



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JDC PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, FF

Introduction

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

- an order to the landlord to make repairs (that is, install new carpeting, repaint, and re-caulk or re-grout the bathtub) to the rental unit pursuant to section 32; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was represented by its agent. The agent is an employee of the corporate landlord.

The landlord admitted service of the tenant's dispute resolution package, including all evidence. The tenant admitted service of the landlord's evidence. Both parties confirmed that they had sufficient time to review the opposing party's evidence.

Preliminary Issue – Amendment to Application

The agent confirmed that he is not the landlord, but rather the agent. The tenant's application sets out the agent as the landlord. I asked the tenant if he would like to amend his application to the correct legal name of his landlord. The tenant indicated that he wished to make this amendment.

Paragraph 64(3)(c) allows me to amend an application for dispute resolution.

As the landlord understood that this application was against the landlord and not the agent personally, I allowed the amendment as there is no undue prejudice to the landlord.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord make repairs to the rental unit? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began 1 November 2000. I was provided with a written tenancy agreement that was signed by both parties 8 October 2000. Current monthly rent is \$1,130.00.

The agent testified that the building was built in 1969. The agent testified that the rental unit is approximately 93 square meters (1,000 square feet). The rental unit is carpeted with the exception of the kitchen and bathroom. The agent testified that the carpet was installed in 1998. The parties agreed that the rental unit has not been painted since the tenant began occupancy. The tenant submitted that the age of the building requires that the repairs be made. The agent submits that the current state of the rental unit is not in violation of any bylaw and that it is in keeping with the age and character of the rental unit.

The tenant testified that there is mould under the carpet. The tenant testified that there are areas of the carpet that are buckled. The agent testified that these areas could be stretched.

The tenant testified that he is very careful to keep a clean apartment because his child has a medical condition that is made worse by unclean living conditions.

The tenant provided five photographs as documentary evidence. These photographs are of low resolution and it is difficult to see clearly what is shown.

Photograph 1: This photograph is a brown line on a tan background. The tenant testified that this photograph shows mould that has grown on the caulking/grout.

Photograph 2: This photograph shows a white area, a tan area and a dark grey area in parallel. The tenant testified that this photograph shows the transition piece that covers the edge of the carpet in the living room and linoleum in the kitchen. The tenant testified that the transition piece is no longer in place and represents a tripping hazard.

Photograph 3: This photograph shows a tan background with darker brown speckling. The tenant testified that this photograph show that there is mould on the bathroom ceiling. The agent submits that the mould accumulation in the bathroom is a result of the tenant failing to turn the fan on when he bathes and failure to clean. The agent testified that the tenant has not reported that his fan is broken. The tenant testified that he is very clean. The tenant testified that he wipes down the walls with a wet towel.

Photograph 4: This photograph shows a section of carpet. There is an area where the backing to the carpet is visible through the carpet fibres. The tenant testified that this is a photograph of the carpet in the master bedroom. The tenant testified that this is the only area of the carpet that shows this type of wear. The tenant testified that if he tried to wash this area of the carpet the damage would get worse. The landlord testified that he can replace this section of the carpet with a patch of carpet from the closet.

Photograph 5: This photograph shows a hand with a rash on the index finger. The tenant testified that this is a photograph of the tenant's child's hand. The tenant testifies that his child develops rashes on her hand. The tenant submits that he has determined that the rash is caused by the carpets because of a process of elimination and information from his family doctor. The agent submits that the tenant has failed to prove that the tenant's child's medical issues are caused by the condition of the carpet.

Analysis

Section 32 of the Act assigns the responsibilities of tenants and landlords for repair and maintenance of rental units. Subsection 32(1) of the Act requires a landlord to 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 the tenant. Subsection 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.

Residential Tenancy Policy Guideline, “1. Landlord & Tenant – Responsibility for Residential Premises” (Guideline 1) sets out that repair and maintenance may be required for:

- reasonable wear and tear; or
- damage or neglect by the tenant.

Guideline 1 defines “reasonable wear and tear” as the natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. The tenant is not responsible for reasonable wear and tear to the rental unit, or for cleaning to bring the premises to a higher standard than that set out in the Act. Guideline 1 establishes that an arbitrator may determine whether or not the condition of a rental unit meets the health, cleanliness and sanitary standards. These standards are not necessarily the standards of the arbitrator, the landlord or the tenant.

Guideline 1 sets out that the tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping. Guideline 1 also sets out that the landlord is responsible for painting the interior of the rental unit at reasonable intervals. Guideline 3 establishes that the tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness.

Residential Tenancy Policy Guideline “40. Useful Life of Building Elements” (Guideline 40) sets out the scope of its application:

This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages...

[footnotes omitted]

I find that Guideline 40 is not applicable in the matter before me as this application is neither an application for additional rent increase or damages. Thus, the mere passage of time is not sufficient to show that the rental unit requires repairs: the tenant must show that the repairs are required in order for the condition of the rental unit to meet health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes the rental unit suitable for occupation by the tenant.

The tenant has provided evidence that the carpet is buckled in places, has a worn patch, and has a broken transition strip. I accept the tenant’s evidence that these are issues; however, I decline to order the landlord to replace the carpet. The agent has testified that these issues can all be repaired. I am sympathetic that the tenant’s child

has health issues; however, the tenant has failed to show, on a balance of probabilities, that the cleanliness of the carpet falls below cleanliness standards and is causing his child's symptoms. Further, once the repairs are complete, the tenant will be able to make arrangements for the carpets to be cleaned. Therefore, all that is required to bring the carpet into compliance with the standards required by subsection 32(1) of the Act is to repair the carpet.

The tenant has provided a photograph of what appear to be mould spots on the ceiling of his bathroom. The tenant has not provided any evidence that there is a building deficiency that would cause mould to accumulate in the bathroom. The tenant has testified that he regularly wipes the walls with a wet towel. The tenant did not provide evidence of any cleaning efforts that he made to clean the spots off the ceiling. The agent submitted that this damage was caused by the tenant neglecting to turn on the bathroom fan when he bathes. The tenant has not provided evidence that the walls in any other area of the rental unit have deteriorated with age in such a way so as to require the landlord to repaint the rental unit. I find that the mould spots on the ceiling were caused by the tenant's failure to maintain the sanitary standards of the rental unit by allowing humidity to build up in the bathroom or, in the alternative, his failure to clean the ceiling. I find that the tenant has failed to show that the texture of the ceiling prevents him from cleaning the mould. I find that the tenant has failed to prove, on a balance of probabilities, that the rental unit requires repainting pursuant to subsection 32(1) of the Act.

The tenant has provided photographic evidence of what he testifies is mould on caulking. I am unable to tell from the photograph that there is mould. The caulking or grout appears to be brown—some areas are darker; however, I am unable to see any mould in that photograph. I find, on a balance of probabilities, that the tenant has failed to show that the grout or caulking requires repairs in order to comply with section 32(1) of the Act.

I order that the landlord undertake the following repairs:

1. patch the carpet section in the master bedroom that has exposed backing;
2. stretch the carpet so as to remove wrinkles; and
3. repair or reaffix the transition strip so as to remove the tripping hazard.

The landlord is ordered to undertake and complete these repairs on or before 30 April 2015.

The tenant seeks to recover his filing fee from the landlord. Subsection 72(1) permits an arbitrator to make a discretionary award of repayment of a filing fee from one party to

another. Generally this repayment is ordered where a party has been successful in its application. In this case, as the tenant has experienced marginal success in his application, I am excising my discretion to refuse to award recovery of the filing fee from the tenant.

Conclusion

I order that the landlord, no later than 30 April 2015:

1. patch the carpet section in the master bedroom that has exposed backing;
2. stretch the carpet so as to remove wrinkles; and
3. repair or reaffix the transition strip so as to remove the tripping hazard.

The tenant's application to recover his filing fee is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: March 11, 2015

Residential Tenancy Branch

