



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lantern Properties Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, RP, RR, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order to have the landlord complete repairs and a monetary order. The hearing was conducted via teleconference and was attended by the tenant and her agent and three agents for the landlord. The tenant did have witnesses available but none were called in to provide testimony.

At the outset of the hearing the tenant's agent sought to amend the Application by including a determination on whether or not the tenant was entitled to have a cat. The landlord submitted that he was not prepared to deal with that issue at this hearing.

While I accept that part of the reason for having to go to dispute resolution regarding flooring replacement is somewhat related to the fact that the tenant has a cat I find that whether the tenant has authority under her tenancy agreement is not relevant to the outcome of this dispute. As such, I declined to accept the tenant's amended.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order to have the landlord replace the current flooring in the rental unit; to a monetary order and a rent reduction for repairs agreed upon but not provided and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 65, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the tenant and the previous landlord on October 29, 1994 for a month to month tenancy beginning on December 1, 1994 with a security deposit of \$285.00 and rent due on the 1st of each month. The current monthly rent is \$760.00. The tenancy agreement contains a clause that restricts the tenant from obtaining a pet without prior written consent of the landlord.

The parties had a previous hearing related to the replacement of carpet in this rental unit on December 4, 2013. In her decision dated December 4, 2013 the arbitrator

ordered the landlord to engage a carpet specialist to assess the carpet and then to follow the specialists recommendations. The decision also ordered that the tenant was at liberty to hire her own specialist and she could provide that report to the landlord. I note the tenant provide the landlord's and her own report as evidence.

The landlord's report indicates the carpet could be stretched and last up to another 3 years and that the damage was caused, at least in part, by pet damage. The tenant's report indicated that the carpets should be replaced and that none of the damage was caused by a pet, but rather natural deterioration. The tenant testified that the carpet had not been replaced during her entire tenancy.

During the interim, the landlord decided that it would be equally as expensive to stretch the carpets as it would be to replace the flooring. He provided an offer to the tenant that he would replace the carpet on two conditions. First, the tenant must pay a pet damage deposit and secondly that the tenant must sign an agreement stating that she would not get a new pet if her current pet dies.

The tenant seeks the following specific order:

"That the landlord replace the carpet in my rental unit with the same carpet colour and quality as the majority of the replacement carpets in my building and that the tenant be provided with a carpet sample for written approval of the carpet to be installed." [Reproduced as written]

The tenant seeks compensation in the form of a rent reduction for two distinct periods and at different rates for these two periods.

Firsts the tenant seeks compensation for the period from November 28, 2012 to September 28, 2013. The tenant submits this period represents the period the tenant had to wait for the landlord to paint the rental unit and clean the carpets as agreed to in his November 28, 2012 email. The tenant seeks a rent reduction in the amount of 10% of the total monthly rent of \$733.00 (at the time) or a total of \$647.48 for this period.

The landlord submits that he had advised the tenant to speak to the onsite manager to arrange for the work. The onsite manager states that he repeatedly requested the tenant put her request in writing to him and that it was not until it was in writing that he set up appointments to complete both the carpet cleaning and the painting.

Secondly, the tenant seeks compensation for the period of September 26, 2013 to March 31, 2014 (estimated completion date of replacement flooring installation). In this case the tenant seeks compensation in the amount of 25% of the total monthly rent. For the period between September 26, 2013 and November 30, 2013 monthly rent was \$733.00 and it was increased effective December 1, 2013 to \$760.00. The total compensation sought for this period is \$1,157.04.

The tenant seeks this rent reduction because of the folding of the carpets that intensified after the carpet cleaning and because the tenant has kept her belongings in boxes waiting for the resolution of this dispute between the parties. The tenant submits that because many of her belongings are boxed up and in the way and because of the tripping hazards she is unable to invite guests or conduct her usual Christmas entertaining.

Analysis

Section 32(1) of the *Act* requires a landlord 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 for the age, character and location of the rental unit make it suitable for occupation by a tenant.

Section 32(2) of the *Act* requires a tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

As such, there is no specific requirement to replace carpets in a rental unit after any specific duration of time or tenancy. However, Residential Policy Guideline 40 outlines the normal useful life of building elements and in the case of carpets indicates that 10 years is the usual life span of carpeting.

While there is dispute from both parties and their experts as to the cause of the damage to the carpets I am satisfied that a carpet that is at least 2 times the useful age of a carpet would require replacement regardless of any damage cause by the tenant or her pet. I am also satisfied, from the landlord's testimony, that it is likely just as expensive to stretch the carpet as it is to replace it.

As to the landlord's position that he is not willing to change the flooring unless the tenant agrees to pay a pet damage deposit and sign a document stating that she will not get another pet should something happen to her current pet, I find that the landlord is not entitled to restrict the flooring replacement contingent on these terms.

Section 20 of the *Act* restricts the landlord from collecting a pet damage deposit to either when the parties enter into a tenancy agreement or if the tenant acquires a pet during the term of the tenancy, when the landlord agrees that the tenant may keep the pet on the residential property.

Since the issue before me is the landlord's obligations under Section 32 to replace the carpet and as noted above I have not allowed the amendment to consider whether or not the tenant is entitled to have a pet I find these two issues to be distinct and separate.

The collection of a pet damage deposit does not guarantee that the landlord would be compensated for any damage caused by the pet at the end of the tenancy. At the end

of any tenancy the landlord must return the deposit within 15 days of the end of the tenancy and receipt of the tenant's forwarding address unless he submits an Application for Dispute Resolution to claim against the deposit.

As such, I find the landlord is not allowed, under Section 20 of the *Act*, to restrict the performance of his obligations under Section 32.

As to the condition that the tenant signs an additional agreement stipulating that she not acquire a new pet if anything should happen to her current pet, I find the landlord already has this agreement in writing. Clause 18 of the tenancy agreement signed by the parties on October 29, 1004 stipulates that tenant requires specific written approval from the landlord.

Again, I find the landlord is not allowed to restrict the performance of his obligations under Section 32 to obtain something that he already has.

To be successful in a claim for compensation or a rent reduction for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

As to the tenant's request for compensation for the period of November 28, 2012 to September 28, 2013, I note that the landlord's obligations under Section 32 do not specifically mandate a time frame for painting. The recommended useful life of interior paint as noted in Policy Guideline 40 is 4 years.

However, Residential Tenancy Policy Guideline 1 stipulates that the landlord is responsible for providing clean carpets at the start of the tenancy and during a tenancy the tenant is responsible for carpet cleaning. As such, I find the landlord was under no obligation to complete carpet cleaning. I also note that Policy Guideline 1 also stipulates the landlord is responsible for painting at reasonable intervals.

As such, I find that despite agreeing to complete carpet cleaning the landlord was not obligated to do so during the tenancy and therefore the tenant did not suffer a loss that resulted from a violation of the *Act*, regulation or tenancy agreement in regard to waiting for the cleaning to be completed.

As there was no evidence before me that the rental unit, prior to the painting completed in September 2013, was unsuitable for occupation, I find the landlord did not violate the *Act*, regulation or tenancy agreement by not completing the painting immediately after

the email agreement. And by extension the tenant has therefore not suffered a loss or damage resulting from a violation of the *Act*, regulation or tenancy agreement.

I am not saying in this decision that the landlord does not have these obligations for repairs, including painting, but I am confirming that waiting for the landlord to complete these repairs does not constitute grounds for the tenant to be compensated. However, I also note that when the tenant had an email from the landlord (owner of the property) confirming that he agreed to do the carpet cleaning and painting the requirement of the landlord's onsite manager to have the tenant submit additional paperwork was redundant and unnecessary. The landlord should have informed the onsite manager to complete the work as soon as possible.

In regard to the tenant's second claim for rent reduction for the period from September 26, 2013 to March 31, 2014, I find the fact that the tenant chose to not invite friends over or do her usual Christmas entertaining to be her own choice.

While I recognize that there may have been some inconvenience due to having boxes of belongings stored in her living space, from the photographs provided into evidence they do not appear to be cumbersome or in the way. Further, I do not find the ripples in the carpet were an impediment to the use of the rental unit for either the tenant's personal needs or for any invited guests. As such, I find the tenant has failed to provide sufficient evidence to establish she has suffered a loss as a result of the landlord breaching the *Act*, regulation or tenancy agreement

Conclusion

As noted above, I order the landlord to replace the carpeting of the rental unit with flooring of his choice suitable for its use and purpose. I dismiss the portion of the tenant's Application seeking to be able to approve the flooring selected by the landlord.

For the reasons note above, I dismiss the portions of the tenant's claim for all compensation. I order, however, the tenant is entitled to recover the \$50.00 fee paid by her for this application. I order the tenant may deduct this amount from a future rent payment pursuant to Section 72(2)(a).

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: March 24, 2014

Residential Tenancy Branch

