



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes ERP, MNDC, FF

Introduction

This matter dealt with an application by the Tenants for an Order that the Landlord make emergency repairs, for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Are emergency repairs required?
2. Are the Tenants entitled to compensation and if so, how much?

Background and Evidence

This fixed term tenancy started on June 15, 2010 and expires on December 31, 2010 (and continues on a month to month basis thereafter). Rent is \$1,400.00 per month. The Tenants paid a security deposit of \$700.00 at the beginning of the tenancy.

The Tenants claimed that the Landlord's agent agreed to replace carpeting in the entrance way of the rental unit prior to the tenancy but after the tenancy agreement was signed she advised the Tenants that the Landlord could not afford to do so. The Tenants said the Landlord finally agreed to replace that section of carpeting with linoleum when they threatened to rescind the tenancy agreement. The Tenants now claim that the rest of the carpeting in the rental unit needs to be replaced. In particular, the Tenants claim that the carpeting is old, smells of mould and mildew and has spiders and cockroaches. The Tenants said that during the move in inspection, they complained to the Landlord's agent about the smell but she told them it was because the carpets were wet and she assured them it would go away when the carpets dried but the Tenants claim it only got worse. The Tenants said when they later brought this to the Landlord's agent's attention, she told them that she would see what she could do about replacing the carpet but nothing has been done.

The Landlord's agent said the carpets were professionally cleaned at the beginning of the tenancy and there was no sign of mould or insects at that time or during subsequent inspections (the most recent being 2 months ago). The Landlord's agent admitted that the carpet was old but claimed that the Tenants accepted it in that condition in

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consideration for lower rent. The Landlord's agent suggested that any bugs or smell was due to the Tenants' failure to maintain proper standards of cleanliness. The Landlord's agent also denied telling the Tenants that she would replace the carpets as she claimed the Landlord was not in a financial position to do so.

The Tenants claimed that both toilets in the rental unit did not work properly since the beginning of the tenancy and that while the Landlord repaired one of them in October, 2010, the Landlord only sent a repair person to fix the other one a day ago and it is expected to be fixed shortly. The Landlord claimed that the repair to the first toilet was due to the Tenants' children putting a bracelet down it which the Tenants deny. The Landlord also claimed that the repair to the second toilet was due to the Tenants' children flushing a tube of tooth paste down it.

One of the Tenants also sought compensation equal to one month's rent as she claimed that many repairs were needed to the rental unit and that she had to take work off each time a repair had to be made. This Tenant estimated that she had to take work off on approximately 20 occasions to deal with repairs to a garbage disposal, a leak from the upstairs bathroom and a broken dryer. The Landlord claimed that the Tenants seem to always be dissatisfied about something and that she always responds in a timely manner to their concerns (which the Tenants denied).

Analysis

Section 33 of the Act defines an emergency repair as one that is "urgent, necessary for the health or safety of anyone or for the preservation or use of residential property and is made for the purpose of repairing major leaks in pipes or the roof, damaged or blocked sewer or plumbing fixtures, the primary heating system, damaged or defective locks that give access to a rental unit or the electrical system."

With the exception of one of the toilets, I find that there is no evidence that any emergency repairs are necessary. The Parties agree that the Landlord is in the process of repairing the malfunctioning upstairs toilet and as a result, I find that no Order is necessary with respect to that repair. The Tenants also sought an order that the Landlord replace the carpeting in the rental unit because they claim it has mould or mildew and bugs. The Landlord's agent denied this claim and argued that the Tenants agreed to accept the carpeting in its existing condition she said is old but is otherwise in acceptable condition.

Section 32(1) of the Act says (in part) that a Landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and that makes it suitable for occupation by a

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tenant. It also states at subsection (5) that “a Landlord’s obligation to maintain and repair applies whether or not a tenant knew of a breach by the Landlord of that subsection at the time of entering into the tenancy agreement.” In other words, even if the Tenants accepted the condition of the carpets at the beginning of the tenancy, if they can now show that the condition of those carpets renders the rental unit unfit for occupation or poses a health or safety risk to them, then the Landlord can be ordered to replace the flooring.

In this matter, the Tenants have the burden of proof and must show (on a balance of probabilities) that the condition of the carpets renders the rental unit unfit for occupation or poses a health or safety risk to them. However, the Tenants provided no evidence of the condition of the carpets (such as photographs, for example) and given the contradictory evidence of the Landlord’s agent, I find that there is insufficient evidence at this time to conclude that the carpets should be replaced. Should the Tenants obtain such evidence then they may reapply for an Order requiring the Landlord to make that repair.

I also find that there is insufficient evidence to support the Tenants’ application for compensation. One of the Tenants claimed that she had to take work off in order to be present in the rental unit when repairs were being made. However, the Tenants provided no evidence showing the dates or times taken off of work and no corroborating payroll evidence to support their claim that they lost employment income as a result. Consequently, this part of the Tenants’ claim is dismissed without leave to reapply.

Conclusion

The Tenants’ application for compensation is dismissed without leave to reapply. The Tenants’ application for emergency repairs is dismissed with leave to reapply. 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: December 13, 2010.

Dispute Resolution Officer