



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties Limited
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, FF

Introduction

This hearing dealt with an application by the tenant for an order compelling the landlord to perform repairs and pay to have his furniture moved to allow for installation of new carpet. Both parties participated in the conference call hearing.

Issue to be Decided

Should the landlord be ordered to perform repairs and pay to move furniture?

Background and Evidence

This tenancy began in 2005. The rental unit is on the third floor of a building which houses a total of 70 units.

The tenant testified that he suffers from breathing problems which are exacerbated when the ventilation unit in his suite is on high. He reported the issue to the landlord and the parties agreed that in April, the landlord arranged for an HVAC technician to inspect the unit. The landlord entered into evidence a letter from the technician in which he stated that he looked at the fan through an inspection port, determined that the unit was making a normal amount of noise and that the “Ducting is well sealed where visible, draws air directly from outside and supplies it to the hallways.” The technician concluded that the operation of the fan was normal.

After the technician had inspected the fan, the tenant continued to complain to the landlord that the fan was blowing dust about his unit, so the landlord arranged for their employee, TG, to inspect the duct for dust. TG provided a letter which was entered into evidence. TG stated that he “taped up the housing to the air intake vent I his apartment because [the tenant] said the dust was bothering his breathing. When I open the housing up there was no signs of dust” [reproduced as written].

The tenant testified that the HVAC technician did not look for dust and he does not trust TG's opinion that there was no dust in the duct when he inspected it. The tenant argued that TG sealed the vent housing with plastic and duct tape and in his opinion, it was improperly done and ineffective to guard against the ingress of dust. The landlord responded that they had done everything within their power to address the tenant's concerns and there is nothing more they can do. The tenant asked that I order the landlord to have the vents and ducts professionally cleaned.

The tenant testified that in April, his kitchen sink was leaking and a plumber attended to repair the leak. After the leak was repaired, an employee of the landlord sealed the inside of the kitchen cabinet with silicone and placed expanding foam in the area around the pipes. The tenant believes that the silicone will break down over time and he requested that I order the landlord to arrange for a professional third party to inspect the sink to determine whether the caulking is an effective solution. The landlord testified that the leak was completely remedied by a plumber and that he caulked the cabinet at the tenant's request as he expressed an ongoing concern despite the absence of an active leak.

The tenant testified that the carpet in his unit requires replacing and the landlord has offered to replace the carpet, but will only do so if the tenant moves his furniture from the affected rooms. The tenant objected to having to bear the cost of moving the furniture and argued that this was the landlord's responsibility. The landlord testified that they were not willing to move the tenant's furniture for liability reasons. The landlord entered into evidence a letter from the tenant in which he requested that the carpet be replaced due to an odour and in which he acknowledged that "the carpet is somewhat my fault" and offered to pay for part of the replacement cost. The tenant requested that I order the landlord to pay for the cost of moving his furniture.

Analysis

Section 32 of the Act requires landlords to provide and maintain the property in a state of 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. This is the tenant's application and therefore the tenant bears the burden of proving that the landlord has failed to meet this obligation.

I find that the tenant has failed to prove that there is a problem with the air ducts in the building or in his unit. The landlord had the vent inspected by a professional and upon receiving further complaints from the tenant, arranged for TG to inspect the vent. Although the tenant believes the ducting has dust therein, he has not provided any evidence other than his ongoing health complaints to suggest that this is indeed the

problem. The tenant has not seen dust in the ducts and as the landlord's agent has viewed the inside of the ducts and has not found dust to be present, I am unable to find that the ducts are the cause of the tenant's breathing difficulties. I therefore decline to order that the landlord have the ducts cleaned as I find that the tenant has failed to prove on the balance of probabilities that such cleaning is required.

Although the tenant is uncomfortable with the silicone placed around his kitchen cabinets and with the expanding foam placed around the piping, he has not proven that any repair issue exists. I cannot order the landlord to perform repairs which are not required and I find that the tenant has failed to prove that such repairs are required.

The landlord has agreed to replace the carpet in the rental unit at the tenant's request, but neither party presented evidence showing the condition of the carpet. If the landlord had chosen to replace the carpet on their own initiative or if the carpet was no longer functional, I would order the landlord to pay for the cost of moving the tenant's furniture as I would have found that the tenant should not pay that cost. However, because I am not persuaded that the carpet no longer serves its intended purpose and that it requires replacement, I am unable to find that the replacement is necessary in order for the landlord to comply with section 32 of the Act. As the replacement is not necessary and as the tenant has requested that the carpet be replaced, I find the tenant should bear the cost of moving his furniture.

Conclusion

The tenant's claim is dismissed in its entirety.

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: January 08, 2016

Residential Tenancy Branch

