



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, OLC, RP, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking a monetary order under the Act or tenancy agreement, and orders for the Landlord to comply with the Act or tenancy agreement, and to make repairs to the rental unit, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Is the Tenant entitled to the relief sought?

Background and Evidence

This tenancy began in June of 2004.

The Tenant testified that in June of 2009, he made an oral agreement with the then property manager of the building, that the Tenant would paint the interior of the rental unit in exchange for the Landlord replacing the old carpet with new carpet in the rental unit. The Tenant testified that the building manager at the time told him, "I am sure they would go for it", or words to that effect. The Tenant painted the rental unit and supplied all the materials and labour. The Tenant testified he is an experienced painter.

The Tenant testified he then moved all of his furniture for the carpet to be installed. The day it was to be installed, he came home and was disappointed to find out that the carpet had been steam cleaned, rather than replaced.

The Tenant testified that the steam cleaning did not alter the lifts, burns marks or worn out portions of the carpet.

In evidence the Tenant supplied photographs of the carpet. The Tenant estimates that the carpet in his bedroom is at least 15 years old and the other carpets in the rental unit are at least 12 years old. The Tenant has also provided a statement of the previous building manager who writes that the carpets are, "... at the very least 12 years old."

The Tenant submits that the prior occupant had two dogs and they badly stained the carpet in the bedroom. In support of this the Tenant provided photographs of the back of the bedroom door, showing many scratches, which he alleges were made by the dogs when they were shut in the bedroom.

The Tenant also provided in evidence a copy of a letter sent to the Landlord's Agents, dated August 22, 2010, requesting that his carpets be replaced and that a ceiling fan be repaired.

During the course of the hearing the Tenant testified that if the carpets were not replaced he wanted \$300.00 in compensation for the painting he performed. The Tenant also testified he was prepared to remove the carpet himself and have a new one installed and deduct the cost of this from his rent.

The Tenant also testified that he was aware another occupant of the building had received \$300.00 for inconvenience suffered due to a bed bug infestation at the building in June of 2009. The Tenant testified he was also inconvenienced and requested compensation of \$300.00.

During his testimony at the end of the hearing the Tenant explained the rental unit did not have a smoke detector in it.

The Landlord's Agent replied that the Tenant had not submitted details of the \$600.00 he was requesting as a monetary order in his Application, and therefore, this request should be denied.

The Agent testified that the age of the carpets is not relevant as the carpet in the Tenant's rental unit is still serviceable. He pointed out that the Tenant's own testimony

was that the prior building manager said he was, "... sure they would go for it", and this indicates that the Landlord had not approved the replacement of the carpet prior to the Tenant painting the rental unit.

The Agent testified that when he viewed the rental unit carpet after the Tenant had painted, he determined the carpet simply required steam cleaning and this was performed at the Landlord's cost. The Agent testified that this was a gesture of goodwill and they were not forced to do this. The Agent submitted that the carpet complies with the Act and municipal standards.

The Agent for the Landlord said he would have the current building manager make an appointment with the Tenant to repair the ceiling fan and install a smoke detector.

There was some discussion of a resolution to the dispute at the end of the hearing, however, no agreement on the carpets was reached.

Analysis

Based on the above, the evidence, photographs and testimony, and on a balance of probabilities, I find as follows:

It is difficult to determine, based on this testimony and evidence, if there was an agreement between the parties to exchange painting the unit for new carpets. However, I do find and order that all the carpet in the rental unit must be replaced, as I find the carpets are worn out, no longer have a useable life, and no longer suitable for occupation by the Tenant. There are areas where the carpet is completely worn through. Cleaning, stretching or repairs to the carpet would appear to be insufficient to alleviate the age and deterioration of the carpets. The large stains the Tenant complains of were not removed by the previous carpet cleaning performed by the Landlord and there is no evidence that a further cleaning will remove these.

Therefore, pursuant to section 32 of the Act, I order that the Landlord must replace all carpets in the rental unit with new carpets before 5:00 p.m. on November 19, 2010.

If the Landlord does not do this, the Tenant may remove and replace the carpets and deduct the cost from his rent. If the Tenant is forced to do this himself, he will provide the Landlord an invoice from the company performing the work indicating the cost to the Tenant of the removal and replacement of the carpet and following this, he may deduct the amount of the invoice from rent to be paid to the Landlord. Furthermore, if the

Tenant is forced to undertake these repairs, he may deduct an additional **\$100.00** from his rent to compensate for his time in having to make these arrangements himself. I note it should be apparent to both parties that it is preferred that the Landlord do this work, without requiring the Tenant to perform it.

As to the smoke detector, if it is not addressed by the time this Decision reaches the parties, **the Landlord is ordered under section 32 of the Act to immediately provide the rental unit with a smoke detector** which complies with the applicable laws and municipal requirements.

The Landlord's Agents also said they repair the ceiling fan. If this is not repaired before November 19, 2010, the Tenant has leave to make a further Application on this issue and request appropriate compensation.

As to monetary compensation, I find the Tenant had insufficient evidence on the issue of the bedbugs and dismiss this portion of the monetary claim. The fact another occupant may have been compensated by the Landlord does not automatically entitle this Tenant to compensation, without the appropriate evidence from the Tenant that he suffered a loss.

As to the compensation for painting the rental unit, the Tenant has been granted an order for the replacement of the carpet, at no cost to him, which is the compensation he sought in exchange for painting the rental unit. Therefore, I dismiss this portion of the monetary claim.

Lastly, I order that the Tenant may deduct **\$50.00** from one rent payment for the recovery of his filing fee for the Application.

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: October 19, 2010.

Dispute Resolution Officer