



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RP, O

### Introduction

This matter dealt with an application by the Tenant for an Order that the Landlords make repairs to the rental unit.

During the first day of the hearing, the Landlord, K.R., claimed that he had not received copies of the Tenant's photographs that she said she had served on the Landlords. Given that the faxed copies of the photographs submitted by the Landlords to the Residential Tenancy Branch were of poor quality, the hearing was adjourned to today's date so that the Landlords could resubmit a color copy of their photographs and receive a further copy of the Tenant's photographs. Both Parties were advised of the new date and time of the reconvened hearing and new Notices of the Reconvened Hearing were sent to each party by regular mail. However, no one attended the reconvened hearing on behalf of the Landlords and they did not provide coloured copies of their photographs as requested. As the Landlords had adequate notice of the reconvened hearing, the hearing proceeded in the Landlords' absence.

### Issue(s) to be Decided

1. Are repairs required?

### Background and Evidence

This tenancy started approximately 6 years ago. The Tenant said she believes that the carpeting in the rental unit is 23 years old because it was not replaced during the previous tenant's 17 year tenancy and was not replaced during her tenancy. The Tenant also claims that the carpet is heavily soiled and responsible for her allergies.

The Tenant said she was diagnosed by her family doctor in April of 2011 as having allergies to "dust, moulds and carpet" and she provided a hand written letter from her physician dated August 2, 2011 to that effect. The Tenant's physician denied doing any allergy testing on the Tenant but claimed that based on symptoms reported by the Tenant (ie. sneezing only when in the rental unit) and her "presentation" at the clinic, the Tenant appeared to have "classic symptoms" of allergies to moulds and dust. The Tenant's physician could not say if the Tenant was allergic to carpet fibres but argued that carpet would make it more difficult to remove dust and/or mould.

The Tenant also provided 3 coloured photographs of the carpet in the rental unit as well as an estimate from a carpet cleaner dated September 1, 2011. The written estimate states “excessive wear, heavily soiled, stains, cannot guarantee stain removal.”

The Landlords did not give any oral evidence but instead submitted documents stating that the carpet in the rental unit was in good condition and did not need to be replaced. The Landlords denied that the carpets were 23 years old but did not say how old they were. The Landlords provided a written statement from a flooring installer who claimed that he viewed the carpet in August 2011 and found it to be in “very good condition.” The Landlords also argued that they offered to clean the Tenant’s carpets at their expense but she refused. The Landlords further claimed that the Tenant initially insisted that the existing carpet be removed and replaced with new carpet or linoleum but then insisted on linoleum only. Consequently, the Landlords argued that it was uncertain if the Tenant was allergic to carpeting or not.

### Analysis

Section 32(1) of the Act says “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 having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.”

The Tenant claims that the carpet in the rental unit is 23 years old, worn and stained and is aggravating her allergies. The Landlords claim that the carpet is not 23 years old and is in good condition. The Tenant also provided an estimate of a carpet cleaner dated September 1, 2011 who claimed that the carpet was soiled and worn. The Landlord provided a written statement of a flooring installer who claimed that in August 2011 the carpet was in very good condition. The Tenant’s photographs show a number of small stains by the entrance to the kitchen, a few more in the living room area and some minor areas of wear. The Landlord, K.R., claimed at the first day of the hearing that the Tenant’s photographs accurately represented the condition of the carpet in the rental unit. Based on these photographs, I find that the carpet shows some signs of wear and tear but is not “heavily soiled” or worn as the Tenant claimed nor is it in “very good condition” as the Landlords claim. Consequently, I find that there is insufficient evidence to conclude that the age and condition of the carpet (ie. the amount of wear and stains) renders the rental unit unfit for occupation.

I also find that there is insufficient evidence to conclude that something in the carpet or underlay (ie. such as chemicals) is the cause of the Tenant’s allergies. The Tenant’s physician admitted that her opinion was based (in part) on the Tenant’s report that she suffered symptoms such as sneezing only when in the rental unit. The Tenant’s physician admitted that she could only say that the Tenant’s symptoms were typical of an allergic reaction to dust and/or mould (for which she had not been tested) and she was uncertain if the Tenant was allergic to carpet fibres. The Tenant also provided a

letter from her psychiatrist dated August 25, 2011 however he did not have any personal knowledge of the cause of the Tenant's allergies and could only say, "the Tenant has chronic anxiety and depression which is aggravated by such stressors as her allergy **"reportedly** aggravated by her old carpet and the dispute with the building manager where she lives."

In summary, while the Tenant may have an allergic reaction to something in the rental unit [and I make no such finding], I find that there is insufficient evidence to conclude that the carpet is the cause of it. I also find that there is insufficient evidence **at this time** that the carpet in the rental unit violates health, safety and housing standards required by law or that it is in a condition that renders the rental unit unfit for occupation by a tenant. For all of these reasons, the Tenant's application is dismissed. The Landlords previously offered to clean the rental unit carpets at their expense to see if this would make a difference to the Tenant's allergies. I find that this is a reasonable offer and ***I hereby Order the Landlords to have the carpet in the rental unit professionally cleaned at their expense no later than November 7, 2011.***

On a final note, the Landlords agreed to install linoleum in the rental unit provided that the Tenant paid for it. However, s. 32 of the Act requires a Landlord to pay for such things unless a Tenant has damaged the flooring by their act or neglect. As the Landlords did not allege that the Tenant was responsible for any damage to the carpet, I find that they cannot pass off the cost of installing linoleum onto the Tenant.

### Conclusion

The Tenant's application is dismissed with leave to reapply upon providing **new evidence** that the condition of the carpet is responsible for the Tenant's allergies or that the carpet is otherwise in a condition that renders the rental unit unfit for occupation. 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 17, 2011.

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Residential Tenancy Branch