

IN THE MATTER between **INUVIALUIT DEVELOPMENT CORPORATION**,
Applicant, and **ROBERT VOUDRACH**, 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 **TUKTOYAKTUK, NT.**

BETWEEN:

INUVIALUIT DEVELOPMENT CORPORATION

Applicant/Landlord

- and -

ROBERT VOUDRACH

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondent shall pay the applicant repair costs in the amount of one thousand eighty four dollars and thirty nine cents (\$1084.39).

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

Hal Logsdon
Rental Officer

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BETWEEN:

INUVIALUIT DEVELOPMENT CORPORATION

Applicant/Landlord

-and-

ROBERT VOUDRACH

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: December 17, 2009

Place of the Hearing: Yellowknife, NT via teleconference

Appearances at Hearing: Tanya Gruben, representing the applicant
Robert Voudrach, respondent

Date of Decision: December 18, 2009

REASONS FOR DECISION

The tenancy agreement was terminated on March 31, 2009 and the application was filed on October 20, 2009. Sections 68(1) and 68(3) of the *Residential Tenancies Act* require that applications be made within six months but permit a rental officer to extend the time limitation.

68.(1) An application by a landlord or a tenant to a rental officer must be made within six months after the breach of an obligation under this Act or the tenancy agreement or the situation referred to in the application arose.

68.(3) A rental officer may extend the time for the making of an application to the rental officer, whether or not the time for making the application to a rental officer has expired, where the rental officer is of the opinion that it would not be unfair to do so.

The applicant stated that she was unable to complete repairs to the premises within the six month period and did not think she should file the application until the repairs were completed. I also note that the application was received at the rental office on October 8, 2009 but due to staff holidays and illness, it was not filed in a timely manner. In my opinion it is not unfair to extend the time limitation and determine the matter.

The applicant alleged that the respondent had damaged the carpet in the premises and sought an order requiring the respondent to pay for the replacement of the carpets less the retained security deposit and interest.

After the tenancy agreement was terminated, the applicant retained the security deposit (\$1260) and interest (\$21.08) but did not provide the respondent with any notice or statement in

accordance with either section 18(3) or 18(4) of the *Residential Tenancies Act*.

- 18.(3) Where a landlord objects to returning all or a part of the security deposit on the grounds that a tenant has caused damage to the rental premises and repairs to the rental premises are necessary or the tenant is in arrears of the rent, the landlord shall, within 10 days after the tenant vacates or abandons the rental premises,**
- (a) send a notice to the tenant and a rental officer of the intention of the landlord to withhold all or part of the security deposit;**
 - (b) give the tenant an itemized statement of account for the security deposit;**
 - (c) give the tenant an itemized statement of account for the repairs or arrears of the rent; and**
 - (d) return the balance of the security deposit with interest to the tenant.**
- 18.(4) Where the landlord objects to returning all or part of the security deposit, but is unable to determine the correct amount of the repairs within 10 days after the tenant vacates or abandons the rental premises, the landlord shall**
- (a) deliver to the tenant, within 10 days after the tenant vacates or abandons the rental premises,**
 - (i) an estimated itemized statement of account for the repairs, and**
 - (ii) the estimated balance of the deposit; and**
 - (b) within 30 days after the tenant vacates or abandons the rental premises**
 - (i) deliver a final itemized statement of account for the repairs, and**
 - (ii) return the final balance to the tenant.**

The applicant stated that the carpet was one year old. Using a useful life of 10 years, the applicant sought 90% of the replacement cost of \$3442 plus GST. The applicant stated that they did not charge the respondent for travel, freight or meals for the installer. The applicant calculated the amount sought as follows:

90% of \$3442	\$3097.80
GST @ 5%	<u>154.89</u>
Total	\$3252.69
less retained deposit & interest	<u>1281.08</u>
Amount claimed	\$1971.61

The applicant testified that the premises had been vacant between the time new carpet was installed in the spring of 2008 and the respondent took possession in September, 2008. The applicant provided a written note from their agent in Tuktoyaktuk dated April 17, 2009 stating that the living room carpet had 36 cigarette burns, the bedroom #1 carpet had 3 cigarette burns and the #2 bedroom carpet had 2 cigarette burns. The applicant also provided an inspection report dated March 5, 2009 which noted “lots of cigarette burns” on the living room carpet. No observations were noted for either bedroom carpet.

The respondent disputed the allegations noting that he never received any notice, statement or other information concerning this matter until the application was served on him. He stated that he did not think there were as many burns on the carpet as alleged and thought some of the burns may have existed before he moved in.

The landlord has failed to meet their obligation pursuant to section 15 of the *Residential Tenancies Act* which requires a landlord to provide the tenant with an inspection report outlining the condition of the premises at the beginning of the tenancy agreement. The landlord has also breached their obligation to provide a statement of the security deposit in accordance with section 18(3). These breaches do not prevent a claim for repairs of damages. Without an inspection

report, one could easily conclude from the evidence that at least some of the carpet burns were the result of negligence by former tenants rather than the respondent. However, the applicant's testimony that the premises remained vacant from the date the carpet was installed to the commencement of the tenancy agreement between the parties establishes the condition of the carpet when the respondent took possession. Therefore, the damage occurred during the term of the tenancy agreement. It is obviously the result of negligence and repair is therefore the responsibility of the tenant.

In my opinion, the number of burns on the living room carpet warrant the replacement of the carpet in that room which I estimate at 50% of the carpeted area of the apartment. The 2-3 burns in the bedrooms do not, in my opinion, justify the replacement of the carpets in those rooms although they certainly represent a loss of value and, in my opinion, the landlord is entitled to compensation for that loss. In my estimation, the carpets in the bedrooms lost 10% of their value due to the burns.

I find the respondent in breach of his obligation to repair damages to the premises. I find reasonable compensation to be \$1084.39 calculated as follows:

<u>Living room carpet</u>	
(50% of total carpeted area)	
50% of \$1971.61	\$985.81
<u>Bedroom carpets</u>	
(10% loss of value)	
10% of \$985.81	<u>98.58</u>
Total	\$1084.39

An order shall issue requiring the respondent to pay the applicant repair costs in the amount of \$1084.39.

Hal Logsdon
Rental Officer