



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, ERP, RP, LRE, FF

Introduction

This was a hearing with respect to the tenant's application for a monetary award, for repair orders and for other relief. The hearing was conducted by conference call. The tenant called in and participated in the hearing. The landlord attended the hearing and was represented by legal counsel.

Issue(s) to be Decided

Is the tenant entitled to a monetary award and if so, in what amount?
Should the landlord be ordered to perform emergency repairs for safety reasons?
Should the landlord be directed to make other repairs?
Should conditions be placed on the landlord's right to enter the rental unit?

Background and Evidence

The rental unit is a strata title apartment in Vancouver. The tenancy has proceeded by a series of fixed term tenancy agreements beginning in 2013. The current tenancy agreement is for a fixed term commencing July 1, 2016 and ending June 30, 2017. Monthly rent in the amount of \$3,267.00 is payable on the first of each month. There was a previous dispute resolution hearing regarding this tenancy conducted by conference call on September 21, 2016. The hearing addressed the tenant's application to cancel a one month Notice to End Tenancy for cause. Other matters, including the tenant's application for compensation and for repairs and a rent reduction were dismissed with leave to reapply. The Notice to End Tenancy given by the landlord alleged that the tenant had caused extraordinary damage to the rental unit. The landlord presented evidence that the tenant removed carpeting from the rental unit and painted ceilings in the rental unit grey without the landlord's permission.

In a decision dated September 22, 2016 the arbitrator found that there was an agreement made between the landlord and the tenant that the flooring would be replaced and that the tenant informed the landlord that she would remove the carpet. The arbitrator made the following findings:

There was no evidence before me that the landlord responded to the tenant, directing her not to remove the carpets and no record of any verbal conversation. When the landlord attended at the rental unit on July 12, 2016 he failed to give the tenant any instructions regarding the carpet and I find it more likely than not that he failed to say anything to the tenant about the cut carpet. I have also reached this conclusion based on the silence of the landlord after July 12, 2016. He did not arrange installation of the flooring; he did not communicate with the tenant in any way and rejected her attempts to communicate. The only action the landlord took was to call the police and issue the eviction Notice. I found this absence of communication unusual as the tenant was not given any indication that she had done anything wrong, which left her confused and resulted in her repeated attempts to reach the landlord.

Therefore, I find that the tenant cannot be faulted for removing the carpet and that she did so after informing the landlord, who has not convinced me he directed the tenant to do otherwise.

In relation to the ceiling painting, I find that it was the landlords' contractor who painted the ceilings with paint supplied by the landlord. The tenant cannot be faulted.

The tenant filed this application for dispute resolution on October 3, 2016. She has claimed a monetary award of \$15,907.86 and orders directing the landlord to make repairs, including emergency repairs. The tenant claimed that the landlord agreed to repaint the rental unit and replace the 18 year old carpet. She said that she discussed the type of flooring with the landlord and they agreed that laminate would be installed. She said that after the agreement was made she removed the carpet with the knowledge of the landlord. This was done in July after the strata council approved the installation of laminate flooring. She testified that the landlord has refused to install the new flooring and has not completed the painting. She and her mother have been forced to live in the unit without flooring. The tenant said that the closet in the master bedroom came off the wall and she replaced with inserts purchased at Canadian Tire so she could hang her clothes. The tenant said that she has been living in the rental unit with bare concrete floors for months. The tenant and her mother do not have access to the balcony or the full use of the rental unit because belongings have had to be boxed and stored pending the completion of the flooring and painting. The tenant requested orders compelling the landlord to install the flooring and complete the painting. She

requested a monetary award including the refund of rent for 3 ½ months and a further \$4,000.00 as compensation for stress and anxiety for a total of \$15,907.86.

The landlord said that he had discussions with the tenant about plans to replace the flooring and repaint the rental unit. The tenant wanted the carpet replaced with laminate flooring. The landlord said that he agreed to replace the flooring with either carpet or laminate, but he did not commit to the installation of laminate flooring. He said that the tenant cut out portions of the carpet around the perimeter of the rooms in the rental unit without the landlord's permission. The landlord said that the strata council did not approve of the installation of laminate flooring. They gave a conditional approval but insisted upon a number of conditions that included a specific type of underlay, the placement of area rugs in the rental unit and a requirement that shoes not be worn in the rental unit when walking on the flooring. The landlord said that the conditions would require an amendment to the terms of the tenancy agreement. The landlord said that he decided that the flooring would be replaced with carpet because of the unacceptable strata conditions. The landlord also noted that this tenancy will end in June 2017, and the life of the flooring will extend far beyond the end of the tenancy; he submitted that the tenant should not be permitted to make decisions affecting the long-term use of the rental unit after her tenancy has ended.

After the previous dispute resolution proceeding was heard and decided, the landlord's former lawyer wrote to the tenant on September 30, 2016 and stated as follows:

In accordance with your agreement with (name of landlord), he will be arranging for new flooring to be installed in your suite. (Name of landlord) will arrange for new carpet to be installed. The timing of installation is yet to be determined. To the greatest extent possible, (landlord) will arrange the installation at a time that is mutually convenient. Are there some dates in October that are not convenient to you?

I look forward to hearing from you.

The landlord said that the tenant did not respond to the letter and has taken the position that she will not accept the installation of carpet in the rental unit. The landlord said the tenant has taken the position that she is entitled to the installation of laminate flooring.

The landlord said that he is ready, willing and able to install the flooring and remove the old ripped up carpet, but the tenant has refused to allow the landlord to enter the unit to have the work performed. The landlord said that it will be up to the tenant to make

arrangements for her furniture to be moved and stored temporarily as required to facilitate the carpet installation.

The landlord submitted that once the issue of cause to end the tenancy for ripping out the carpet was determined in the tenant's favour at the last hearing the landlord promptly undertook to install new carpet. The landlord submitted that the tenant is the cause of her own loss and damage; she removed the carpet and she has refused to allow the landlord to proceed with the installation of new carpeting. The tenant has thereby failed to mitigate her damages by frustrating the landlord's efforts to rectify the situation.

Analysis

The tenant initially took the position that the landlord was obliged to install laminate flooring in the rental unit. I do not accept her submission on this point. The strata council gave a conditional approval to the installation of laminate flooring, but the landlord decided for legitimate reasons that he would install carpet rather than laminate flooring. Pursuant to section 32 of the *Residential Tenancy Act* the landlord must provide a tenant with a rental unit that complies with housing standards and is suitable for occupation by the tenant, but the tenant cannot dictate the type of flooring that must be installed, particularly when the tenancy will soon end and the landlord must make a choice that will continue to serve as functional flooring through successive tenancies.

I accept that the landlord has been ready to install the new flooring at the earliest opportunity. During the hearing there was a protracted discussion about the need to remove the tenant's furniture from the rental unit in order to allow the new carpet to be installed. The tenant's position is that the landlord should be responsible for removing and storing the tenant's furniture if that is required.

At the hearing I directed that the landlord arrange to have his chosen carpet installer attend at the rental unit to inspect the unit and advise the landlord and the tenant what must be done with the tenant's belongings in order to allow new carpet to be installed. If it is possible to have the tenant's furniture moved temporarily into one area while another is carpeted for example, then the parties can make the necessary arrangements to have the items moved as needed. The landlord is responsible for the costs of removing and disposing of the old carpet and the costs for labour and materials to install the new carpet, but, if it is necessary to remove and temporarily store some of the tenant's furniture, I find that the tenant is responsible for arranging and paying for the removal and temporary storage costs.

With respect to the tenant's monetary claims, I find that the clothes supports in the closet failed. I was not provided with evidence to show that the failure was due to any fault or negligence on the part of the tenant. I find that she is entitled to recover the cost of a closet accessory that she purchased in the amount of \$110.86 and I grant the tenant an order under section 67 in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that court. With respect to the remainder of her monetary claim, I find that the landlord is not responsible for the tenant's loss. The tenant removed the carpet and she has thus far been responsible for the delay in having new flooring installed and the remainder of the work completed. Apart from the sum of \$110.86 awarded the tenant's monetary claim is dismissed without leave to reapply. The tenant has been largely unsuccessful on this application and I do not award a filing fee for this application.

Conclusion

The tenant has been awarded the sum of \$110.86. The remainder of her claims have been dismissed without leave to reapply.

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: December 29, 2016

Residential Tenancy Branch