



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Skyview Ventures Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, RP, RR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant testified that he handed the landlord a copy of his dispute resolution hearing package on August 10, 2013. The landlord testified that the tenant handed him a copy of the tenant's dispute resolution hearing package on August 12, 2013. The tenant confirmed that the landlord provided him with a copy of the landlord's written evidence package in advance of this hearing. I am satisfied that the parties served the above documents to one another in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses arising out of this tenancy? Should any repair orders be issued to the landlord with respect to this tenancy? Is the tenant entitled to reduce his monthly rent for services and facilities not provided to him by the landlord that the tenant expected to receive when he entered into his tenancy agreement with the landlord?

Background and Evidence

This periodic tenancy commenced on June 1, 2012. According to the terms of the written Residential Tenancy Agreement (the Agreement) entered into between the parties, monthly rent is set at \$850.00, payable on the first of each month. The

Agreement specifically noted that carpets are included in the tenant's monthly rent. The landlord continues to hold the tenant's \$425.00 security deposit paid on May 28, 2012.

The tenant's application included the following Details of the Dispute:

I was promised new floors on agreement to rent... 14 months later still not started. floors are chewed up by animal and burns from fire place. \$3290.00 min cost to replace with laminate floor as promised.

At the hearing, the tenant testified that he wanted the new floor that he was promised over a year ago and had no specific monetary claim for expenses he incurred. He said that some type of animal had chewed the carpet before he moved into the rental unit.

The landlord's spouse, speaking on behalf of her husband, did not dispute the tenant's claim that the carpet in the living room and dining room needed to be replaced. She said that the carpet in those rooms were chewed by a rabbit that lived with the previous tenant. She estimated that the carpet in those rooms was about 5 years old. She and the landlord agreed to replace the carpet in the living and dining rooms.

The tenant disputed the evidence provided by the landlord's spouse. He said that the carpet appears much older than 5 years old. He said that there was also the same carpet in the two bedrooms of this rental unit which also needed replacement.

The landlord submitted a September 9, 2013 letter in which he maintained the total cost of carpet would be under \$1,000.00, and not the \$3,290.00 estimated by the tenant. In his letter, he stated "We are willing to replace the flooring in the living/dining area and will fix the small damaged area in the bedroom if he pays the rent in full and on time for a minimum of six months." This written evidence confirmed the tenant's claim that the landlord has attempted to tie his provision of required repairs to the tenant's timely payment of rent.

The landlord also entered into written evidence copies of a number of 10 Day Notices to End Tenancy for Unpaid Rent (the 10 Day Notices) issued to the tenant as recently as August 6, 2013 and September 2, 2013. The landlord confirmed that each time the landlord has issued a 10 Day Notice, the tenant has paid his outstanding rent in full within five days. At the time of the hearing, the landlord confirmed that the tenant had paid all of his outstanding rent.

The tenant testified that the \$1,000.00 estimate for carpet replacement by the landlord did not include the installation and underpad for the carpet, both sizeable expenditures.

Analysis

Section 32 of the *Act* establishes the obligations of a landlord to repair and maintain rental premises covered under and Agreement. Section 32 reads in part as follows:

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...

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The obligations to repair and maintain rental premises under section 32 of the *Act* are not dependent on a tenant's timely payment of rent. The *Act* does not allow a landlord to make the provision of repairs required to comply with section 32 of the *Act* contingent on the tenant's establishment of a record of timely payment for a period specified by the landlord.

I find that there are other sections of the *Act* which enable the landlord to take action if the tenant is not paying his rent on time or continues to owe outstanding rent. I find that these provisions and the landlord's claim that the tenant has a poor record of paying his rent on time have no bearing whatsoever on the obligations placed on a landlord under section 32 of the *Act* to repair and maintain the rental premises.

Based on the evidence before me, I find that the landlord and his spouse have provided sworn testimony and written evidence that the carpet in the tenant's living room and dining room needs replacement. The landlord testified that he believed that he could have the carpet replacement completed by November 1, 2013.

I also find that the landlord's written evidence supports the tenant's claim that there is damaged carpet in one of the bedrooms which also needs to be "fixed." In the absence of photographs of the carpet that is damaged in the bedroom, I accept the tenant's testimony that the damage to the carpet in the bedroom could not easily be repaired in a satisfactory way and as such, I find that it too requires replacement.

I order the landlord to replace the carpet in the living room, dining room and the bedroom referred to in the landlord's September 9, 2013 letter in this rental unit before November 1, 2013. I order the tenant to co-operate with the landlord to the extent necessary to ensure that the carpet replacement is completed by that date.

Section 65(1)(f) of the *Act* allows me to issue a monetary award to reduce past and future rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement." Based on the evidence before me, I find that there has been a loss in the value of the tenant's Tenancy Agreement pursuant to section 65(1)(f) of the *Act*, as a result of the landlord's refusal to replace carpet because the tenant was not paying his rent on time. I allow the tenant a retroactive reduction in rent of \$50.00 for September 2013 for loss in the value of his tenancy for that month.

I also allow the tenant to reduce his rent by a further \$100.00 for October 2013. In total, I order the tenant to reduce his October 2013 rent payment by \$150.00.

I dismiss the remainder of the tenant's application for a monetary Order for losses arising out of this tenancy without leave to reapply.

If the landlord has not replaced the carpet in the living room, dining room and at least one of the bedrooms as ordered in this decision before November 1, 2013, I order the tenant to reduce his monthly rent for November 2013 by a total of \$200.00. I further order that this \$200.00 reduction in monthly rent remain in place until the month after the carpet replacement ordered in this decision is completed. On the month following the completion of the carpet replacement, the tenant's monthly rent reverts to the level set out in the Agreement and as set out in the *Act* and the regulations.

Conclusion

I order the landlord to replace the carpet in the living room, dining room and the bedroom referred to in the landlord's September 9, 2013 letter in this rental unit before November 1, 2013.

I order the tenant to reduce his monthly rent by \$150.00 for October 2013.

In the event that the landlord has not replaced the carpet as ordered in this decision before November 1, 2013, I order the tenant to reduce his monthly rent for November 2013 by a total of \$200.00. I further order that this \$200.00 reduction in monthly rent remain in place until the month after the carpet replacement ordered in this decision is completed. On the month following the completion of the carpet replacement, the

tenant's monthly rent reverts to the level set out in the Agreement and as set out in the *Act* and the regulations.

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: September 24, 2013

Residential Tenancy Branch

