

DECISION

Dispute Codes ERP RP PSF RR FF

Preliminary Issues

The Landlord testified that they were not served with copies of all of the Tenant's evidence as they did not receive photographs. The Landlord argued that they received a copy of the Tenant's application for dispute resolution and a copy of a letter dated November 6, 2009.

The Tenant confirmed that she did not send the Landlord copies of her photographic evidence.

The Residential Tenancy Branch Rules of Procedure (RTBRP) # 3.1 stipulate that the applicant must serve each respondent with copies of all their evidence. If I were to consider evidence not served on the other party it would constitute a breach of the principles of nature justice, consequently I do not accept the Tenant's photographic evidence, in accordance with section 11.5 of the RTBRP.

The Tenant argued that she did not receive copies of the Landlord's evidence until January 6, 2010 and that she is so upset that she could not open the evidence.

The Landlord testified that they attempted to personally serve the Tenant with the evidence on December 30, 2009 however the Tenant refused to accept it so the Landlord sent it via registered mail.

The Tenant confirmed that she refused to accept the Landlord's evidence, that she returned the first envelope to the Resident Manager, and that she picked up the registered mail package on January 6, 2010 and has not opened it.

The Tenant has applied for dispute resolution in this case and has made a personal choice to refuse to accept service of the Landlord's evidence. I find that the Landlord has served the Tenant with their evidence, in accordance with the RTBRP and the Residential Tenancy Act (Act) and so I will accept and consider all of the Landlord's evidence in my decision.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain Orders to have the Landlord make emergency repairs, have the Landlord make repairs

to the unit, to have the Landlord provide services or facilities required by law, to allow the Tenant to reduce rent for repairs not previously provided, and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was sent via registered mail on November 30, 2009. The Landlord confirmed receipt of the hearing package.

The Landlord, the Resident Manager, and the Tenant appeared, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

All of the testimony and the accepted documentary evidence were carefully considered.

Issues(s) to be Decided

Has the Tenant proven entitlement to Orders under Sections 62, 65, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony provided that the month to month tenancy, in this rental unit, began on August 1, 1999. The Current monthly rent is \$882.00 payable on the first of each month and the Tenant paid a security deposit of \$337.50 on September 1, 1999.

The Tenant testified that she is seeking to have six items attended to in her rental unit as follows:

Kitchen Cabinets Replaced – The Tenant argues that the kitchen cabinets are old and that a couple of ledges are rough and have been mended with tape which falls off. The Tenant stated that one of the cabinet corners is chipped and is sharp which could be dangerous.

The Landlord testified that the cabinets were original from when the building was built in 1974 however they are still in very good condition and are fully functional. The Landlord stated that they are willing to offer the Tenant two new cupboard doors to repair the problem.

The Tenant argued that the doors are not the problem and if the doors were replaced they would not solve the problem. The Tenant confirmed that the problem exists at the edge of the ledge and at the corner of the end of the upper cabinets where the corner has been broken off.

Kitchen Counter Replaced – The Tenant provided testimony that the counter has been scratched by repair people placing their tools on the counter. The Tenant confirmed that the counter is functional and does not cause her problems however she has been in the rental unit for many years always paying her rent and she feels she should have some of the older items replaced.

The Landlord stated that the Tenant's kitchen counter is not the original, that it was replaced just prior to the Tenant moving in, and that there is nothing wrong with the counter. The Landlord argued that there are a few very small scratches on the counter but nothing that interferes with its usage.

Kitchen Floor Replaced – The Tenant testified that the kitchen floor is now yellow with age and it looks awful. The Tenant confirmed that the floor does not cause her any problems it is just old.

The Landlord argued that the Tenant's floor has no squeaks, no water damage, no holes, and no cuts in it. The Landlord stated that there is nothing wrong with the floor.

The Tenant argued that there are a few scratches on the floor.

Kitchen Walls Painted – The Tenant argued that she keeps the walls in excellent condition however they have never been painted during her tenancy and she has been there almost eleven years.

The Landlord confirmed that the rental unit has not been painted since the Tenant has taken possession and the Landlord could not locate the records on when the rental unit was last painted.

Replace Bedroom Carpet - The Tenant referred to her written letter in support of her testimony that there was a water leak in her bedroom from the boiler heat that flooded the bedroom and dripped into the suite below. The Tenant argued that the resident manager arranged to have a vacuum suck up the water, after the leak was repaired, however nothing has been done to eliminate the mould that developed or to repair the carpet which became rippled. The Tenant argued that there is a horrible smell in the bedroom and that she has brought this matter to the attention of the resident manager verbally on a regular basis, however the resident manager has refused to do anything about the problem.

The Landlord stated that she did not know the exact age of the carpet in the bedroom and that she has no records to indicate if or when the bedroom carpet has ever been

replaced. The Landlord argued that she considers the possibility of mould to be a serious matter and confirmed that they had an inspection of the bedroom on December 18, 2009 and that it was the Landlord who submitted a copy of the inspection report into evidence.

Paint the Bedroom and Repair Mouldy Walls – The Tenant is seeking to have the mould removed from the walls, have the walls repaired if required, and to have the walls repainted. The Tenant argued that the walls in her bedroom have never been painted.

The Tenant argued that her health has been negatively affected by the presence of the mould and that she is now required to use puffers to assist with her breathing.

The Landlord confirmed the report she provided into evidence records the presence of dry mould on the drywall and that the Tenant's bedroom has not been painted during the Tenant's occupation of this rental unit.

Rent Abatement – The Tenant stated that she is not necessarily seeking money; however she feels she is entitled to have repairs or old items replaced before newer tenants as she has been in the rental unit a very long time and has always paid her rent. The Tenant argued that she would really like to have her requests attended to by the Landlord.

Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

Section 32 of the Act provides that a landlord must provide and maintain the rental unit in a state of decoration and repair that complies with health, safety, and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Based on the evidence and testimony before me I find that the Tenant has maintained the rental unit with high standards for health, cleanliness, and sanitary standards and the contents of the rental unit have lasted beyond the normal life expectancy because of the Tenant's high standards. That being said, there is no provision under the Act that provides that a Landlord must replace flooring or cabinets strictly for cosmetic reasons.

In response to the Tenant's claims I make the following findings:

Kitchen Cabinets Replaced – The testimony supports that the cabinets are more than 35 years old, damaged at one corner, and that some of the facing strips at the ledges have either fallen off or have been damaged leaving rough edges. The Residential Tenancy Policy Guideline (RTPG) provides that cabinets are expected to last up to 25 years. Given the age and condition of the cabinets, I find that repairs by a cabinet professional are warranted. Based on the aforementioned I hereby order the Landlord to bring in a cabinet professional to remove and replace the end panel/piece of the upper cabinet that is chipped and to repair/replace all missing or damaged facing strips, with a product that is a complimentary or like color of the existing cabinets. The cabinets are to be inspected by a cabinet professional no later than January 31, 2010 and the repairs completed no later than February 28, 2010.

Kitchen Counter Replaced – I find that there is no evidence before me to support that the kitchen counter is in need of replacing. Therefore I dismiss the Tenant's claim without leave to reapply.

Kitchen Floor Replaced – I find that there is no evidence before me to support that the kitchen floor is in need of replacing. Therefore I dismiss the Tenant's claim without leave to reapply.

Kitchen Walls Painted – The evidence supports that the rental unit has not been painted at any time during the more than ten year tenancy. The RTPG provides that interior paint has the normal life expectancy of four years. I find that the Tenant's standards for health, cleanliness, and sanitary standards have provided for the interior paint finish to last six years past the normal life expectancy. Based on the aforementioned I find that the Tenant has proven the merits of her claim and I hereby Order the Landlord to paint the kitchen of the rental unit no later than January 31, 2010.

Replace Bedroom Carpet – The Landlord has provided documentary evidence which supports the Tenant's claim that there is the presence of mould in the bedroom. The carpet in the bedroom has been negatively affected by the flood from 2006 and there is possibly mould growing under the carpet. The useful life of carpet provided the RTPG is ten years and the testimony supports that the age of the carpet is anywhere between eleven and thirty-five years old.

Based on the evidence and testimony before me I find that the Tenant has proven the merits of her case and I hereby order the Landlord to bring in a professional restoration company to have the carpet and underlay removed and discarded, the drywall walls and

exposed floor repaired and treated to eliminate all presence of mould, and then new carpet and underlay installed.

I note that it is the Landlord's responsibility to provide someone to have the Tenant's bedroom furniture carefully moved out of the restoration company's way so they can perform their work.

The Landlord is ordered to contact the restoration company immediately upon receipt of this decision to arrange the work to be initiated and completed no later than February 12, 2010. The Landlord is ordered to request written documentation from the restoration company which confirms the remediation of the mould has been completed to health and building standards and to provide a copy of the documentation to the Tenant within one week of completion of the repairs.

Paint the Bedroom and Repair Mouldy Walls – Based on the remediation work ordered above and in the presence of testimony that the bedroom has not been painted in over eleven years, I hereby order the Landlord to have the entire bedroom painted, after the completed of the mould remediation work, and no later than February 19, 2010.

Rent Abatement – The Tenant has applied for rent abatement and has stated that it has been her intention to just get the work completed as it is her belief that she has always paid her rent so she should be entitled to have repairs completed as requested.

The evidence and testimony supports that the rental unit was flooded in 2006 and that the Landlord has avoided the Tenant's requests to have the mould and carpet in her bedroom attended to. While the Tenants requests have all been verbal, there was no evidence or testimony provided by the Landlord to discount the Tenant's claims.

Based on the aforementioned I find that the Landlord has contravened Section 32 of the Act and has not provided the Tenant with a rental unit that complies with health and safety standards since the onset of the presence of the mould. While there is no specific evidence before me to prove when the mould first existed I find that on a balance of probabilities the mould began to grow sometime after the June 2006 flood and has been present for over 2 ½ years.

The Tenant first attempted to file her application for dispute resolution on June 19, 2009, after several failed verbal requests. The Tenant was hoping the Landlord would change their mind and repair her rental unit however when they failed to do so the Tenant filed her application for dispute resolution on November 12, 2009.

I find the Tenant has proven the merits of her claim however there is no evidence to support that the Tenant mitigated her losses prior to June 19, 2009. That being said I find that the Tenant is entitled to rent abatement for the past seven months (ending January 31, 2010) in the amount of \$617.40 which represents $1/10$ of the monthly rent times seven months ($\$882.00 \times 1/10 \times 7$).

If the Landlord does not complete the above ordered repairs by the dates listed in this decision the Tenant will be at liberty to apply for further monetary compensation.

The Landlord is required to provide the Tenant with 24 hours notice of entry to the rental unit to have the above mentioned repairs completed. The Tenant is hereby ordered to allow the Landlord entry to the rental unit, after receipt of 24 hour notice, to complete the ordered repairs.

As the Tenant has been partially successful with her claim I award her recovery of the \$50.00 filing fee.

Conclusion

I HEREBY ORDER the Landlord to have repairs completed to the kitchen cabinets, as specified above, no later than **February 28, 2010**.

I HEREBY ORDER the Landlord to paint the kitchen no later than **January 31, 2010**.

I HEREBY ORDER the Landlord to have the mould remediated from the bedroom, and replace or repair the carpet, underlay, and flooring, as described above, no later than **February 12, 2010**.

I HEREBY ORDER the Landlord to obtain written documentation from the restoration company which lists that the remediation of the mould has been completed to health and building standards and to provide a copy of the documentation to the Tenant no later than one week of completion of the repairs.

I HEREBY ORDER the Landlord to have the entire bedroom painted, after the completion of the mould remediation work, no later than **February 19, 2010**.

I HEREBY AWARD the Tenant a monetary claim in the amount of **\$667.40** (\$617.40 rent abatement + \$50.00 filing fee). The Tenant may deduct this amount from her future rent payments.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 08, 2010.

Dispute Resolution Officer