

IN THE MATTER between **Barbara G. Kiely**, Applicant, and **Anthony Devlin**,
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,
regarding a rental premises located within the **town of Inuvik in the Northwest
Territories.**

BETWEEN:

BARBARA G. KIELY

Applicant/Landlord

- and -

ANTHONY DEVLIN

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondent must compensate the applicant for the cost of repairs in the amount of \$1,019.81 (one thousand nineteen dollars eighty-one cents).

DATED at the City of Yellowknife in the Northwest Territories this 7th day of December
2015.

Adelle Guigon
Deputy Rental Officer

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-and-

ANTHONY DEVLIN

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REASONS FOR DECISION

<u>Date of the Hearing:</u>	November 4, 2015
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories, by teleconference
<u>Appearances at Hearing:</u>	Barbara G. Kiely, applicant Anthony Devlin, respondent
<u>Date of Decision:</u>	November 5, 2015

REASONS FOR DECISION

An application to a rental officer made by Barbara G. Kiely as the applicant/landlord against Anthony Devlin as the respondent/tenant was filed by the Rental Office September 16, 2015. The application was made regarding a residential tenancy agreement for the rental premises known as 10 Union Street in Inuvik, Northwest Territories. The applicant sent a copy of the filed application to the respondent by registered mail deemed served October 9, 2015, pursuant to section 71(5) of the *Residential Tenancies Act* (the Act).

The applicant alleged the respondent had damaged the wood flooring in the rental premises and sought an order for compensation for the cost of repairs. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for Wednesday, November 4, 2015, by teleconference. Ms. Barbara G. Kiely appeared as applicant. Mr. Anthony Devlin appeared as respondent.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them for the rental premises known as 10 Union Street in Inuvik, Northwest Territories. The tenancy commenced September 1, 2012, and ended April 30, 2015. I am satisfied a valid tenancy agreement was in place between the parties in accordance with the Act.

Damages

The applicant claimed that during the respondent's tenancy water damages occurred to the corner section of the engineered wood flooring in the area in front of the patio door. The applicant testified that the respondent had kept a water cooler in that corner which appears at some point to have leaked water, compromising the wood sealant and severely damaging the flooring. Photographs were provided showing the extent of the damage.

The applicant admitted that the flooring was 11 years old and that prior to the respondent's occupancy she and her family resided in the premises. She acknowledged the wear and tear immediately in front of the patio door as normal considering the high traffic area. The damaged area for which she is making this claim is off the traffic path, specifically in the corner. The applicant testified that at no time during the tenant's occupancy was she made aware of the damage developing in that corner of the flooring and as such was unaware preventive maintenance was required.

The applicant sought opinions from three different local sources regarding her options to repair the damage and all agreed that the damage was too far along to consider re-sealing or re-finishing; the damaged planks would require replacement. All sources agreed that had the water staining been reported much earlier repairs may have been possible. Inquiries into the availability of the same or similar material to facilitate replacing the specifically damaged planks instead of the entire flooring were unsuccessful. As such, the entire 32 square foot area would need to be replaced. The applicant made the economical decision to replace the existing engineered wood floor with tiles, which were less expensive overall. She claimed from the tenant the cost of material and labour totalling \$1,649.73 for the replacement of the flooring.

The respondent disputed that he was responsible for 100 percent of the damages. Prior to the filing of this application, the respondent had offered to pay \$500 for the claimed damages. The parties could not come to a negotiated settlement in this regard, resulting in the applicant's filing of this application.

The respondent admitted that a water cooler was stored in the damaged corner, but that it was only used for the first two months; he and his family were not satisfied with the quality of the bottled water available in Inuvik and chose not to continue using it.

The respondent submitted that the damaged area was exposed to significant direct sunlight during certain periods of the year, was in a high-traffic area, and that the flooring had not been maintained by the landlord. Articles were provided suggesting that wood flooring should be re-sealed, re-finished, and/or serviced on average approximately every three to five years. The respondent maintains that he and his family regularly swept and mopped the floor, and cleaned

up any water tracked in through the patio door, on a regular basis, and that the landlord's failure to maintain the flooring in a good state of repair is what resulted in the extensive damage. The respondent indicated that he and his family had not noted the extent of the damage during their occupancy, which is why it was not reported to the applicant.

The articles the respondent provided speak to the care and maintenance of solid hardwood flooring as opposed to engineered hardwood flooring. The difference being that engineered hardwood does not necessarily require regular re-finishing and re-sealing. My own internet searches suggest that re-finishing and re-sealing of engineered hardwood may in some instances void the warranty. Additionally, engineered hardwood is designed to be more durable than solid hardwood, withstanding harsher heat and humidity variances and water damage. From my reading, it seems for any kind of significant water damage to occur in engineered hardwood, water would have to be allowed to stand repeatedly for some period of time.

The damage that I can observe in the photographs covers an area in the corner measuring roughly 24 inches by 20 inches. The wear which is apparent on the wood planks directly in front of the patio door and to the right of the vent is clearly normal wear and tear associated with approximately 11 years of high-traffic use without protection (i.e. an area rug). The same cannot be said for the damage in the corner.

The respondent's arguments that the flooring in that area was continuously and alternatively exposed to direct sunlight and dry air is only partially probable; certainly the area in front of the door and around the vent may have suffered from direct and constant exposure, but not the flooring in the corner.

Whether or not the water cooler base stored in that corner leaked water at any time, the extent of the damage to the floor is clearly an indication that water was present in the corner and that it was not immediately addressed by the tenants. I cannot find the landlord in breach of their obligation to maintain the premises in a good state of repair because (a) the landlord was not made aware of the accumulating damage to the engineered floor, and (b) engineered flooring does not require re-sealing or re-finishing on a regular basis for maintenance.

The extent of the damage in the corner cannot be deemed normal wear and tear. Whether intentional or not, the tenant was negligent in either not addressing the cause of the problem in order to prevent such extensive damage from occurring or not recognizing that the problem was developing at all. The property inspection report entered into evidence establishes that there were no damages of any concern noted to the flooring when the tenancy started. Had any evidence been presented establishing that the damage in that corner was pre-existing to the tenancy, my findings might be otherwise. I find the respondent liable for the damaged section of floor in the corner.

To effect repair of the damage, the landlord was required to replace an approximately 32-square-foot area of flooring. To the landlord's credit, rather than replacing engineered wood for engineered wood, she chose to go with the less expensive tile flooring. Additionally, she received three quotes from local contractors for the labour to replace the flooring. The least expensive quote came out to \$1,560. The cost of the materials came out to \$123.03. Both amounts are substantiated by the provided quote and receipt. The total amount for labour and materials is \$1,683.03.

The tenant is responsible for 3.34 square feet of damaged flooring, which works out to 10.44 percent of the 32 square feet of flooring which was replaced; this amounts to \$175.71 of the cost of repairs.

The average lifespan of engineered wood flooring is 25 years. This flooring was installed approximately 11 years ago. As such, the landlord enjoyed 11 years of useful life of the engineered wood flooring, including the now-damaged section. The landlord was required to replace the entire section of flooring as a direct result of the damaged section which the tenant is responsible for. As such, the tenant does have some liability for the remaining 28.66 square feet of flooring. That liability must be calculated on the remaining useful life of the flooring: 14 years or 56 percent; this amounts to \$844.10, calculated as follows:

Total cost of repairs	\$1,683.03
Less, cost of repairing the damaged corner	\$175.71
Remaining cost of repairs	\$1,507.32
56 percent of remaining cost of repairs	\$844.10

Order

An order will issue requiring Mr. Anthony Devlin to compensate the applicant for repairs in the total amount of \$1,019.81.

Adelle Guigon
Deputy Rental Officer

APPENDIX

Exhibits

- Exhibit 1: Residential tenancy agreement signed September 1, 2012
- Exhibit 2: Property inspection report signed September 30, 2013
- Exhibit 3: Statement of security deposit account dated June 12, 2015
- Exhibit 4: Three quotes for labour to replace hardwood floor
- Exhibit 5: Home Depot receipt number 119887205 dated June 23, 2015
- Exhibit 6: Email from Tony Devlin to Barb Kiely dated June 12, 2015
- Exhibit 7: Email from Barb Kiely to Tony Devlin dated May 7, 2015
- Exhibit 8: Set of four photographs
- Exhibit 9: Respondent's submission of five articles regarding the care of hardwood floors
- Exhibit 10: Respondent's written submission received by fax on November 3, 2015