



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Middlegate Developments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

RP, FF, O

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application for an order requiring the Landlord to make repairs to the rental unit; to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution; and for "other".

The Tenant stated that he personally served the Application for Dispute Resolution to the female Landlord on October 04, 2013. The female Landlord stated that the Application was received on October 05, 2013.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord submitted documents to the Residential Tenancy Branch on November 07, 2013. The male Agent for the Landlord stated that copies of these documents were personally served to the Tenant on November 07, 2013. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

The Tenant submitted documents to the Residential Tenancy Branch on October 18, 2013 and October 25, 2013. The Tenant stated that these documents were personally served to an agent for the Landlord, although he does not recall the date of service. The male Agent for the Landlord stated that the documents were received on October 25, 2013 and they were accepted as evidence for these proceedings.

Issue(s) to be Decided

Is there a need to issue an order requiring the Landlord to replace the carpets in the rental unit?

Preliminary Matter

At the hearing the Tenant stated that he also wanted an order requiring the Landlord to clean the baseboard heaters. The Tenant was advised that his application for an order to clean the baseboard heaters was being refused, pursuant to section 59(5)(a) of the *Residential Tenancy Act (Act)*, because his Application for Dispute Resolution did not properly notify the Landlord of this claim, as is required by section 59(2)(b) of the *Act*.

In reaching this conclusion, I was strongly influenced by the absence of any reference to cleaning the baseboard heaters on the Application for Dispute Resolution that was received by the Landlord on October 04, 2013 or October 05, 2013.

Although the Tenant makes reference to cleaning the heaters in documents served to the Landlord after the Application for Dispute Resolution was served to the Landlord, I find that this is not sufficient notice of this claim. The Tenant must provide full details of the claim with the Application for Dispute Resolution itself. It is not acceptable to add issues by making reference to them in an evidence package, as it is entirely possible that the other party may find it unnecessary to read the evidence package if they do not believe the applicant has grounds for a claim.

The Tenant retains the right to file another Application for Dispute Resolution in which the Tenant applies for an order to clean the baseboard heaters, however the Tenant is reminded that the Tenant would bear the burden of proving that the Landlord's failure to clean the heaters is a breach of section 32(1) of the *Act*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on August 01, 2011. The Tenant is seeking an order requiring the Landlord to replace the carpet in the rental unit.

The Landlord submitted a copy of a condition inspection report which was completed on August 01, 2011 and was signed by a co-tenant, which indicates the carpets have several stains in the living room but are otherwise in reasonable condition. The Tenant stated that this report does not accurately depict the condition of the carpets at the start of the tenancy, as it does not address the "serious wear" in the hallways and it does not note that the carpets had a musty odour at the start of the tenancy.

The Tenant submitted a letter from the co-tenant who signed the condition inspection report. In the letter the co-tenant declared that the rental unit was not well lit when she inspected it; that the carpets were wet when she inspected the unit; that after moving into the rental unit she noticed a strong smell of industrial cleaner and mould; that after she moved in she noticed many stains and that the carpet was worn; that after she moved in she could feel that the underlay had deteriorated; and that after she moved she noticed that an excessive amount of dirt and fibers in the carpet.

The Tenant argues that the carpet needs to be replaced because it is very old; that the underlay is deteriorating; that the carpet is worn in several areas; and there is an excessive amount of carpet fibers and debris in the carpet.

The Landlord contends that the carpet is in reasonably good condition and that the Landlord has no immediate plans to replace it. In support of this position, the Landlord submitted several photographs of the carpets. The Tenant contends that the photographs do not accurately reflect the current condition of the carpets. He stated that it is difficult to take photographs that accurately depict the wear on the carpet.

The Landlord submitted a sworn affidavit from a representative of a carpet company who has sold carpet to the Landlord, in which the representative declared that the carpet in the rental unit was of good quality; that it was between 7 and 9 years old; that there are signs of wear on the carpet in the hallway; that the carpet is not defective; that the carpet is not unsightly; and that the carpet does not appear to be in need of cleaning.

The Tenant argues that this letter should be given limited weight, as the representative has a business relationship with the Landlord and is, therefore, biased. He stated that he has spoken with several carpet companies who have informed him that it is not possible to accurately date a carpet. He stated that he has spoken with a representative of the carpet company that installed the carpet, who advised him that the carpet was not good quality.

The Tenant contends that the carpet in the unit is over ten years old and that they should now be replaced as Residential Tenancy Branch policy guidelines suggest that carpets should be replaced after ten years.

The Tenant argued that the carpets should be replaced because numerous Tenants have lived in the rental unit prior to this tenancy and that the rental unit was not left in clean condition by the occupants who vacated the rental unit in December of 2004. The Landlord agrees that many tenants have lived in the rental unit since the carpet was installed but that the carpets have always been professionally cleaned at the end of the tenancy.

Analysis

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report that is completed in accordance with the legislations is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. I find that this report does accurately reflect the condition of the carpet at the start of the tenancy, as the Tenant has submitted insufficient evidence to establish that the condition inspection report does not accurately reflect the condition of the carpet at the start of the tenancy. In reaching this conclusion I was heavily influenced by the absence of any documentary evidence, such as a photograph or a statement

from an unbiased party, which shows the carpet was damaged beyond the staining noted on the condition inspection report. I do not consider oral or documentary evidence from the Tenant or co-tenant serves as a “preponderance” of evidence, given that they are not unbiased parties.

Section 32(1) of the Act requires landlords to provide and maintain residential property in a state of decoration and repair that complies with the 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.

I find that the Tenant has submitted insufficient evidence to establish that the flooring in the rental unit does not comply with section 32(1) of the *Act*, as the Tenant has not established that the flooring makes the rental unit unsuitable for occupation or that it does not comply with health, safety and housing standards required by law. In reaching this conclusion I was heavily influenced by the photographs of the carpet that were submitted in evidence by the Landlord. In my view, these photographs demonstrate that the carpet is in reasonably good condition.

In reaching this conclusion I was also influenced by the affidavit from the representative of the carpet company. I find that the information contained in the affidavit clearly indicates the carpet is not in need of replacement. While I accept that the representative has a business relationship with the Landlord, the Tenant has submitted no evidence to support his belief that the representative’s observations have been biased by that relationship. Given that those observations are corroborated by the photographs submitted in evidence, I find them reliable.

I note that the Tenant bears the burden of establishing that the carpet does not comply with section 32(1) of the *Act*, and the Tenant has submitted no photographs or documentary evidence from an unbiased party that establishes the carpets do not comply with section 32(1) of the *Act*. I therefore dismiss the Tenant’s application for an order requiring the Landlord to replace the carpet.

In determining this matter I have placed little weight on the undisputed evidence that several tenants have lived in the rental unit since the carpets were installed, as that is not particularly relevant to the condition of the carpet. I find it entirely possible that carpets could be in reasonably good condition after 15 years of use, providing the occupants care for them properly. Conversely, I find it entirely possible that carpets could be in deplorable condition after 1 year of use if they are not properly cared for.

In determining this matter I have placed little weight on the argument that the carpets should be replaced because of their age. Residential Tenancy Branch Policy guidelines do suggest that the useful life of carpets is ten years. This guideline is a general guide for determining the useful life of carpet when considering applications for additional rent increases and/or for determining compensation for damages. It does not intend to suggest that carpets must be replaced every ten years. In my view, a Landlord is only obligated to replace a carpet when it can be established that the carpet does not comply

with section 32(1) of the *Act* or if new carpets have been promised as a term of the tenancy.

Conclusion

I find that the Tenant's Application for Dispute Resolution has been without merit and that the Tenant is therefore not entitled to recover the fee for filing this Application for Dispute Resolution.

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 20, 2013

Residential Tenancy Branch

