

IN THE MATTER between **VQ84 INVESTMENTS LTD.**, Applicant, and **JORDON BALANUIK**, Respondent;

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 **NORMAN WELLS, NT.**

BETWEEN:

VQ84 INVESTMENTS LTD.

Applicant/Landlord

- and -

JORDON BALANUIK

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 four thousand three hundred forty six dollars and sixty five cents (\$4,346.65).

DATED at the City of Yellowknife, in the Northwest Territories this 12th day of February, 2013.

Hal Logsdon
Rental Officer

IN THE MATTER between **VQ84 INVESTMENTS LTD.**, Applicant, and **JORDON BALANUIK**, 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.

BETWEEN:

VQ84 INVESTMENTS LTD.

Applicant/Landlord

-and-

JORDON BALANUIK

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: January 22, 2013

Place of the Hearing: Yellowknife, NT via teleconference

Appearances at Hearing: Kelly Anderson, representing the applicant
Damen Anderson, witness for the applicant
Richard Alberta, witness for the applicant
Bob Greek, witness for the applicant
Jordon Balanuik, respondent
Karen Balanuik, witness for the respondent

Date of Decision: February 11, 2013

REASONS FOR DECISION

This tenancy agreement was made between the applicant and three joint tenants, including the respondent and commenced on February 1, 2010. The tenancy agreement was assigned to Jordon Balanuik as sole tenant on April 27, 2012. The tenancy agreement was terminated by order on September 30, 2012. The applicant alleged that there was extensive damages to the premises which rendered it unrentable and sought repair costs and lost rent net of the retained security deposit in the amount of \$15,260.70.

A security deposit statement was not produced until November 5, 2012. There was no evidence that a prior estimated security deposit statement was issued. The security deposit statement, photographs and inspection reports were provided in evidence.

The applicant and Mr. Alberta, the contractor, outlined several areas of damage.

- Damaged laminated flooring, window casings and baseboards. A dog kept on the premises had scratched the flooring and scratched and chewed on the casings and baseboards throughout the main level of the house, mainly in the living room area.
- Holes in bifold closet doors.
- Numerous holes in walls. Painting required throughout.
- Broken exterior door hardware.
- Stained carpets.
- Extensive cleaning required throughout.

The applicant stated that the freight costs for the laminate flooring precluded them from bringing the material in by air and as a result, the premises could not be re-rented until February resulting in a loss of rent for October, November, December and January. The rent for the premises is \$1650/month.

The security deposit statement outlines labour and material costs for each repair item. The applicant has not charged the full labour costs for some items, stating that the reduced charges related to the “normal wear and tear” component.

The respondent acknowledged that a dog had damaged the laminate flooring but noted that the damage was primarily in one area. He noted that the flooring had been poorly installed resulting in gaps and that it was quite old. He also noted that the carpet was quite old and that some areas, such as the area by the stairs, were frayed when he moved in.

The respondent stated that some of the damage was caused by the other tenants and their dog prior to the assignment of the tenancy agreement to him. He stated that during part of the time he was a joint tenant he didn't live in the premises. He stated that he had asked the landlord to take him off the tenancy agreement but the landlord would not consent.

The assignment of a tenancy agreement does not terminate the agreement. It simply assigns the remainder of the agreement to another tenant. Because the tenancy agreement does not end with the assignment, the landlord is not obligated to deal with the security deposit. It is up to the

assignor and the assignee to inspect the premises at the time of assignment and determine if there are damages that would be the responsibility of the tenant to repair. Normally the assignee pays the assignor the security deposit less any estimated costs of repair and the assignee collects the deposit from the landlord when the tenancy agreement is terminated.

A joint tenant cannot simply remove himself from a tenancy agreement. Joint tenants may seek the permission of the landlord to assign the tenancy agreement to remaining joint tenants with the permission of the landlord which cannot be unreasonably withheld. I find no evidence to suggest that the respondent should not be held liable for any repairs to the premises that are the result of the tenants' negligence.

THE ALLEGED DAMAGES

Flooring/baseboards/ window casings

The applicant stated that the laminate flooring was to replace both the current laminate as well as the carpeting which had been damaged. The check in inspection notes that all floor coverings were clean and in good condition at the commencement of the tenancy except the carpeting on the back entry and hall, which was frayed. The check out inspection indicates that the carpeting was dirty and the photos of the carpeted areas confirm that they were dirty and stained. The applicant's witness stated that the carpets were "stained beyond repair" but there is no indication that any attempt was made to clean them or remove the stains. The check out inspection only notes damages to the flooring in the living/dining room. The photographs of the laminate flooring show that the

strip laminate flooring has a number of sizable gaps, particularly at the end joints, which appear to have been chipped. The respondent acknowledged that this was caused by the dog. The applicant stated that the laminate flooring was installed in 2009 and the carpeting installed in 2007. The applicant revised the cost of the laminate flooring, stating that the material cost was \$971.29. The freight cost for the laminate flooring was unknown. There was no evidence that the replacement of the carpet with laminate was equivalent in cost.

The check in inspection indicates that all trim was clean and in good condition at the commencement of the tenancy. The check-out inspection does not indicate any damage to the trim but one photograph shows a broken piece of window trim and another shows a baseboard that has been pulled away from the wall but is not broken. An invoice indicated that 230 lineal feet of casing was purchased for \$224.60.

The applicant sought only 50% of the estimated \$5760 for labour to install the flooring and the baseboards. Although there was no detail as to how this reduction was determined, I assume it was in consideration of the areas of the laminate, baseboards and window casings that are planned to be replaced but have sustained only normal wear and tear and/or some allowance for depreciation.

Walls and painting

The check-in inspection indicates that the walls were clean and in good condition. The

check-out report notes only a hole in the kitchen wall. The photographic evidence shows one hole and considerable wear on the stairwell corner bead. The wall surfaces are very dirty. The applicant stated that the premises were last painted in 2007. The applicant sought material costs of \$100 and 25% of the \$3600 labour costs or \$900.

Doors

The check-in inspection report indicates that all closets and doors were in good condition. The check-out inspection report notes that one closet door in the master bedroom was damaged. A photograph confirms the damage to one door. The applicant also sought relief for an interior door but neither the inspection reports or the photographic evidence indicates any damage. The applicant sought relief for the cost of three bifold doors at \$63.97 plus GST each and labour costs of \$720. The applicant also sought relief of \$40.57 plus GST for an interior door but neither the inspection reports or the photographic evidence indicates any damage to interior doors.

Cleaning

The check-in report indicates that the premises were clean at the commencement of the tenancy. The check-out report notes that the premises required cleaning throughout. The photographic evidence shows that the premises required considerable cleaning. The applicant sought cleaning costs of \$960 which represents 16 hours at \$60/hour.

Other costs

The applicant also claimed half of a 5% administration fee charged by the contractor plus half of the contractor's meal costs of \$1400 and GST.

Loss of rent

The applicant submitted that the premises were in such bad condition that they were rendered uninhabitable. The applicant argued that the flooring and other materials had to be purchased from the south and transported to the community by air or winter road. Since the premises were vacated at the end of September, the only immediate way to get the required material was by air which the applicant stated was too costly to reasonably consider. Therefore, the applicant submitted, the repairs had to wait until the materials could arrive by winter road causing the landlord to lose rent for October, November, December and January. There was no evidence that the applicant took any steps to rent the premises in order to mitigate loss.

CONCLUSIONS

I find that the downstairs flooring and the upstairs carpeting has been damaged by the respondent. Although there is no evidence that the applicant attempted to clean the upstairs carpet, in my opinion, the photographic evidence indicates that the carpeting was so badly stained that they could not have been adequately cleaned. In my opinion, it is reasonable to replace the upstairs carpet with laminate flooring. The cost of doing so should be depreciated in accordance with the useful life of the flooring (10 years), the age

of the downstairs flooring (3 years old) and the upstairs carpet (6 years old). I find reasonable material costs for the flooring to be \$534.22 calculated as follows:

Cost of materials downstairs	$(\$971.29/2) \times 70\% = \339.96
Cost of materials upstairs	$(\$971.29/2) \times 40\% = \194.26
Total flooring materials	<u>\$534.22</u>

The evidence supports the replacement of only one bifold door. Based on the receipts provided by the applicant, I find material cost of one bifold door plus GST to be \$67.17. The requested relief for the other doors is denied.

The evidence does not support the replacement of 230 feet of window casing and baseboards. Only one length of window casing appears to be damaged. I find the material costs of 12 feet of casing including GST to be \$11.72.

The premises have not been painted since 2007. Given a useful life of 5 years, the premises are due for interior paint. The cost of paint is depreciated 100% and the applicant's request for material costs of \$100 is denied.

In my opinion, the following labour costs are reasonable:

Removal of flooring and carpet as claimed	\$570.00
Patch one hole in wall (\$50 + GST)	52.50
Install bifold door (.5 day + GST)	378.00
Install flooring as claimed	2880.00
Cleaning as claimed	960.00
Administration @ 5%	256.61
Meals for 7.5 days @ \$38.88/day	<u>291.60</u>
Total	\$5388.71

In my opinion, the damages to the premises did not render them uninhabitable. The applicant made no effort to re-rent the premises, even with a rent abatement until the repairs could be made. In my opinion, the premises could have been re-rented after general cleaning and the cleaning of the carpets. The compensation for lost rent is denied.

The applicant has not included the interest on the security deposit. I find the interest to be \$5.17.

I find the respondent in breach of his obligation to repair damages to the rental premises. Taking the security deposit and accrued interest into consideration, I find reasonable costs of repair to be \$4346.64 calculated as follows:

Security deposit	\$1650.00
Interest	5.17
Material cost	(613.11)
Labour cost	<u>(5388.71)</u>
Amount owing applicant	\$4346.65

An order shall issue requiring the respondent to pay the applicant repair costs in the amount of \$4346.65.

Hal Logsdon
Rental Officer