



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, FF, O

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants for the Landlord to make repairs to the rental unit, and to recover the filing fee.

An agent for the Landlord and one of the Tenants appeared for the hearing and provided affirmed testimony. The Tenants were the only party who provided written and photographic evidence prior to the hearing. The Landlord’s agent confirmed receipt of the Tenants’ Application and documentary evidence which I determined was served in accordance with the *Residential Tenancy Act* (the “Act”).

The parties were informed of how the proceedings would be conducted and no questions were raised in relation to these instructions. The parties were given an opportunity to make submissions, present their evidence and to cross examine each other on the evidence.

Issue(s) to be Decided

- Is the Tenant entitled to an order requiring the Landlord to make repairs to the rental unit?

Background and Evidence

Both parties confirmed that this tenancy started on April 5, 2002 on a month to month basis. Rent is payable by the Tenants in the amount of \$1,385.00 on the first day of each month. The Landlord’s agent confirmed that a move in Condition Inspection Report was completed at the start of the tenancy.

The Tenant testified that when they moved into the rental suite in 2002, the Landlord promised to replace the carpets on the main floor and second floor because they were filthy and dirty from pet stains and burn marks from previous renters who had operated a drug operation in the rental unit.

The Tenant explained that in 2008, the second floor carpet was replaced and that the main floor was not and despite repeated requests from the owner of the rental suite and the Landlord, this has not been replaced.

The Tenant was asked to explain why the carpet needed to be replaced. The Tenant referred to her photographic evidence which shows several kinks and waves in the carpet which the Tenant submitted were a safety issue. The Tenant testified that the carpet was worn out as it was 30 years old and referred to a document provided in written evidence from a carpet cleaning company which states "Original carpet 30 years old. Requires to be replaced". The Tenant also explained that there were burn marks in the carpet and stains which are not indicated in the photographic evidence.

The Tenant explained that they have the carpet cleaned professionally twice a year and but it cannot be cleaned any longer. The Tenant explained that her husband has developed allergies as a result of the carpet and that the underlay is also rotten.

The Tenant testified that the owner of the rental suite had offered to replace the carpet but only if they agreed to an excessive rent increase which she feels that she should not have to pay. The Tenant submitted that this was evidence that the owner knows that the carpet needs to be replaced.

The Tenant explained, that although she had not disclosed on the Application the request for repairs to be done other than the carpets, the Tenant was seeking repairs in her written evidence to the outside decking and stairs which had cracked and were rotting and the window seals which had been compromised and were becoming mouldy.

The Landlord's agent explained that she had approached the owner on several occasions and put forward the requests of the Tenants to have the carpet replaced but these have been denied.

The Landlord's agent agreed to the kinks in the carpet and that this would be remedied immediately by having the carpet stretched.

The Landlord's agent confirmed that the owner of the rental suite had asked the Tenants for a voluntary rent increase in exchange for replacing the carpets but this was

to reflect the fair rental market value of similar units and was not intended as an admission that the carpets did need to be replaced.

The Landlord's agent submitted that the Tenants had not provided any evidence that: the carpet is worn out and past its useful life; the underlay is rotten; the carpet is causing the Tenant's allergies; or that the rental unit was used previously for a drug operation.

Analysis

I attempted a discussion between the parties to see what renovations could be made voluntarily between the parties, but to no success. Therefore, I turn my mind to the Act in my analysis of the evidence before me.

Section 32 of the Act requires a Landlord to provide and maintain residential property in a state of decoration and repair that complies with the law and makes it suitable for occupation by the Tenant.

In relation to the replacement of the carpet, I find that a mere passing of a long period of time is not sufficient to compel the Landlord to replace it. A Tenant would need to show that the carpet lapsed in a state of decoration that required it to be replaced. In this case, I find that the Tenants have failed to provide sufficient evidence to show that the carpet has to be replaced.

The Tenant's photographic evidence is only sufficient to show that there are kinks in the carpet which I do find require remedy due to a safety issue. However, the photographic evidence does not indicate the staining, the burn marks, the rotting underlay or sufficient wearing or deterioration through reasonable wear and tear and that this is having an effect on the Tenant's health.

I also find that a two line comment by a professional carpet company indicating that the carpet needs to be replaced is not sufficient evidence for me to compel the Landlord to replace the carpets either. The expert testimony did not show why the carpet needed to be replaced and that it supported the reasons provided by the Tenant during the hearing.

In relation to the remaining repairs requested by the Tenants in their written evidence, I find that the Landlord was not put on sufficient notice or provided with sufficient evidence for the Landlord to provide rebuttal evidence. In addition, the Tenants would need to meet the same burden of proof and evidence requirements to prove these additional repair requests from the Landlord.

Based on the foregoing, pursuant to Section 62 of the Act, I order the Landlord to remedy all of the kinks and waves in the rental unit carpet by November 30, 2014.

As the Landlord has been ordered to do some of the repairs requested by the Tenant, I find that as the Tenants had to make the Application for this request to be granted, the Tenants are entitled to the recovery of their filing fee.

The parties agreed that they will work together with each other in respect to this dispute and attempting to reach mutual resolution for the remaining issues.

If the parties are not able to reach mutual consensus, then I provide the Tenants will leave to reapply for the replacement of the carpet. In addition, the remainder of the Tenants' Application for the additional repairs is also dismissed with leave to re-apply.

Conclusion

The Tenants' Application for **repairs** to the carpet is partially granted. The Tenants' Application for the **replacement** of the carpet and other items of the rental unit is dismissed with leave to re-apply.

I also grant the Tenants the recovery of their filing fee pursuant to Section 72(2) (a) of the Act. The Tenants are able to obtain this amount by deducting \$50.00 from their next month's rent. The Tenants should inform the Landlord of their intention to redeem this amount when making a reduced monthly rent payment.

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 12, 2014

Residential Tenancy Branch

