applicant retained the security deposit ($1600) and accrued interest ($85.29) applying it against casing repairs ($400), wall patching ($300), replacement of a door ($100), replacement of flooring ($2940), replacement of a shower head ($85), replacement of a light fixture ($30), yard clean-up ($367.50) and loss of two weeks rent due to the necessary repairs ($850) leaving a balance owing to the applicant of $3387.21. The applicant sought an order requiring the respondent to pay that amount. The applicant provided a statement of the security deposit and deductions, invoices and photographs in evidence.

The respondent objected to paying the full amount stating that a verbal agreement was made between the parties at the commencement of the tenancy agreement whereby the rent would be $1700 rather than $1600 because the respondent had a dog. The respondent stated that the additional $100/month was to be applied to any damages done by the dog. The respondent argued that during the tenancy he had paid an additional $1400 which should now be applied against the damages done by the dog. The respondent provided two letters from other tenants who expressed similar understandings of their tenancy agreements. The respondent also disputed the yard clean-up costs, the door replacement and the claim for lost rent.

The tenancy agreement was made in writing and sets out a monthly rent for the premises of $1700. The required security deposit was $1600. The tenancy agreement sets out the tenant's

obligation to repair any damages in article 5.1.2.

> The tenant shall repair, within a reasonable time after it's occurrence, any damage to the premises caused by the willful or negligent conduct of the tenant, or of persons who are permitted on the rental premises by the Tenant

There is nothing in the agreement which obligates the landlord to apply a portion of the rent paid during the term to the repair of damages caused by the respondent's pet.

Article 5.1.2. of the tenancy agreement is consistent with section 42 of the *Residential Tenancies Act.*

> **42.(1) A tenant shall repair damage to the rental premises and the residential complex caused by the wilful or negligent conduct of the tenant or persons who are permitted on the premises by the tenant.**

Once a tenancy agreement has been reduced to writing, unless there is an omission by error, the written agreement binds both parties. As well, no term of any tenancy agreement, written or otherwise, may contradict the rights and obligations set out in the *Residential Tenancies Act*. The Act clearly sets out the tenant's obligation to repair damage and the parties may not alter that obligation. Therefore, the applicant may deduct repair costs from the security deposit but is not obligated to use any part of the rent paid by the respondent to repair damages.

Of the costs claimed by the applicant, the respondent disputed three; the clean-up of the yard, the replacement of the door and the lost rent. There was some confusion regarding painting costs contained on one invoice but the costs appear to apply to the painting of window and door casings which the respondent admitted were damaged by his dog.

The applicant claimed clean-up costs of $367.50 to clean up the yard of dog faeces. Photographs of the yard, provided by the applicant in evidence and taken on or about April 15, 2009 indicate quite a mess in and around a dog pen used by the respondent. The respondent claims that he cleaned up all of the faeces prior to moving and that the neighbour's large St. Bernard dog and numerous loose dogs who frequented the area must have created the mess between the time he moved and the time the photographs were taken. The respondent stated that the door to the pen was broken and other dogs, including the St. Bernard could access the pen. While I accept the fact that two weeks passed between the time the respondent moved and the time the photographs were taken, I also note that there is still snow on the ground which shows obvious signs of melting. I question how the respondent could have completely cleaned up the accumulated dog faeces prior to moving given the amount of snow on the ground at the end of March. In my opinion, some of the mess must have emerged from the snow as it began to melt. Perhaps some was deposited after the respondent moved. In my opinion, it is reasonable to have the parties split the cost.

The respondent disputed the damage to the door stating that the damage was not noted on the inspection report. Although, it appears that damage to the door is noted on the report submitted in evidence, the applicant withdrew the claim, stating that she did not wish to argue about it.

The applicant claims that due to the repairs made necessary by the damage, two weeks were required to adequately repair the premises for the next tenant. The applicant stated that they re-rented the premises on May 1, 2009 but felt that only two weeks were the result of making the

necessary repairs. The compensation claimed is not due to insufficient notice, but pursuant to section 42(3)(c).

> **42.(3) Where, on the application of a landlord, a rental officer determines that a tenant has breached the obligation imposed by this section, the rental officer may make an order**
>
> **(a) requiring the tenant to comply with the tenant's obligation;**
> **(b) prohibiting the tenant from doing any further damage;**
> **(c) requiring the tenant to compensate the landlord for loss suffered as a direct result of the breach;**
> **(d) authorizing any repair or other action that is to be taken by the landlord to remedy the effects of the tenant's breach;**
> **(e) requiring the tenant to pay any reasonable expenses directly associated with the repair or action; or**
> **(f) terminating the tenancy on the date specified in the order and ordering the tenant to vacate the rental premises on that date.**

The respondent disputed the claim, stating that it was not clear how much time the repairs took to complete and that much of the delay in re-renting the premises was due to normal maintenance on the unit. The respondent also stated that the owner had told him not to bother with the repairs and that they could be done by the landlord after they moved.

As stated previously, it is the tenant's obligation to repair damages. The respondent did not repair them and he is therefore in breach of that obligation. The landlord is entitled to the costs of repair and compensation which is directly related to the breach. In my opinion, lost rent is directly related to the time required to undertake the repairs. The question is whether two weeks is a reasonable time. The respondent notes that the landlord was made aware of the damages and that the tenant did not intend to do the repairs himself "less than one month" before he moved out. Therefore the landlord did have some advance notice that certain repairs would have to be planned. The flooring installation should not take more than a day. The other work could take

several days, particularly when paint and drywall mud must be allowed to dry. Taking into account the availability of contractors and materials, compensation of two weeks rent is not, in my opinion, unreasonable.

In summary, taking into account the retained security deposit and interest, I find the amount owing to the applicant to be $3103.46 calculated as follows:

Security deposit	$1600.00
Interest	85.29
Casings	(400.00)
Patching	(300.00)
Flooring	(2940.00)
Shower head	(85.00)
Light fixture	(30.00)
Yard clean-up	(183.75)
Lost rent	(850.00)
Amount due applicant	$3103.46

An order shall issue requiring the respondent to pay the applicant repair costs and compensation for costs related to the repairs in the amount of $3103.46.

Hal Logsdon
Rental Officer