



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BRIGHTSIDE COMMUNITY HOMES FOUNDATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RP, FFT

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on November 2, 2018, wherein the Tenant requested an Order that the Landlord make repairs to the rental unit as well as recovery of the filing fee.

The hearing was conducted by teleconference at 9:30 a.m. on December 11, 2018.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Landlord was represented by A.F., the Tenancy Coordinator, and G.M., the Director of Operations.

At the conclusion of the Tenant's testimony, she claimed that she did not receive the Landlord's evidence. She stated that, after receiving the notice of registered mail, she went to the post office and the staff could not find the package.

A.F. testified that the Landlord's evidence package was sent to the Tenant on November 27, 2018 by registered mail. She confirmed that as of the date of the hearing the package had yet to be picked up. A copy of the registered mail tracking number is included on the unpublished cover page of this my Decision.

During the hearing I reviewed the Landlord's evidence with the Tenant. This evidence included copies of communication between the Tenant and the Landlord as well as photos of the rental unit. As this evidence had already been received by the Tenant in the course of her dealings with the Landlord, and included photos of her carpet, I found no prejudice in considering this evidence in making my Decision. The Landlord also

provided a print out from the internet providing information for dealing with dust mites; as I did not find that information to be relevant to my Decision, I decline to consider it.

No other issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

### Issues to be Decided

1. Should the Landlord be ordered to replace the carpet in the living room of the rental unit?
2. Should the Tenant recover the filing fee?

### Background and Evidence

The Tenant testified that she moved into the rental unit October 2006. She stated that the carpet in the living room is original from the time she moved in such that it is at least 12 years old. She also stated that the carpet was a light pink colour when she first moved in but now it is dark. She further stated that she regularly steam cleans the carpet but the colour remains dark. She also said that she has to use baking soda and sea salt on the carpet every day.

The Tenant also testified that she has lupus, which she described as an immune system disability. She further confirmed that she received this diagnosis prior to moving into the rental unit. She also stated that she did not know, when she moved into the rental unit, that one of the complications of lupus is that she would have a sensitivity to dust and allergens.

The Tenant testified that in 2016 she made a formal request to the Landlord to replace the living room carpet. She did not keep the records of this request as she did not believe she would need to go to the residential tenancy branch. She stated that she made a second request, although she could not remember when, and again, did not keep records.

The Tenant stated that she then went to the Landlord's office to ask when the carpet would be replaced to which the Landlord responded that they would inspect the carpet to determine if replacement was necessary

The Tenant testified that in addition to her lupus, she has started to have an allergic reaction to the carpet, which manifests as nasal discharge into her mouth. Her family doctor sent her to an allergy specialist in 2017. She asked the specialist to write a letter, which was also included in evidence; in this letter the doctor writes:

“[The Tenant] has rhinitis and allergies likely due to dust mites. It may be more suitable for her condition to have wood floors instead of carpets.”

The Tenant stated that her request for new carpet was denied as the Landlord responded, by letter dated July 5, 2017, as follows:

“after discussion your request with management they have advised that all suite upgrades will be evaluated during our planned maintenance schedule.”

The Tenant made another written request in May of 2018 (a copy of which was provided in evidence). The Tenant confirmed that it was the fourth request she had made.

The Landlord provided the Tenant with a Notice of Inspection on June 19, 2018. The Tenant stated that the Landlord's representative came to her rental unit and took photos of the carpet; the Landlord has also sent someone to measure her floor for replacement. She stated that despite these steps, the carpet has not been replaced.

The Tenant stated that the Landlord changed the carpet in her neighbours unit in 2015 or 2016 to vinyl plank flooring. The neighbour told her that the Landlord was very reluctant to change the carpet but eventually they did it.

In response to the Tenant's submissions, A.F. testified as follows. She confirmed that they do not have any information as to the age of the carpet. She stated that the building was built in 1995.

A.F. stated that she was not aware that the Tenant had lupus, and the first time she was made aware of this was during the hearing. A.F. confirmed that the eligibility requirements of the building deal with age and income, not disability; although there are some accessible suites. A.F. stated that she had the Tenant's file, which she said was 200 pages long. She also stated that she reviewed the file and there is no mention of lupus in the file. The file was not provided in evidence.

A.F. confirmed that although the Tenant made a request to have her carpet replaced in 2017, she was not made aware in June of 2018 that the Tenant had a medical reason for having the carpet replaced.

A.F. stated that the full building is going to have the carpet replaced. She noted that the rental unit is highly subsidized and they cannot afford to replace all the carpet and can't have this be a precedent for other renters who might think that if you request enough you will get new carpet.

The Landlord's Director of Operations, G.M. also testified. He confirmed that he does not know the age of the carpet and that the rental unit was built in 1995.

G.M. also stated that when such a request is made they go to the unit and inspect to see if replacement is required. G.M. stated that a member of their maintenance team assessed the carpet on June 21, 2018 and determined that it was in reasonable condition and did not require replacement. G.M. stated that based on the photos and discussing the issue with their team, they believed that maintenance was an issue. He noted that the carpet pile looked fresh and the edge looked in the same condition as the traffic areas.

G.M. stated that he first became aware that the Tenant wanted her carpet changed in May 29, 2018. When I put it to him that a letter in the materials from the Landlord confirmed that the Landlord responded to the Tenant's request in July of 2017, he stated he was not aware of this, and had not reviewed the Landlord's evidence prior to the hearing.

G.M. also stated that he was first made aware that the Tenant had a medical reason for requesting her carpet to be replaced, was raised May 29, 2018. He further stated that he was not made aware until this hearing that she had lupus.

G.M. noted that the doctor did not inspect the carpet and the doctor wrote that it *may* be suitable to have hard flooring rather than carpet, not that replacement was required.

G.M. stated that they have replaced carpet with vinyl plank flooring in other units and the cost is \$2,000.00 to \$3,000.00 as they want to do the entire unit to make it seamless. G.M. noted that the Tenant stated that the carpet in the bedroom is fine, as it is only the living room carpet she wants replaced.

G.M. stated that they do not believe replacement is necessary at this time. He proposed that the Landlord have their professional carpet cleaning company come in and do a professional cleaning, particularly as the Tenant admitted to using baking soda and salt as well as grocery store steam cleaners which may prematurely wear the carpet.

In reply the Tenant stated that when she applied for housing, she had to provide her doctors information confirming that she has a disability. She stated that at the time she applied she had to tell the Landlord she had lupus, otherwise she would not be able to live in the building. The Tenant replied that her income is from the federal and provincial disability such that the Landlord cannot claim they did not know she was disabled.

### Analysis

After consideration of the evidence and testimony before me, and on a balance of probabilities, I find as follows.

The Tenant seeks a repair order pursuant to section 32 of the *Act* which reads 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.

As the Applicant, the Tenant bears the burden of proving her claim on a balance of probabilities.

The evidence establishes that the Tenant has made her request for replacement of her carpet at least 18 months ago. It is also clear that the carpet in her rental unit is at least 12 years old and likely original to when the rental unit was built in 1995.

Although *Residential Tenancy Policy Guideline 40* provides that carpet has a useful building life of 10 years, the *Guideline* is intended to be used as a general guide for determining the useful life of building elements in additional rent increase applications and when quantifying damage. It is not meant to direct landlords to replace such elements after a set amount of time. As aptly noted by G.M., the useful life of a building element can be extended through proper maintenance.

The Tenant obtained a letter from a doctor indicating that removing the carpet *may* alleviate her medical condition; this letter specifically referenced rhinitis and allergies. This letter makes no mention of lupus.

During the hearing the Tenant testified that she has lupus. The Landlord's representatives testified that the first they heard of the Tenant having lupus was at the hearing.

The Tenant replied that she informed the landlord when she first moved in of her disability, and that she is in receipt of federal and provincial disability benefits which is known to the landlord as she must disclose her income to remain in the subsidized building. As the tenancy began prior to the Landlord taking over management, it is possible this information was not conveyed to the current Landlord. Further, although A.F. testified that she reviewed the Tenant's 200 page internal file prior to the hearing, it

is possible she would not have seen mention of the Tenant's specific medical condition unless she were explicitly looking for that information.

In any case, I was not provided any medical evidence to support a finding that the replacement of the carpet is *required*, or that its current condition has any effect on the Tenant's lupus.

The Tenant confirmed that she only wishes to have her living room carpet replaced. Presumably, if dust in the carpet is problematic, she would want all the carpet removed, including the carpet in her bedroom. The Tenant's position suggests this is more of a cosmetic request, not one based on her health issues.

I find the Tenant has submitted insufficient evidence to support a finding that the rental unit fails to comply with health, safety and housing standards. Further, I find the Tenant has failed to prove the condition of the carpet renders the rental unit unsuitable for occupation such that the Landlord should be ordered to replace the carpet. I therefore dismiss her claim.

G.M. suggested that the carpets be professionally cleaned. I find this to be a reasonable suggestion.

### Conclusion

**The Tenant's request for an order that the Landlord replace the carpet in her living room is dismissed.**

Pursuant to sections 32 and 62(3) of the *Residential Tenancy Act*, I make the following Order:

- 1. By no later than December 31, 2018, the Landlord shall, at their sole expense, have all the carpet in the rental unit, including the living room and bedroom, professionally cleaned.**

Although I have dismissed the Tenant's claim for an Order that the Landlord replace the carpet, I find it unlikely the Landlord would have agreed to professionally clean the carpet had the Tenant not made this application. There was no evidence to suggest the Landlord made this suggestion prior to this hearing.

As such, and pursuant to section 72 of the *Act*, I grant the Tenant recovery of the \$100.00 filing fee. **The Tenant may reduce her next months' rent by \$100.00.**

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 19, 2018

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Residential Tenancy Branch