



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

RP

Introduction

The Application for Dispute Resolution filed by the Tenant seeks an order that the landlord make repairs and replace a carpet.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Both parties acknowledged they had exchanged all relevant evidence. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on January 16, 2017. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issue to be decided is whether the tenant is entitled to an order for repairs?

Background and Evidence

The tenancy began on January 1, 2003. The present rent is \$704 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$285 on December 16, 2002.

The tenant seeks the following orders:

- The carpets be replaced.
- The rental unit be re-painted.
- The bathroom and kitchen lino be replace
- The metal strips between carpets be replace or repaired.

The tenant gave the following evidence:

- She has lived in the rental unit since 2003 and the carpets were there when she took possession
- Shortly after she took possession she placed her own carpet on the carpet that was in the rental unit. Her carpet is 50 years old and needs to be disposed.

- The carpet installed by the landlord is of two different colours and is original to the building. The original carpet has a hole in it.
- The linoleum in the kitchen needs to be replaced.
- She is a diabetic and worried of the medical problems that could arise if she cut her foot on the metal connectors between the carpet and the lino.
- The carpet in the hallway was not properly laid and is old.
- There are stains on the carpet in the bedroom. She acknowledged she caused a burn mark when she inadvertently dropped a cigarette ash.
- The walls and ceiling need to be repainted. It has not been painted since she took possession. In one area the drywall was not properly taped and is cracking.
- The ceiling in the bathroom is stained from a leak from the upstairs apartment.
- There are stains above the stove from many years of cooking.
- She cannot get her wheelchair into the living room.
- She presented 29 photos into evidence.

The landlord gave the following evidence

- The tenant has caused the damages when she failed to clean after cooking. Further, she is a smoker and this has caused stains in the walls in ceiling.
- The carpet in the living room is still good as it has been covered since the tenant took possession.
- The lino is adequate.
- The tenant has caused significant damage to the walls when driving her scooter.
- He agreed to look at the cracks in the wall.
- The reason the tenant covered the carpet was because she did not like the colour of the carpet.
- The rental property was constructed in 1992. There are 51 rental units in the property.
- The lino is in good shape.
- The landlord relies on a couple of decisions from other arbitrators who have held as follows:

“While I accept the tenant’s position that Policy Guideline #40 does stipulate the useful life on building produced, the intended purpose is for considering applications for additional rent increases and determining damage claims by landlord when tenants have caused damage to building products.

As such the mere fact that a building product has reached a certain age does not, in itself, become an automatic requirement for the item to be replaced. As such the burden is on the tenant to provide sufficient evidence to establish that the product requires replacement or repair.”

- The landlord provided a number of photos.

Analysis

Section 32 of the Residential Tenancy Act provides as follows:

Landlord and tenant obligations to repair and maintain

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Policy Guideline #40 provides that the life expectancy of an interior paint job is 4 years and the life expectancy of an interior carpet is 10 years.

Section 32(1) puts an obligation on the landlord to “provide and **maintain**” (my emphasis) residential property in a state of decoration of repair that (a) complies with health, safety and housing standards required by law and (b) **having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant**. I am satisfied the carpet in the bedroom and hallway is not suitable for occupation by a tenant having regard to the age, character and location of the rental unit. The tenant has been in the rental unit for the last 14 years and the carpet has not been replaced. It may very well be that the carpet is original to the building which would make it over 25 years old. I am satisfied that the carpet in the hallway and bedroom is in need of replacement because of its poor condition as proven by the oral evidence of the parties and the photos presented. However, I am not able to make an order that the landlord replace the carpet in the living room as it has been covered for most of the tenancy and the tenant failed to provide sufficient evidence that it is in need of replacement. It may very well be in both parties interest for the landlord to replace the living room carpet at the same time but I determined that it was not appropriate to order that the landlord make this replacement.

I ordered that the landlord paint the rental unit in its entirety. The rental unit has not been painted for at least 14 years. In my view the landlord has breached its obligations under section 32 in maintaining the property. Policy Guideline #40 provides that the expected life of an interior paint job is 4 years. I am satisfied the rental unit needs a new paint job so that the rental unit is suitable for occupation by the tenant having regard to the age, character and location of the rental unit. The tenant may bear some responsibility for the deterioration of the walls and ceiling because of her smoking. However, the landlord failed to present any evidence to establish any additional costs that would be incurred because of the tenant's conduct. As a result I determined that it was not appropriate to limit the responsibility of the landlord given the statutory obligation imposed by section 32.

I further determined that the lino needs replacement and that the metal strips between the carpet and lino be replaced as a safety measure.

Application for a Repair Order

I order that the landlord do the following:

- a. Replace the carpet in the bedroom and the hallway.
- b. Paint the rental unit in its entirety.
- c. Replace the linoleum in the bathroom and kitchen
- d. Replace the metal strips between the carpet and linoleum.

I further order that the repairs be complete by March 31, 2017.

This decision is final and binding on both parties.

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: February 26, 2017

Residential Tenancy Branch