



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC and RP

Introduction

This hearing was scheduled in response to the Tenants' Application for Dispute Resolution, in which the Tenants made application for a monetary Order for money owed or compensation for damage or loss and for an Order requiring the Landlord to make repairs to the rental unit.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

The Landlord submitted evidence to the Residential Tenancy Branch on August 13, 2010. The male Agent for the Landlord stated that this evidence was posted on the door of the rental unit on August 13, 2010. The Tenants acknowledge receiving this evidence but stated they have not had time to respond to the evidence submitted.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure stipulate that evidence must be served on the other party at least five days before the dispute resolution proceeding. I find that the Landlord did not serve the Tenants with evidence in accordance with rule 3.5. I decline to accept the late evidence from the Landlord as the Landlord had ample opportunity to submit the evidence within the timelines established by the Rules of Procedure. I find that the Landlord's failure to serve the evidence in accordance with the Rules of Procedure denied the Tenants a reasonable opportunity to consider and respond to the evidence and I find it would be prejudicial to the Tenants to accept the evidence at this late date.

Issue(s) to be Decided

The issues to be decided are whether there is a need for an Order requiring the Landlord to make repairs and whether the Tenants are entitled to a rent rebate of \$400.00 for being unable to use one of the bedrooms in the rental unit.

Background and Evidence

The Landlord and the Tenants agree that this tenancy began on April 30, 2010 and that the Tenants are required to pay monthly rent in the amount of \$1,100.00.

The Landlord and the Tenants agree that a Condition Inspection Report was completed on April 30, 2010, in the presence of both parties. A copy of the Condition Inspection Report was submitted in evidence by the Tenants. The parties agree that when the Condition Inspection Report was completed there was no reference to the carpets needing cleaning or that there was a smell of urine in the second bedroom.

The male Tenant stated that when they moved into the rental unit they detected the smell of urine in the carpet in the spare bedroom and they added a notation regarding the smell to their Condition Inspection Report. He stated that after they moved into the rental unit they noted the carpets had not been cleaned. He stated that they noted that the carpets had not been cleaned on the Condition Inspection Report and they cleaned the carpet.

The male Tenant stated that on May 07, 2010, after the changes had been made to the Condition Inspection Report, they discussed the changes with the female Agent for the Landlord and she signed the Landlord's copy of the Condition Inspection Report to indicate she was aware of the changes. He stated that he was not provided with a copy of the amended Condition Inspection Report.

The female Agent for the Landlord denies being advised of changes to the Condition Inspection Report and she denies signing an amended report. She stated that the Tenants never informed her of their plans to clean the carpet.

The male Tenant stated that on May 08, 2010 or May 09, 2010 they again noticed urine smell in the spare bedroom, even though it had been thoroughly cleaned. The parties agree that the Tenants advised the Landlord that they could smell urine in the room and the Landlord agreed to have the carpets treated.

The Landlord and the Tenants agree that the Landlord treated the carpet with a chemical agent on June 03, 2010. The male Tenant stated that he can still smell urine, although it is now masked by a strong chemical smell. The parties agree that the Landlord was made aware of a continued problem with the carpet after it had been treated on June 03, 2010.

The Tenant is seeking an Order requiring the Landlord to replace the carpet and take whatever measures are necessary to eradicate the odor of urine in the bedroom and for a monetary Order of \$400.00 in compensation for the loss of use of this area in the rental unit.

The male Landlord stated that the carpet was cleaned at the beginning of the tenancy, although no evidence was admitted that corroborates this statement.

The male Landlord stated that this rental unit was shown various times prior to the tenancy and a urine smell was not detected at that time. He stated that nothing was noted about a smell on the Condition Inspection Report.

The male Landlord stated that the Landlord agreed to deodorize the carpets in an effort to maintain good relations with the Tenants. He stated that the technician who sanitized the carpet did not detect an odor of urine in the room although the individual who repaired the screens did notice an odor when he was re-installing the screens.

The Landlord stated that the Tenants have two cats and a dog and he speculates that one of their pets may have soiled the carpet after the tenancy began. The female Tenant stated that one of their cats was moved to the rental unit until May 12, 2010 and the second cat was not moved to the rental unit until May 16, 2010, which was after they smelled the odor. She stated that their dog was kept in a crate for the first part of their tenancy so this pet could not have soiled the carpets in that room.

The Landlord and the Tenants agree that the Landlord promised to repair window screens in the rental unit once the tenancy began; that many of the screens were repaired on site in May of 2010 and that three screens were taken away and returned by July 14, 2010. The male Tenant stated that all the screens have now been repaired and there is no need for an Order requiring the Landlord to make repairs to the screens.

Analysis

Section 32(1) of the *Act* requires landlords to provide and maintain residential property in a state of decoration and repair that complies with the 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.

I find that the Tenants have submitted insufficient evidence to establish that the carpet in the second bedroom in the rental unit does not comply with section 32(1) of the *Act*, as the Tenant has not established that the flooring makes the rental unit unsuitable for occupation or that it does not comply with health, safety and housing standards required by law. In reaching this conclusion I was strongly influenced by the fact that the Tenants did not detect an odour in that bedroom when they initially viewed the rental unit or when they completed the Condition Inspection Report, which causes me to conclude that the odour cannot be so significant that it constitutes a health or safety hazard.

There is nothing in the *Act* that requires landlords to provide pristine rental accommodations. There is a general understanding that rental accommodations are rented in an "as is" condition unless there is an agreement at the beginning of the tenancy to make designated repairs or renovations. In these circumstances the parties did not agree that there was an odour in the second bedroom at the beginning of the tenancy and they therefore made no agreements to remedy that odour. As the parties

made no agreement to remedy a problem with the carpet in the second bedroom at the beginning of the tenancy, I find that I do not now have the authority to compel the Landlord to repair the carpet.

As the Tenants have failed to establish that the Landlord is obligated to repair the carpet in the second bedroom or that the Landlord agreed to repair the carpet at the beginning of this tenancy, I find that the Tenants are not entitled to compensation for living in the rental unit with carpets that are significantly unchanged from the time they viewed the rental unit.

Conclusion

As I have determined that I do not have authority to compel the Landlord to repair the carpet in the second bedroom of the rental unit, I dismiss the Tenants' application for an Order requiring the Landlord to make repairs.

I find that the Tenants have failed to establish a monetary claim and I therefore dismiss their application for a monetary Order in the amount of \$400.00.

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: August 16, 2010.

Dispute Resolution Officer