

DECISION

Dispute Codes:

OLC, RP, FF

Introduction

This hearing was convened in response to an application by the tenant for the landlord to make repairs to the rental unit : replace carpeting throughout the suite, and for the landlord to comply with the Act, regulation or tenancy agreement: comply with an order of the Director, and a monetary order for recovery of the filing fee associated with this application. The tenant requests an undetermined quantum or sum in compensation for tasks related to litigation for dispute resolution, and for the tenant accommodating repairs by the landlord – past and projected. The tenant has not applied for monetary relief or amended their application to reflect a request for a monetary Order. Nonetheless, costs incurred which are related to litigation are not compensable.

I accept the tenant's evidence that despite the landlord having been served with the application for dispute resolution and notice of hearing by personal service to an agent for the landlord, where they carry on business as the landlord, on April 15, 2010, in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing.

Issue(s) to be Decided

Should the landlord be ordered to replace the carpeting in the entire suite?
Should the landlord be made to comply with the Act: an Order of the Director?
Is the tenant entitled to monetary compensation for litigation related costs, or for accommodating the landlord's repairs?
Is the tenant entitled to recover the filing fee?

Background and Evidence

Rent in this tenancy is the amount of \$930 is payable in advance on the first day of each month. On July 27, 2009 the landlord was ordered to replace carpeting in the rental unit due to damage. On September 23, 2009 the Residential Tenancy Branch received an application for correction or clarification of the Decision or Order. The Dispute Resolution Officer clarified the Decision and Order as follows:

I hereby Order the landlord to replace the rugs in the living room and bedrooms with the same or similar material and in particular, material commonly referred to as carpet wherever the carpet has been irreparably damaged by mould or water leaks. The landlord is to try to match the rugs or carpeting in the remainder of the rental unit but is not required to replace carpeting in the entire unit.

The tenant testified that the landlord has replaced the requisite carpet areas with linoleum, and not made repairs consistent with the Director's Decision or Order, or the Director's *clarified* Decision or Order. The tenant provided photographs of the repairs made showing that approximately 3 feet of flooring by the sliding doors of the rental unit have been replaced with linoleum, rather than carpeting. The tenant provided similar evidence in respect to the two (2) bedrooms of the rental unit. The tenant requests that, now, all of the carpeting in the rental unit be replaced, as the tenant has been told by the landlord that the carpeting is thirty one (31) years old.

Analysis

The tenant has not amended their application to reflect a request for a Monetary Order or an amount for their litigation costs, and costs for accommodating the landlord's past and projected repairs. Nonetheless, costs incurred which are related to litigation are not compensable, and costs for accommodating the landlord's repairs have not been linked or proven by the tenant to be for unusual or extraordinary cause. The tenant's claim for compensation is hereby **dismissed** without leave to reapply.

On preponderance of the evidence, I find the tenant has not proven that all of the carpeting in the suite requires complete replacement; therefore this portion of the tenant's claim is **dismissed** with leave to reapply.

I accept the tenant's evidence and find that the landlord has not corrected the damaged carpeted area according to the Order dated July 27, 2009, **or** the *clarified Order* dated September 23, 2009.

As a result, **I Order** that the rent - commencing with the rent payable for **June 2010** - is reduced **\$430** per month, and the tenant is permitted to withhold **\$430 each month** from rent until the end of their tenancy – until such time as the landlord has fully complied with the Order of July 27, 2009 and the *Clarified Order dated September 23, 2009*, **or** has replaced the carpeting in the living room and the two (2) bedrooms, in their entirety; **and**, receives an Order from a Dispute Resolution Officer ending the rent abatement and reinstating the rent to its original amount of \$930.

I find that the tenant's claim has merit and is entitled to recovery of the **\$50** filing fee for this application. **I Order** the tenant may deduct this amount from rent.

Conclusion

The tenant's claim for monetary compensation is hereby **dismissed** without leave to reapply.

The tenant's claim for complete replacement of the carpeting in the entire suite is **dismissed** with leave to reapply.

The rent is reduced by **\$430** per month – commencing June 2010 – until the landlord has complied with the previous order and receives an Order from a Dispute Resolution Officer reinstating the rent to its original amount of \$930.

I Order the tenant may deduct the filing fee of **\$50** from rent.

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*.