



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, ERP, RR, MNR, MNSD, O, OLC, and FF

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied for:

- a monetary Order for money owed or compensation for damage or loss;
- an Order requiring the Landlord to make repairs to the rental unit;
- authority to deduct the cost of repairs/services from rent;
- to recover the cost of emergency repairs;
- to recover the security deposit;
- for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement;
- for "other"; and
- to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

As the tenancy has not ended, the Tenant withdrew her application to recover her security deposit.

The Tenant stated that on February 11, 2016 the Application for Dispute Resolution, the Notice of Hearing, and 49 pages of evidence the Tenant submitted to the Residential Tenancy Branch on March 09, 2016 were served to the Landlord, via registered mail. The Agent for the Landlord acknowledged receiving these documents and they were accepted as evidence for these proceedings.

On March 14, 2016 the Landlord submitted 30 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was sent to the Tenant, via registered mail, on March 14, 2016. The Tenant stated that she received this evidence on March 17, 2015 and that she has not had adequate time to consider/respond to the evidence.

The Tenant objected to adjourning the hearing for the purposes of providing her with more time to consider/respond to the Landlord's evidence, in part, because she contends the Landlord had ample time to serve the evidence within the legislated time

period. The Tenant objected to the adjournment, in part, because she does not want to further delay these proceedings as she does not want to continue living in the rental unit with the carpets in their current condition.

The Agent for the Landlord stated that there was a delay in serving the Landlord's evidence because it took him some time to collect the evidence and he was not certain if the Tenant was continuing with the tenancy.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure stipulates that evidence that is intended to be relied on at the hearing must be received by the Applicant and the Residential Tenancy Branch not less seven days before the hearing. The Landlord submitted evidence to the Residential Tenancy Branch seven days prior to the hearing; however that evidence was not mailed to the Tenant until seven days before the hearing and was received by the Tenant five days before the hearing. I find that the evidence submitted by the Landlord does not comply with Rule 3.15, as it was not received by the Tenant within seven days of the hearing.

Rule 3.17 of the Residential Tenancy Branch Rules of Procedure stipulates that evidence not provided to the other party and the Residential Tenancy Branch in accordance with rule 3.15 may or may not be considered depending on whether the party can show that it is new and relevant evidence and that it was not available to be served in accordance with the timelines established by the Rules of Procedure. The documents submitted in evidence by the Landlord were all dated prior to March 15, 2016 and cannot, therefore, be considered "new". I find that, with reasonable diligence, the Landlord could have served the evidence in accordance with rule 3.15. I therefore decline to consider the evidence submitted by the Landlord.

After hearing from both parties on the issue of an adjournment, I did not adjourn the proceedings to provide the Tenant more time to consider the Landlord's evidence. The decision to not adjourn the hearing was due, in large part, to the fact this dispute has been on-going since the start of the tenancy and that a delay will result in the Tenant living with the allegedly dirty carpets for at least another 5-6 weeks, which I find would unduly prejudice the Tenant.

The decision to not adjourn the hearing was due, in part, to the fact that documents for these proceedings were mailed to the Landlord on February 11, 2016 and, in my view, the Landlord had ample time to submit evidence prior to March 15, 2016. I find that the need for an adjournment is directly related to the Landlord's neglect or intentional disregard for the deadline for service of evidence.

The Agent for the Landlord was advised that the Landlord's evidence was not being accepted; that he may refer to those documents during the hearing; and that if, during the hearing, it appears it is necessary for me to view the documents the hearing will be adjourned to provide the Tenant with the opportunity to consider/respond to the documents. The documents were not discussed during the hearing and there was no need to consider the issue of an adjournment after the hearing commenced.

The decision to not adjourn the hearing was due, in part, to the fact that the Agent for the Landlord was given the opportunity to introduce the Landlord's documentary evidence through oral testimony. I therefore find that the Landlord had a fair opportunity to present the Landlord's documentary evidence.

The Tenant and the Agent for the Landlord were given the opportunity to present relevant oral evidence, to ask questions, to make relevant submissions.

Issue(s) to be Decided

Is the Tenant entitled to a monetary Order or a rent reduction for costs associated with silverfish and/or a carpet allegedly in need of replacing?

Is there a need to issue an Order requiring the Landlord to make repairs to the rental unit and/or an Order requiring the Landlord to comply with the *Act* or the tenancy agreement?

Background and Evidence

The Agent for the Landlord and the Tenant agree that:

- the Tenant moved into the rental unit on November 12, 2015;
- a condition inspection report was not completed at the start of the tenancy;
- the Landlord and the Tenant entered into a fixed term tenancy agreement, the fixed term of which started on December 01, 2015 and ends on November 31, 2016;
- the Tenant agreed to pay monthly rent of \$2,800.00 for the first day of each month; and
- pro-rated rent was charged for November of 2015, in the amount of \$1,586.61.

The Tenant is seeking a rent reduction of 30% for living with the rental unit with substandard carpets.

In support of this claim the Tenant stated that:

- an agent for the Landlord who did not participate in these proceedings showed her the rental unit sometime near the beginning of November of 2015;
- when she viewed the rental unit the carpets were old but she believed they could be cleaned and she did not detect an odour;
- when she moved into the rental unit she believed the carpets had been cleaned but they were still considerably dirtier than when she first viewed the unit and they smelled of mould;

- based on her experience in the cleaning business, she concluded that the carpets had been soiled with some sort of organic matter, possibly from a steam cleaner, after her initial viewing of the rental unit;
- on November 11, 2015 she reported the problem with the carpet, via text message, to an agent for the Landlord who did not participate in these proceedings;
- she was advised that the Landlord would be replacing the carpets on February 09, 2016;
- after being advised that the carpets would be replaced the Agent for the Landlord told her that she would have to move her property out of the unit, at her own expense;
- she told the Agent for the Landlord that she would not move her property out of the unit but she agreed to cover her property and move it from room to room to accommodate the floor replacement;
- after being advised that the carpets would be replaced she agreed to move into the "guest suite" in the residential complex for three days to accommodate the floor installation;
- on February 05, 2016 she was advised that the Landlord would not be replacing the carpets;
- the Landlord never offered to clean the carpets;
- shortly after February 05, 2016 she hired a professional carpet cleaning company to clean the carpets;
- that she spent approximately three hours helping the cleaning company clean the carpet;
- she paid \$163.00 to clean the carpet, although she did not submit a receipt of the cleaning; and
- she believes the condition of the carpets is now reasonable, with the exception of the hallway carpet which is still badly stained.

In response to this claim the Agent for the Landlord stated that:

- he began working for the Landlord on November 29, 2015;
- he did not view the rental unit prior to the Tenant moving into the unit;
- he is not aware of the carpet being damaged prior to the start of the tenancy;
- he was first advised of the problem with the carpet in late November of 2015;
- he does not dispute that the Tenant reported concerns with the carpet to a previous agent for the Landlord on November 12, 2015 or November 13, 2015;
- he is aware that the Landlord offered to replace the carpet with laminate flooring;
- the flooring was to be replaced on February 09, 2016;
- the flooring was not replaced because the Tenant refused to comply with the Landlord's request to her furniture out of the unit;
- the Tenant did agree to live in the "guest suite" for three days to accommodate the floor replacement;

- the flooring contractor would not replace the flooring while the Tenant's property was in the rental unit, for liability reasons;
- the laminate flooring needed to be cut on site so it would have been very dirty;
- on February 05, 2016 the Tenant was advised that her flooring would not be replaced;
- the Landlord did not offer to clean the carpets in the unit; and
- he inspected the rental unit at the end of January and noticed staining on the carpet, which he believes occurred after the start of the tenancy.

The Tenant based her 30% rent reduction on:

- the cost and inconvenience of cleaning the rental unit;
- her need to wear slippers in the rental unit due to the cleanliness of the carpet;
- her inability to have company due to the cleanliness of the carpet;
- the need to leave some of her property in boxes until February 05, 2016 to facilitate the floor installation; and
- the need to close her bedroom door, for reasons of hygiene, when she is undergoing dialysis.

The Tenant submitted text messages regarding the condition of the carpet, which she exchanged with an agent for the Landlord who did not participate in these proceedings.

The Tenant submitted a screen shot of a photograph of the carpet which she contends was sent to an agent for the Landlord who did not participate in these proceedings, via text message. The text message is dated November 13, 2015. The Agent for the Landlord stated that the photograph did not represent the condition of the floor on November 13, 2015 and that the date on text message could have been altered.

The Tenant is seeking compensation for purchasing plastic storage bins, which she contends were necessary because there were silverfish in the rental unit.

In support of this claim the Tenant stated that:

- approximately two days after she moved into the rental unit she reported silverfish to an agent for the Landlord who did not participate in these proceedings;
- the Tenant had the rental unit fumigated on December 22, 2015 after the Landlord did not respond to her concerns about silverfish;
- the Landlord has compensated her for the cost of the fumigation;
- in December, January, and February she informed the Landlord that the problem with silverfish had not been resolved;
- sometime in February of 2016 the Landlord had the rental unit fumigated for silverfish; and
- she is withdrawing her claim for compensation for replacing her bed as the fumigation resolved that issue.

In response to this claim the Agent for the Landlord stated:

- the Tenant did report a problem with silverfish in the rental unit;
- the Tenant had the rental unit fumigated in December of 2015 shortly after the problem was reported;
- the Landlord has compensated the Tenant for the cost of the fumigation;
- in January of 2016 the Tenant told him that the problem with silverfish had not been resolved; and
- sometime prior to February 16, 2016 the Landlord has the rental unit fumigated for silverfish.

The Tenant is seeking of \$50.00 because she was not able to access her storage locker until the end of November of 2015.

In support of this claim the Tenant stated that

- she could not access her storage locker until the end of November of 2015;
- she reported the problem to the Landlord shortly after moving into the rental unit;
- she asked the on-site manager for assistance with accessing the storage locker and was told he could not assist;
- sometime near the end of November she was told the lock had been cut off of her storage locker; and
- she was able to access her storage locker after the lock was cut off.

In response to this claim the Agent for the Landlord stated that he had no knowledge of this issue but the on-site manager could have cut the lock off for the Tenant.

During the hearing the Tenant withdrew her claim of \$100.00 for Canada Post, \$800.00 for moving costs; \$200.00 for the move in/move out fee; and \$5,085.00 for rent at a new place.

Analysis

I favour the evidence of the Tenant, who contends that the carpet was in substantially worse condition at the start of the tenancy than it was when she first viewed the unit early in November of 2015, over the testimony of the Agent for the Landlord, who contends that the carpet was in the same condition at the start of the tenancy as it was when the rental unit was viewed by the Tenant prior to the start of the tenancy.

I favoured the evidence of the Tenant, in part, because her testimony regarding the condition of the carpet when she viewed the rental unit and when she moved into the rental unit is not refuted by anyone who viewed the carpet on those dates.

I specifically note that the Agent for the Landlord did not view the carpets prior to the start of the tenancy or at the start of the tenancy and that a condition inspection report was not completed at the start of the tenancy. I therefore find that any knowledge that the Agent for the Landlord had about the condition of the carpets at the start of the tenancy would be based on hearsay.

I find that the carpets were very dirty at the start of the tenancy. In reaching this conclusion I was heavily influenced by:

- the testimony of the Tenant, who stated they were dirty and that they had an odour;
- the text messages exchanged between the Tenant and an agent for the Landlord who did not participate in these proceedings, in which the Tenant informed the agent for the problem with the carpet within shortly after she moved into the rental unit; and
- the photograph of the carpet, dated November 13, 2015, which shows the carpet is badly stained.

Given that the Agent for the Landlord did not view the carpet on November 13, 2015, I placed no weight on his testimony that the photograph did not represent the condition of the carpet on that date. As the Landlord has not submitted any evidence to support the Agent for the Landlord's speculation that the date on this photograph has been altered, I have placed no weight on his speculation.

Residential Tenancy Branch Policy Guideline #1, with which I concur, stipulates that at the beginning of a tenancy the landlord is expected to provide clean carpets in a reasonable state of repair. This is consistent with section 32(1) of the *Residential Tenancy Act (Act)*, which requires a landlord to provide and maintain residential property in a stated 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 a tenant. Given the amount of rent being paid for this rental unit, I find it reasonable for the Tenant to expect to be provided with clean carpets at the start of the tenancy.

I find that the Landlord initially acted reasonably and responsibly when the Landlord advised the Tenant that the carpets would be replaced with laminate flooring once the Tenant informed the Landlord of the condition of the carpets in the rental unit.

I find that the Landlord did not act reasonably when the Landlord rescinded the promise to replace the flooring on the basis that the Tenant would not move her property from the rental unit to facilitate replacing the floor, at the expense of the Tenant.

It is the Landlord's responsibility to maintain the rental unit and the Tenant is not obligated to absorb any of the costs related to maintaining the rental unit. I therefore find that if the Landlord wanted the Tenant's property out of the rental unit to facilitate replacing the floor, the Landlord was obligated to pay for the costs of moving/storing her property.

Over the years that I have adjudicated residential tenancy matters I am aware of many occasions where tenants moved furniture from room to room to facilitate replacement of floors. In the absence of evidence to corroborate the Landlord's submission that the

flooring could not be replaced while the Tenant's property was in the rental unit, such as documentation from a flooring specialist, I cannot conclude that the flooring could not be replaced while some of the Tenant's property was being stored in another area of the rental unit.

I find that the Tenant was living in substandard conditions between November 12, 2015 and approximately the first week in February of 2016 when the Tenant cleaned the carpets in the rental unit. I accept the Tenant's explanation that the condition of the carpets interfered with her right to the quiet enjoyment of her rental unit because she had to live with dirty carpets; she was reluctant to have guests; she did not fully unpack in anticipation of the flooring being replaced; and she had to take additional precautions during her dialysis. I therefore find that the Tenant is entitled to a rent reduction to compensate her for the reduced value of the tenancy.

Determining the reduced value of a tenancy is highly subjective. Given that the Tenant has been able to use all areas of her rental unit since the start of the tenancy, I find that her claim for a rent reduction of 30% is excessive. I find that she is entitled to a rent reduction of 15% in compensation for reduced aesthetic value of the rental unit, the inconvenience and costs of having the carpet cleaned, and she did not unpack all of her boxes in anticipation of the floor replacement.

As the carpets were not cleaned until early February of 2016, I find that the Tenant is entitled to a 15% rent reduction of per diem rent for November of 2015, in the amount of \$237.99; a 15% rent reduction for December of 2015 and January of 2016, in the amount of \$840.00; and a rent reduction of 15% for the first week of February of 2016, in the amount of \$105.00.

I find that the Landlord did not act responsibly when, after determining that the flooring would not be replaced, the Landlord did not clean the carpet in the rental unit.

On the basis of the Tenant's testimony that all the carpets in the rental unit were reasonably clean, with the exception of the hallway, after the Tenant had them professionally cleaned, I find that the Landlord does not need to take further action in regards to those areas.

On the basis of the Tenant's testimony that the carpet in the hallway is still badly stained, I find that the Landlord is obligated to either clean the carpet or replace the carpet in the hallway. I hereby Order the Landlord to clean the carpet in the hallway and, if the cleaning does not adequately remove the stain, to replace the carpet in that area prior to April 30, 2016.

I find that the Tenant is entitled to a rent reduction of 5% in compensation for reduced aesthetic value of the rental unit for the last three weeks of February, in the amount of \$105.00, and for the month of March of 2016, in the amount of \$140.00. This rent reduction is significantly less than the compensation awarded for the first few months, in

large part, because the inconvenience/costs of cleaning no longer exist and the Tenant has been able to unpack her boxes.

I hereby authorize the Tenant to continue to reduce her rent by \$140.00 per month, commencing on April 01, 2016, until such time as the Tenant agrees that the carpet in the hallway has been adequately cleaned/replaced or until such time as the Landlord applies for an Application for Dispute Resolution and satisfies an Arbitrator that the hallway carpet has been adequately cleaned/replaced.

I find that the Landlord acted responsibly when the Landlord compensated the Tenant for the cost of fumigating the rental unit and when the Landlord fumigated the rental unit in February of 2016 after receiving a report of a continued problem with silverfish in the rental unit. I am unable to award the Tenant compensation for any inconvenience associated with the silverfish, as the Tenant has not applied for compensation for loss of quiet enjoyment as a result of silverfish.

I find that the Tenant has submitted insufficient evidence to establish that she needed to purchase plastic bins as a result of the silverfish. In reaching this conclusion I was heavily influenced by the absence of any evidence from a pest control expert that establishes property needs to be stored in plastic bins to protect from silverfish. I therefore dismiss the Tenant's claims for compensation for the cost of purchasing plastic bins.

On the basis of the undisputed evidence I find that the Tenant was unable to access her storage locker for the first two weeks of this tenancy and that she made reasonable efforts to access the locker by asking for assistance from the on-site manager and an agent for the Landlord.

Section 27(2) of the *Act* authorizes a landlord to terminate or restrict a non-essential service or facility if the landlord reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. I find that being unable to use a storage locker for two weeks is a restriction of a facility and that the Tenant is entitled to a rent reduction for that restriction. I find her claim of \$50.00 for this restriction to be reasonable.

I find that the Tenant's Application for Dispute Resolution has merit and I find that the Tenant is entitled to compensation, in the amount of \$100.00, for the cost of filing this Application for Dispute Resolution.

Conclusion

The Tenant has established a monetary claim, in the amount of \$1,577.99, which is comprised of \$1,427.99 in compensation for living with the dirty carpet; \$50.00 for being unable to use the storage locker for approximately two weeks; and \$100.00 in

compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Based on these determinations, I authorize the Tenant to reduce the next monthly rent payment by \$1,577.99 in full satisfaction of this monetary claim.

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 23, 2016

Residential Tenancy Branch