



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, RR, FF

Introduction

This matter dealt with an application by the Tenants for repairs to the unit, site or property, for a rent reduction, and to recover the filing fee.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on or about March 30, 2018. The Landlord said he received the hearing package on April 9, 2018. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are there repairs to the unit, site or property to be completed?
2. Are the Tenants entitled to a rent reduction?

Background and Evidence

This tenancy started in April, 2010 as a fixed term tenancy and then renewed as a month to month tenancy. Rent is \$1,070.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$475.00 at the start of the tenancy. The Tenant said she thought a move in condition inspection report was completed at the start of the tenancy. Neither the Tenant nor the Landlord submitted the inspection report into evidence.

The Tenant said that they had a previous arbitration meeting in which the Landlord has been ordered to resurface the floors in her rental unit prior to May 31, 2018. The Tenant continued to say that she was unaware that she could request a rent reduction for the time she has waited for the floors to be repaired. The Tenant said she advised the Landlord by email that the floors needed repairs in November, 2016. The Tenant continued to say the Landlord met with the Tenant in the spring of 2017 and refused to repair the floors in the rental unit. The Tenant said she submitted many emails and text messages into evidence to show that she communicated with the Landlord many times to get the floors repaired. The Tenant said she is now requesting \$300.00 per month for 18 months as a rent reduction for the poor condition of the floors in her rental unit. The

Tenant said that the poor condition of the floors were proven in the last hearing so this part of her application is about compensation for the time she waited to have the floors repaired. The Tenant explained that she just pick \$300.00 per month as an amount that she thought was appropriate.

The Landlord said the Tenant did not loss the use of any space in the rental unit so he does not believe there is a loss to the Tenant and the Tenant should not be compensated. The Landlord continued to say if the Tenant is compensated the amount of \$300.00 per month for 18 months is too high and does not reflect the perceived loss of the Tenant. The Landlord said the floors have not been resurfaced as of yet, but the work will be completed by May 31, 2018 as ordered by the previous hearing.

Further the Landlord agreed the Tenant met with the owner of the rental complex in the spring of 2017 and the owner said they would not be resurfacing the floors in the Tenant's rental unit.

The Tenant said the owner said it was because the Tenant had a cat that damaged the floors.

The Tenant said her cat did not damage the floors and she has done many improvements to the unit at her own cost.

Both parties said the floors were not perfect at the start of the tenancy.

The Tenant continued to say that the carpets in the common areas in the rental complex are 20 plus years old and have not been cleaned for over 10 years. Consequently the Tenant has applied for the Landlord to replace the carpets in the common areas of the rental complex.

The Landlord said he agrees the carpets in the common areas are over 20 years old and need to be replaced. The Landlord said they will be replacing the carpets by the end of the year.

The parties were offered an opportunity to settle the dispute with a mediated settlement agreement and there was a good discussion but no agreement was reached.

The Tenant said in closing that this has been a long and difficult process to get the Landlord to repair and replace the flooring in the rental unit and complex. The Tenant concluded that the Landlord should have made the repairs without these hearings.

The Landlord said he had nothing to add in closing.

Analysis

Section 32 of the Act guides the tenant's and landlord's obligations in respect repairs.

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.

Residential Tenancy Act Regulation – Schedule; Repairs 8, in relevant part, states:
Repairs

- 8** (1) Landlord's obligations:
- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.

Further the Residential Tenancy Policy Guidelines #40 addresses the useful life of **FINISHES – Flooring** as, carpets is 10 years. I accept both parties testimony that the carpets in the common areas of the rental complex have not been resurfaced for at least 20 years.

The Landlord gave affirmed testimony that the carpets in the common areas have not been replace in 20 years and need to be replaced. Further the Landlord said the carpets would be replaced by the end of the year. Consequently, I find the Tenant has established grounds to have the Landlord replace the carpets in the common areas. I order the Landlord to replace the all the carpets in the common areas of the rental complex by December 31, 2018.

With regard to the Tenants claim for compensations of a rent reduction of \$300.00 for 18 months in the amount of \$5,400.00, I have reviewed the testimony, evidence and the legislations and I find the following:

Policy Guideline #16 says:

A. LEGISLATIVE FRAMEWORK

Under section 7 of both the Residential Tenancy Act and the Manufactured Home Park Tenancy

Act:

- a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and
- the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Under section 67 of the Residential Tenancy Act and section 60 of the Manufactured Home Park Tenancy Act, if the director determines that damage or loss has resulted from a party not complying with the Act, the regulations or a tenancy agreement, the director may:

- determine the amount of compensation that is due; and
- order that the responsible party pay compensation to the other party.

B. DAMAGE OR LOSS

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- loss of access to any part of the residential property provided under a tenancy agreement;
- loss of a service or facility provided under a tenancy agreement;
- loss of quiet enjoyment (see Policy Guideline 6);
- loss of rental income that was to be received under a tenancy agreement and costs associated; and
- damage to a person, including both physical and mental.

C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. **It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.** In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;

- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the Residential Tenancy Act for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- **“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.**
- “Aggravated damages” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

D. AMOUNT OF COMPENSATION

In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

E. LIMITATION PERIODS

Under section 60 of the Residential Tenancy Act and section 53 of the Manufactured Home Park Tenancy Act the limitation period for filing an application for dispute

resolution is two years from the date the tenancy ends or is assigned unless the Act sets specifies a different limitation period for the type of claim in question. Additionally, a party to a claim can file a counterclaim outside of the limitation period, as long as they do so before the dispute resolution hearing takes place.

Further Section 65 of the Act says: (1) without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

- (a) that a tenant must pay rent to the director, who must hold the rent in trust or pay it out, as directed by the director, for the costs of complying with this Act, the regulations or a tenancy agreement in relation to maintenance or repairs or services or facilities;
- (b) that a tenant must deduct an amount from rent to be expended on maintenance or a repair, or on a service or facility, as ordered by the director;
- (c) that any money paid by a tenant to a landlord must be
 - (i) repaid to the tenant,
 - (ii) deducted from rent, or
 - (iii) treated as a payment of an obligation of the tenant to the landlord other than rent;
- (d) that any money owing by a tenant or a landlord to the other must be paid;
- (e) that personal property seized or received by a landlord contrary to this Act or a tenancy agreement must be returned;
- (f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;**

I find the Tenant has established that the Landlord had an obligation to repair the flooring in the rental unit as determined in the previous arbitration hearing and the Landlord was aware of the Landlord's obligation to do the repair from November 2016 to the present time. I find the Tenant has provided evidence in the form of an email to the Landlord in November 2016 requesting the floor be repaired and the Landlord refused to do the repairs in a conversation with the Tenant in the spring of 2017. Therefore, I find the Tenant has proven the time period of 18 months for the compensation.

With regard to the amount of compensation the Tenant said she just picked the number of \$300.00 per month and it seemed appropriate. The Landlord responded that the Tenant did not lose the use of the floor so there should not be any compensation. I

find that the tenancy was devalued by the condition of the floor and the lack of action by the Landlord in repairing the floor. Further it is the responsibility of the Tenant/claimant to prove the amount of compensation and in this situation the Tenant has not done that. Consequently I find this situation is a **Nominal Damage** claim and I award the Tenants \$50.00 per month for 18 months in the amount of $\$50 \times 18 \text{ months} = \900.00 .

Further as the Tenants have been partially successful in this matter I order the Tenants to recover the filing fee of \$100.00 from the Landlord. I order the Tenants to reduce the next months rent payment by \$1,000.00. The next rent payment is adjusted from \$1070.00 to \$70.00.

Conclusion

The Landlord is ordered to replace all the carpets in the common areas of the rental complex by December 31, 2018.

The Tenants are ordered to reduce their next rent payment from \$1,070.00 to \$70.00 as full compensation for the Tenants' application.

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 25, 2018

Residential Tenancy Branch