



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VALLEY REALTY SALES AND PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes mndc, rp, rr, mn, o, ff

Introduction

The tenants apply for an order for reimbursement for the cost of emergency repairs, a monetary order for loss of quiet enjoyment, an order for repairs, and an order for an abatement of rent pending the completion of repairs.

Issue(s) to be Decided

Are the tenants entitled to an order that the landlord repair the premises?

Are the tenants entitled to an abatement of rent?

Are the tenants entitled to compensation from the landlord?

Background and Evidence

This tenancy began on or about January 26, 2015. Rent is due on the 1st day of each month in the amount of \$1,025.00, and all rent is paid.

The tenants participated in a brief inspection of the premises prior to moving in, and signed a condition inspection report that indicated no damage to the flooring. However upon moving in, they noticed a pet odor emanating from the carpets, and particularly in the small bedroom. They immediately notified the landlord of the smell (on January 30, 2015). The landlord responded by email on January 30, 2015, acknowledging that the landlord was aware of some residual pet odor, and that the prior tenant had moved out as a result.

The tenants attempted to clean, deodorize and sanitize the carpet, and the landlord provided 2 bottles of a specialty cleaner. This treatment had only a temporary effect, and the odor returned. The tenants noticed that the odor was more prevalent at times, such as when the heat was on. The tenants had a family guest living with them in March, who used the small bedroom. The odor was prominent enough that the guest's possessions took on this odor.

The landlord and tenants attempted to find a mutual date for an inspection of the carpet by the landlord's worker, which proved difficult due to conflicting work schedules.

Eventually the landlord posted a formal notice, and entered the premises April 7, 2015. The landlord then determined that the small bedroom carpets would be replaced with laminate flooring. This work was completed on April 18, 2015.

Analysis

Section 33(1) of the Residential Tenancy Act defines the specific nature of repairs to premises that qualify as “emergency repairs”. The cleaning or replacement of flooring in this case does not qualify as an emergency repair. I therefore consider the claim as dealing with ordinary repairs to the premises. Any claim as to emergency repairs, or recovery of costs related to emergency repairs is therefore dismissed.

The tenant at the hearing confirmed that the requested repairs are now completed, and that no order for repairs is now required. That portion of the claim is therefore also dismissed.

The remaining issue is a monetary claim by the tenants, for breach of an implied covenant of quiet enjoyment in the tenancy agreement. The covenant of quiet enjoyment promises that the tenant shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant’s right to freedom from serious interferences with the tenancy for all usual purposes. Every tenancy agreement contains an implied covenant of quiet enjoyment. In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant must show that there has been substantial interference with the ordinary and lawful enjoyment of the premises by the landlord’s actions or inactions, that renders the premises, or a portion of the premises, unfit for occupancy for the purposes for which they were leased. In making such a determination, I must take into consideration the seriousness of the situation, and the length of time over which the situation has existed, and the actual steps taken by the landlord to address the concern.

I find that the exposure to the tenants and their guest to an ongoing odorous emission from the carpeting in the small bedroom, resulted in their inability to fully use and enjoy this room. Based upon the landlord’s email of January 30, 2015, and notwithstanding the Condition Inspection Report, I accept that the landlord knew that the carpets in the premises were problematic, to the point where a prior tenancy had ended as a result. It was reasonable for the landlord to first clean the carpets in an effort to address this issue, and the landlords did so prior to the tenancy starting. However, once the odor returned, it became incumbent upon the landlord to further address and remedy this issue. While the landlord did provide the tenants with some de-odorizing product, the

tenants' repeated and persistent complaints by the tenants made it clear by February 10, 2015 that further and direct attention was required by the landlord.

Some steps were taken by the landlord to have a worker inspect the premises and certainly the tenants' schedules contributed to some delay. The landlord eventually and properly resolved the problem, but it was not until April 18, 2015 that the flooring replacement occurred, well over 2 ½ months from the start of the tenancy, and more than 2 months after the date the landlord should have known that cleaning the carpet would not rectify the problem. In my view, this delay was unreasonable and was not entirely related to the tenants' scheduling issues. The loss of enjoyment suffered by the tenants is due in part to an unreasonable delay by the landlord in rectifying the odor problem.

The tenants request compensation equal to 20% of their rent over a 33 day period ending April 17, 2015. While I accept this percentage as appropriate, I consider that the period of loss actually commences earlier than this date, but also that an adjustment must also be made for delay attributable to the tenants' schedule. While not an exact science, I therefore find the loss of enjoyment period is equivalent to about 30 days, or one full rental period. The compensation awarded to the tenants is therefore $\$1,025 \times 20\% = \205.00 . The tenants are also awarded recovery of their filing fee of \$50.00. The total sum due by the landlord to the tenants is \$255.00.

This award can be satisfied by way of payment to the tenants directly by the landlord. Alternatively, the award can be satisfied by way of a reduction by the tenants from a future rent obligation to the landlord. For example, the tenants could reduce their rental payment for May to the sum of \$770.00.

Conclusion

The tenants have suffered a loss of quiet enjoyment. The landlord must pay the sum of \$255.00 to the tenants.

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: April 23, 2015

