



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding ALPINE COURT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, RP, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for an order for the Landlord to completed emergency repairs and/or regular repairs, and for the recovery of the filing fee paid for this application.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing, as was the Tenant. The Landlord confirmed that he received the Notice of Dispute Resolution Proceeding package and copies of the Tenant’s evidence by registered mail. The Landlord did not submit any evidence prior to the hearing.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Should the Landlord be ordered to complete emergency repairs?

Should the Landlord be ordered to complete regular repairs?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Tenant provided testimony that the tenancy started on June 1, 2007. Monthly rent was initially \$750.00 but was recently increased from \$1,165.00 to \$1,220.00. A security deposit of \$375.00 was paid at the outset of the tenancy.

The Landlord submitted that he is a new agent for the Landlord and therefore did not have some information on the history of the tenancy. He was in agreement as to the current monthly rent.

The Tenant testified that emergency repairs are needed in the bathroom. She stated that the bathroom flooring and the bathtub surround requires repairs. The bathroom floor is peeling away from the floor underneath, causing concern for possible mould or asbestos exposure. The bathroom surround is also coming away from the wall, leaving an opening that allows water to get in, causing further concern for mould growth.

The Tenant stated that she spoke to previous agents for the Landlord regarding this issue and was advised the bathroom would need to be assessed for the presence of mould or asbestos before repairs are undertaken.

The Tenant was planning to undertake repairs herself, but stated that an assessment must be conducted first, due to the moisture issues possible leading to mould and potential for asbestos given the age of the building. Photos of the floor and the bathtub surround were submitted into evidence.

The Landlord stated that he is not a mould expert and unsure of the presence of asbestos in the rental building. Although unsure of the exact age of the building, he noted it was likely built around 1970. He testified as to his willingness to repair the floor and the tub surround in the bathroom and can seal in any asbestos that may be present. He noted that he can sanitize in case of any risk of mould, but the Tenant will be responsible for the costs of any further mould inspection.

As for her request for regular repairs, the Tenant testified that the carpet in the home was aged and well worn when she moved in 11 years ago. She vacuums regularly and has also had the carpet steam cleaned. However, the seams of the carpet are coming apart, causing it to be worn right through in some areas. There are also parts of the carpet that have buckled. Photos of the carpet were submitted into evidence.

The Landlord was unsure as to when the carpet was new. He stated that there was no evidence as to the state of the rental unit when the Tenant moved in. The Landlord provided testimony that the carpet in the building entryway was probably the same age and remains in good condition due to how it has been cared for.

The Tenant also stated the need for some repairs in the kitchen, mainly with the kitchen cabinets, kitchen countertops and the wallpaper/paint.

The Tenant stated that she was told the kitchen cabinets and countertops would be fixed when she moved in. She believes they were likely original when the building was new. She stated that the countertops are splitting from the particle board, which is causing water to get underneath. This is also causing the particle board under the sink to chip off and peeling to occur around the edges of the sink. The Tenant noted that as a result, the sink is loose.

The Tenant testified that the material of the cabinets has also worn away in some areas and that they were in a similar condition when she moved in. The Tenant submitted that the wallpaper and paint in the kitchen is also peeling. Photos of the cabinets and countertops were submitted into evidence.

The Landlord testified that the Tenant's request for repairs in the kitchen may require a complete remodel of the unit, which is expensive and would also require the Tenant to vacate the rental unit. The Tenant

confirmed that she is not asking for the unit to be remodelled and that she would provide access and accommodations for completing the repairs.

The Tenant testified that the fuse box in the rental unit was replaced in 2007 and that at the time she was promised a cover would be installed over the box. However, the Tenant stated that no cover was ever provided. The Landlord responded by stating that he would see if a cover was available. The Tenant asked that if there isn't a cover, if the drywall around the fuse box could be repaired.

The Tenant also requested repairs to the electrical in the bedroom. She stated there are two electrical outlets, one of which doesn't work.

The Tenant originally claimed an issue with the refrigerator, which she states has since been resolved.

The Tenant testified that she has notified property management regarding these issues many times over the years. She submitted that she left a letter with a previous manager, but did not keep a copy of this letter. She also had text message with another previous manager and testified as to many verbal conversations.

An undated letter outlining her concerns and request for repairs was submitted into evidence. The Tenant stated that this was provided to the previous property manager on or around August 1, 2018 when she paid rent for August.

The Tenant testified that after the letter was provided, the manager came in and took photos and agreed that repairs were needed in the bathroom, the kitchen and with the carpet. The manager at the time stated that he would check with the owner and get back to her. When no steps were taken towards the repairs, the Tenant filed an Application for Dispute Resolution.

During the hearing the parties came to a settlement agreement on some of the issues which will be outlined below. The remaining claims of the Tenant will be outlined in the Analysis section of this decision.

Settlement

During the hearing, the parties were offered the opportunity to discuss a possible settlement agreement. They were able to come to a settlement of some of the claims of the Tenant, but left the remaining claims to be decided upon as an agreement could not be reached on all of the claims.

Pursuant to Section 63 of the *Act*, the terms of the settlement agreement are outlined below. Both parties confirmed their understanding that entering into a settlement agreement is voluntary. The final and binding nature of the settlement agreement was also explained, and the parties confirmed their understanding.

1. The agent for the Landlord will arrange a time with the Tenant to come to the rental unit and assess the issue with the electrical outlets in the bedroom.
2. Should the electrical issue be able to be fixed by the agent, the repairs will be completed by the end of the day on October 14, 2018.

3. Should the agent for the Landlord not be able to repair the electrical issues, a licensed professional will be contacted, and an appointment scheduled within 14 days from the date of this hearing.
4. The agent for the Landlord will find out if there is a cover available for the fuse box. If not, the drywall around the fuse box will be fixed by the end of the day on October 14, 2018.
5. The agent for the Landlord will assess the issues in the bathroom and will determine if mould or asbestos may be a problem. If not concerned about mould or asbestos, the floor will be glued down, and the tub surround repaired.
6. If the agent for the Landlord is concerned about the possibility of mould or asbestos in the bathroom, or if he is unable to determine whether this is a concern, a licensed professional will be called for an assessment. The professional will be contacted, and an appointment booked within 14 days from the date of the hearing.

Analysis

The remaining issues that the parties were not able to agree upon were the Tenant's claims for repair of the carpet, the kitchen cabinets, kitchen countertop, and the wallpaper and paint in the kitchen.

I refer to Section 32(1) of the *Act* which states the following:

- 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.

I accept the testimony of both parties that this is an older building. Although the Landlord was not sure of whether repairs have been completed in the rental unit during the Tenant's tenancy, I accept the testimony of the Tenant, along with the photos submitted into evidence, and find it unlikely that any upgrades to the carpet or kitchen have been completed during the 11 years that the Tenant has resided in the rental unit.

I also note that in accordance with Section 32(2), a tenant is responsible for repairing any damage caused by their own actions. However, I do not find evidence before me that any of the repairs requested by the Tenant are due to her own actions, and instead I find that the requested repairs are related to the age of the rental unit, as well as regular wear and tear over the years.

A landlord is unable to complete repairs if they do not know about them. However, I find evidence before me that the Tenant has made several attempts over the years to advise the Landlord of her concerns, most recently in August 2018 when a letter was provided to an agent for the Landlord.

Although the agent that attended this hearing on behalf of the Landlord is new to this property and therefore unable to confirm receipt of any verbal or written communication regarding the Tenant's request for repairs, I accept the testimony and evidence of the Tenant that they have made several attempts to contact the Landlord.

As for the carpet, as the Tenant submitted that the carpet is more than 11 years old, given that it was not new at the time her tenancy began, I refer to the Policy Guidelines. *Residential Tenancy Policy Guideline 40: Useful Life of Building Elements* states that the useful life of a carpet is 10 years. The photos of the carpet submitted into evidence show significant wear on the carpet, leading to areas that have worn right through.

As the carpet has passed its useful life expectancy, I determine that the carpet should not be repaired, but instead that it be replaced.

As for the Tenant's claim for repairs in the kitchen, based on the photos and the Tenant's evidence, I find it likely that the countertops and the cabinets have not been repaired or replaced in many years. The photos clearly show the cabinets and counters in poor condition. However, *Policy Guideline 40* states that useful life expectancy of cabinets and counters as 25 years, although I do not have evidence on the age of the counters or cabinets.

However, I find it reasonable that the Landlord be required to repair or replace the countertops and cabinets. As the Tenant testified as to the kitchen sink being loose in the counter, this is of significant concern for the safety of the Tenant and the property. As such, any repairs should take this into consideration and ensure that the sink is stable in the countertop.

The Tenant also noted that the wallpaper and paint in the kitchen are peeling off the wall. However, I find that I have insufficient evidence before me to establish the condition of the wallpaper and paint in the kitchen. Therefore, I decline to order the Landlord to paint or replace wallpaper in the kitchen. I do caution the Landlord that the *Useful Life of Building Elements* policy states that the useful life of interior paint is 4 years.

I note that a landlord has a responsibility to keep up with the maintenance of a rental unit, regardless of how long a tenant resides in the unit. Upgrades and regular maintenance are not only required between tenancies.

The Landlord is ordered to complete the following:

1. Replace the carpet throughout the rental unit.
2. Repair the countertop and ensure that the sink is stable in the counter.

3. If it is not possible to repair the countertop in a way that looks reasonable, is safe and prevents water from leaking underneath, then the countertop should be replaced.
4. Repair the kitchen cabinets so that they are in a reasonable condition in function and appearance.
5. Should it not be possible to repair the kitchen cabinets in this manner, then the cabinets should be replaced.
6. The above-noted repairs must be completed by January 4, 2019, which is three months from the date of the hearing.
7. The Tenant must provide access to the rental unit as required to complete the repairs. The Landlord must follow the process for entry to the rental unit as outlined in Section 29 of the *Act*.

As the Tenant was successful in her Application for Dispute Resolution, I award the recovery of the filing fee in the amount of \$100.00, pursuant to Section 72 of the *Act*. The Tenant may deduct \$100.00 one time from her next monthly rent payment.

Conclusion

The parties are ordered to follow the terms of the **settlement agreement** as outlined above.

The parties are ordered to follow the **terms outlined in the Analysis** section of this decision.

Pursuant to Section 72 of the *Act*, **the Tenant may deduct \$100.00 one time from her next monthly rent payment** to recover the filing fee paid for this 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: October 10, 2018

Residential Tenancy Branch