



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, RR, OLC, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking an order requiring the landlord make repairs and to comply with the *Residential Tenancy Act (the "Act")*, an order to reduce rent for repairs and to recover the filing fee.

The tenants, their advocate, the landlord and witness appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to respond each to the other party, and make submissions to me.

Preliminary Issue 1:

The landlord stated that he submitted evidence, including the tenancy agreement and condition inspection report, prior to the hearing by fax; however the evidence was not in the file at the time of the hearing. Additionally, the landlord testified that he had not provided a copy of his evidence to the tenants, stating that he had not as he "wanted to see" the tenants' copies of the tenancy agreement and condition inspection report.

Rule 4.1 of the Residential Tenancy Branch Rules of Procedure state that the respondent, the landlord in this case, must serve upon the applicant a copy of their evidence they intend to rely on at the hearing at least five business days before the hearing.

As I informed the landlord at the hearing, due to his acknowledgement that he did not serve the evidence upon the tenants, I have excluded his documentary evidence from consideration. I did allow the landlord to describe his documentary evidence.

Preliminary Issue 2:

The day following the hearing, the landlord submitted unsolicited documentary evidence to the Residential Tenancy Branch. As this evidence was not received five business days prior to the hearing, I have neither reviewed nor considered the evidence.

Issue(s) to be Decided

Has the landlord breached the Act or tenancy agreement, entitling the tenants to an order requiring the landlord to comply with the Act, for an order requiring the landlord to make repairs, for an order reducing the rent of the tenants, and to recover the filing fee?

Background and Evidence

This month to month tenancy began on June 1, 2004, monthly rent started at \$935.00, is currently \$1,185.00, with a security deposit of \$467.50 paid by the tenant at the beginning of the tenancy.

In support of their application, tenant JS submitted that when he took occupancy, the then property manager promised the tenant that, among other things, the carpet would be replaced. The tenant submitted that the other items promised to be repaired were eventually repaired, with the exception of the carpet.

The tenant submitted that the carpet is over 8 years old, is in poor condition, stained, and suffering from other than normal wear and tear. The tenant also stated that the carpet has detached from the floor in several areas.

The tenant also stated that one property manager informed him that the carpet would be replaced if he agreed to a rent increase of \$50.00 per month.

The tenant's relevant evidence included photos of the carpet and letters to various property managers concerning the carpet replacement. The tenant did not submit a condition inspection report or tenancy agreement.

In response, the landlord testified that the move-in condition inspection report listed all floors and carpets as satisfactory and that if the carpet was damaged or stained during the tenancy, the tenant would be at fault.

The landlord disputed that the tenant was promised a carpet replacement and that he has met his obligations under the Act as a landlord.

In response, the tenant stated that he did not receive a copy of the condition inspection report until February 28, 2006, that he did not sign it, and disagreed that the floor and carpet was in satisfactory condition at the beginning of the tenancy.

Analysis

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

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 and properly submitted is described in this Decision.

In order to be successful in a claim for compensation for damage or loss, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 32 of the *Act* requires a landlord to provide and maintain a rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law and having regard for the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In the circumstances before me, the tenants supplied deficient and inconclusive documentary evidence which I find does not meet the burden of proof necessary for a monetary claim.

In reaching this conclusion, I find the tenants failed to submit proof that the carpet posed a health or safety hazard, which would compel me to order the landlord to repair or replace the carpet. I therefore **dismiss** the tenants' claim for an order requiring the landlord to make repairs.

As I have found that the tenant failed to prove that the landlord has violated the *Act*, regulation or tenancy agreement, I also **dismiss** the tenants' claim for an order requiring the landlord to comply with the Act and for a rent reduction.

As I have dismissed the tenants' claims, I decline to award them recovery of the filing fee.

Conclusion

For the reasons noted above, I dismiss the tenants' application in its entirety.

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: November 16, 2011.

Residential Tenancy Branch