



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bright Star Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: ERP, RR, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested an order the landlord complete emergency repairs, repairs and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord stated that he received the tenant's letter, supplied as evidence and the tenant's 9 photographs. As there was no evidence before me that any additional documents were given to the landlord, the tenant was at liberty to provide oral testimony in relation to the other 2 pages of evidence he had supplied to the Residential Tenancy Branch (RTB.)

The landlord said that he provided the tenant with evidence that included 8 photographs. This evidence was given to the tenant's sister. The tenant's sister provided affirmed testimony that on March 25, 2013 she received a 1 Month Notice to End Tenancy for Cause; no other documents or photographs were given to her by the landlord.

As there was no evidence before me proving service of evidence to the tenant, I determined that the landlord's photographs would be set aside. The landlord was at liberty to make oral submissions.

Issue(s) to be Decided

Must the landlord be Ordered to make repairs and emergency repairs to the rental unit?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced on January 1, 2000. Rent is currently \$776.00 per month, due on the first day of each month. A deposit in the sum of \$275.00 was paid.

The rental unit is 1 of forty suites in a 1974 structure that has concrete floors and wood framing.

The tenant supplied a copy of a March 14, 2013 letter that was given to the landlord. The tenant is requesting repairs, as set out in his letter:

- Meal moth infestation requires treatment;
- Carpet is beyond normal wear and tear and requires replacement, the tenant has requested laminate;
- The unit requires painting,
- The linoleum in the kitchen and bathroom need replacing;
- The bathroom tub needs to be caulked;
- The exterior windows need sealing;
- The shelf under the kitchen sink needs to be replaced; and
- The kitchen sink needs to be caulked.

During the hearing the tenant said that, with the exception of the kitchen, he has now painted the unit. Since the tenant has not painted the kitchen, he would like the landlord to complete that work. The landlord confirmed that the kitchen was last painted prior to 2000.

The tenant said that the meal moths are the result of food in the unit.

The landlord confirmed that the carpets have not been replaced since the tenancy commenced thirteen years ago. The tenant's letter to the landlord indicated that the carpet is beyond its life span. A photograph of the carpet showed frays and stains.

The tenant supplied a photograph of the bathroom linoleum; it has completely lifted from around the bathtub. The photograph showed old caulking around the toilet. The landlord said that the tenant has purposely ripped the bathroom linoleum.

The tenant and landlord agreed that the kitchen linoleum is likely the original installed when the building was constructed in 1974. The landlord said some of the tenants have lived in the units for thirty years and have not damaged the flooring.

The tenant's brother provided affirmed testimony; he was formerly a building inspector. This witness said that the linoleum has never been replaced, that the bathroom lino is installed over the original linoleum flooring, which is the same as the kitchen. The kitchen flooring is difficult to clean as it is so old.

The tenant's hydro bill is extremely high and the tenant believes this is a result of the windows not properly fitting. Some of the windows are not meeting properly at the corners, which allows cold air to enter the unit. The tenant thinks the window seals have failed and that this causes mold to grow around the windows.

The landlord said that the windows are single-glazed and that if a tenant does not use the electrical heat, condensation will form. If the tenant were to clean the window sills mold would not grow. The agent and property owner inspected the unit on March 22, 2013 and found the window sills dirty.

The tenant supplied a photograph of the cupboard under the sink. The bottom shelf has completely rotted due to leaking plumbing.

A drawer is missing from the kitchen; the landlord took the drawer parts some time ago and has yet to replace the drawer.

The tenant wants the kitchen sink caulked; it has not been caulked since the start of the tenancy.

The landlord said that he will repair the kitchen drawer, caulk the kitchen sink and repair the shelf under the kitchen sink.

The tenant said that he will complete the meal moth pest control.

Analysis

I have considered the agreement reached during the hearing in relation to:

- the missing kitchen drawer;
- the bottom shelf under the kitchen sink;
- caulking around the kitchen sink; and
- meal moth treatment.

Section 62(3) of the Act provides:

(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Therefore, pursuant to section 62(3) of the Act I Order:

- the landlord to ensure that no further leaks originate from the kitchen sink plumbing;
- the landlord to replace the shelf under the kitchen sink;
- the landlord to replace the kitchen drawer;
- the tenant to complete meal moth treatment; and
- that these all be completed no later than May 15, 2013.

Once completed the tenant is to immediately provide the landlord with a copy of the invoice as proof of pest control treatment.

These Orders are also based on section 32 of the Act, which provides, in part:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Residential Tenancy Branch (RTB) policy suggests a useful lifespan for the following building elements:

- Carpet: 10 years
- Linoleum: 10 years (20 years if hardwood)
- Windows: 15 – 20 years (depending if aluminum or wood); and
- Paint: 4 years.

From the evidence before me I find that all of the items in dispute are well beyond the useful lifespan for building elements, as set by RTB policy. I find that the policy takes a reasonable stance. Therefore, pursuant to section 32 and 62(3) of the Act I Order the landlord to:

- Replace all of the carpets in the unit with new flooring of the landlord's choice;
- Have the windows inspected by a licenced Glazier who can make recommendations on the condition of the windows and the need for repair or replacement;
- That the tenant immediately be given a copy of the Glaziers written recommendations;
- That the landlord follow the Glazier's recommendation;

- That the kitchen be painted in a finishing coat;
- That the bathroom linoleum and kitchen linoleum be replaced; and
- That the bathtub and toilet be caulked.

I Order that these repairs be completed within a reasonable period of time, but no later than May 15, 2013. Once all Ordered repairs are completed the landlord must give the tenant written confirmation they are completed.

The tenant is expected to cooperate with the landlord by removing belongings and providing access to the rental unit; in accordance with section 29 of the Act, which is appended after the conclusion of this decision.

I find that the tenant's application has merit and that the tenant is entitled to recover the \$50.00 filing fee from the landlord for the cost of this Application for Dispute Resolution. The tenant may deduct the filing fee from the next month's rent due.

Conclusion

Repairs have been Ordered to the rental unit.

The tenant is entitled to the filing fee cost.

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: April 09, 2013

Residential Tenancy Branch

Landlord's right to enter rental unit restricted

29 (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).