Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN & BROS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order to the landlord to make repairs to the rental unit pursuant to section 32.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package and the 1st documentary evidence package via Canada Post Registered Mail on August 23, 2018. The tenant stated that a second documentary evidence package was served to the landlord in person on September 27, 2018 consisting of a copy of the condition inspection report and a photograph of carpet. The landlord stated that they also submitted a copy of the same documents on September 27, 2018, but a review of the database showed no submissions on behalf of the landlord. The landlord argued that a second documentary evidence package was not served to them. The tenant was unable to provide sufficient evidence to support this claim.

I accept the affirmed testimony of both parties and find that both parties have been sufficiently served with the notice of hearing package. Although both parties provided conflicting evidence regarding the tenant's second documentary evidence and the landlord's submission of documentary evidence, I find that both parties have referred to the same documents submitted on September 27, 2018. As such, I find that neither party would be prejudiced in continuing with the hearing. Both parties are deemed sufficiently served with the submitted documentary evidence as per section 90 of Act.

At the outset of the hearing the parties both agreed and acknowledged that the tenant seeks two things.

1) Replacement of the carpet and underlay in the rental unit.
2) Re-glazing of the bathtub and sink.

During the hearing it was clarified that the tenant has not provided any notice to the landlord regarding the repair/re-glazing of the bathtub and sink prior to the application being filed. As such, this portion of the tenant's application is dismissed with leave to reapply. The landlord is considered to have notice of the tenant's request for repairs/re-glazing of the bathtub and sink. Both parties agreed that the landlord shall give notice to the tenant to attend and inspect the bathtub and sink for possible repairs/replacement. The hearing shall proceed on the replacement of the carpet and underlay issue only.

Issue(s) to be Decided

Is the tenant entitled to an order for the landlord to make repairs by replacing the carpet?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Neither party provided any details of this tenancy except that it began in 2011.

The tenant seeks an order for the landlord to replace the carpet. The tenant provided written details stating that the repairs are required as the carpet is 10-13 years old and falling apart. The tenant has requested of the landlord approximately 22 months ago that the landlord replace the carpet, but that the landlord has only made patchwork repairs in 5 locations. The tenant stated that there is degradation in many other locations as well as the noted cigarette burns in the middle of the living room area and as such the carpet needs to be replaced.

The landlord disputes the tenant's claims stating that when the tenancy began the rental unit was offered "as is" and that the monthly rent was reflected in the agreement as below market rate. The landlord argued that there is nothing wrong with the carpet with the exception of it being old and worn.

The tenant has submitted in support of the claim 15 photographs, of which 10 are of carpeted areas. Two photographs show cigarette burns that both parties agreed were present at the beginning of tenancy. Four photographs depict the carpet with patchwork repairs. Four photographs depict the carpet with loose threads or rips.

Analysis

Subsection 32(1) of the Act requires a landlord to maintain residential property in a state 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 the tenant.

Pursuant to subsection 62(2) of the Act, I may make any finding of fact or law that is necessary or incidental to the making of decision or order under the Act. In this case, the tenant seeks an order for the landlord to make repairs by replacing the carpet/underlay and re-glazing the bathtub and bathroom sink.

Residential Tenancy Branch Policy Guideline #40, Useful Life of Building Elements state in part,

This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases[1] and determining damages[2] which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

This guideline states regarding the useful life of carpet to be 10 years and for a bathtub or sink, 20 years.

In this case, I find that the rental building being approximately 40-45 years of age and that based upon the tenant's submission the carpet is approximately 10-13 years old. A review of the carpet photographs does show a used and worn carpet. However, it is also undisputed that when required the landlord repairs the carpet areas that are damaged by replacing patches. I find that this is sufficient in the circumstances as the worn, frayed areas depicted in the photographs do not raise any health or safety standards based upon the age of the rental unit. It is the choice of the landlord to repair instead of replace the carpet based upon their situation of maintaining a below market rent rate. The tenant has failed to provide sufficient evidence requiring the landlord to replace the carpet/underlay.

Conclusion

The tenant's application is dismissed.

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: October 05, 2018

Residential Tenancy Branch