



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION NORTHEAST AREA
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, MNDCT, RP, RR, 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 complete emergency repairs, for monetary compensation, for an order for the Landlord to complete regular repairs, for a reduction in rent due to repairs not completed as agreed upon, and for the recovery of the filing fee paid for this application.

Two agents for the Landlord (the “Landlord”) were present for the teleconference hearing, as was the Tenant and a friend who did not participate in the hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant confirmed receipt of a copy of the Landlord’s evidence package. Neither party brought up any concerns regarding service and therefore I find that both parties were duly served in accordance with Sections 88 and 89 of the *Act*.

All 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 *Residential Tenancy Branch 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?

Is the Tenant entitled to monetary compensation?

Is the Tenant entitled to a reduction in rent due to repairs agreed upon but not completed?

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

Background and Evidence

The parties were in agreement as to the details of the tenancy which were also confirmed by the tenancy agreement that was submitted into evidence. The tenancy began on February 1, 2017. The Tenant pays a monthly rent of \$759.00 and a security deposit of \$460.00 was paid at the outset of the tenancy.

The Tenant stated that she noticed a smell in the rental unit shortly after moving in. She testified that the smell is coming from the carpet and has greatly affected her health so that she has been unable to stay in the rental unit since October 1, 2018. The Tenant further stated that she has been sleeping in her car or staying with friends.

The Tenant testified that the Landlord conducted an inspection in her rental unit on October 30, 2018 and it was determined that the carpet is in fair condition. However, the Tenant was not in agreement with this determination as she stated that she has had breathing problems, issues with allergies and other health issues that are impacted by the condition of the rental unit. She submitted that she has contacted the Landlord numerous times regarding her concerns with the carpet but feels that her concerns are not being addressed.

The Landlord submitted a written statement into evidence outlining the events that have occurred since the start of the tenancy and regarding the Tenant's concerns with the rental unit. The move-in inspection report was submitted into evidence by the Landlord and notes no concerns in the rental unit. The report was signed by the Landlord and Tenant on January 27, 2017. The Landlord also noted that they require tenants to view the units before entering into a tenancy agreement.

The Landlord provided testimony that an agent for the Landlord attended the rental unit in October 2018 in response to a maintenance request from the Tenant. The maintenance request was included in evidence and indicates that the Tenant advised the Landlord as to her concerns with the carpet on October 1, 2018. The maintenance request form includes the response from the Landlord dated October 11, 2018 which states that there was no mould or odours noticed in the rental unit. The report notes that the carpet was found to be in fair condition.

The Landlord stated that three agents attended the rental unit on October 30, 2018 for another inspection. They noted that no odours or other concerns were noticed during this inspection. However, they stated that they were willing to replace the carpet with vinyl flooring and notified the Tenant of such. They stated that arrangements to replace the carpet were not made as the Tenant noted other concerns that would not be resolved by this solution, such as wanting to move to a rental unit with more light.

The Tenant applied for an order for the Landlord to complete emergency repairs as well as an order for the Landlord to complete regular repairs. She confirmed that both of these claims were regarding her request to have the carpet replaced.

The Tenant stated that her only concern with the rental unit is the carpet. She submitted an letter from an advocate dated October 23, 2018 that was sent to the Landlord. The letter stated the Tenant's concerns with the rental unit and requests that she be moved to a different unit. The Tenant also submitted a doctor's note dated October 11, 2018. The note states that the Tenant has allergies that would benefit from the carpet being changed. A second doctor's note, dated January 3, 2019, states that the Tenant's allergies are aggravated by the situation in the rental unit which has also impacted other health issues of the Tenant.

The Tenant submitted a letter dated January 3, 2019 from another resident in the building stating that the rental unit had an odour during a time when a previous tenant resided there. A note dated January 5, 2019 was also submitted from a friend of the Tenant's. This note states that since December 28, 2018 the Tenant has been staying with the friend's mother. The Tenant submitted photos of her car, showing blankets in the back seat and indicated that this is where she has been sleeping when not staying with friends.

The Tenant applied for monetary compensation in the amount of \$3,040.00, which is four months of rent from October 2018 to January 2019 at \$760.00 per month. The

Tenant stated that she attends the rental unit to gather belongings on occasion, but otherwise has not been able to stay there since October 1, 2018 due to concerns with her health which are impacted by the condition of the carpet.

The Landlord stated that the Tenant is continuing to use the rental unit and that no issues have been noticed with the carpet. However, the Landlord stated that they have told the Tenant that they are willing to replace the carpet with vinyl flooring in 2019.

The Tenant also applied for a reduction in rent for the remainder of the time before the carpet issue is resolved. As the parties came to a settlement agreement to have the flooring replaced by the end of March 2019, the Tenant stated she is seeking a full rent reduction for February and March 2019, along with compensation for the period of October 2018 to January 2019.

The Landlord stated that they have not ignored the Tenant's requests and this issue would have been resolved sooner had the Tenant agreed to have the flooring replaced. However, they stated the Tenant brought up other issues that were not able to be resolved through a replacement of the flooring. The Landlords suggested that the Tenant file for a transfer or apply with other housing providers should she not wish to stay in the current rental unit or have other concerns that will not be addressed by removal of the carpet.

Settlement Agreement

Section 63 of the *Act* states that the parties may be provided with the opportunity to settle their dispute and for that settlement agreement to be recorded in the form of a decision and/or order. During the hearing the parties reached the following agreement:

1. The Landlord will have the carpet in the rental unit removed and the flooring replaced with vinyl. This will be completed by March 31, 2019.
2. The Tenant will support the completion of the flooring replacement by moving belongings and emptying rooms as needed and/or as requested by the Landlord or professionals completing the work.

The Tenant stated her understanding that she has the option to request a transfer to another rental unit should the flooring replacement not resolve her concerns with an odour in the rental unit.

The parties confirmed that they were entering into this settlement agreement voluntarily and of their own free will. They also confirmed their understanding that a settlement agreement is final and binding and fully resolves the Tenant's application for the Landlord to complete emergency repairs and/or regular repairs.

Analysis

As stated above, the parties came to a settlement agreement regarding the Tenant's request for emergency and regular repairs to be completed.

The Tenant also applied for compensation in the amount of \$3,040.00, which is equivalent to the return of four months of rent from October 2018 to January 2019. While the Tenant provided testimony and evidence regarding her health and stated that this is impacted by the condition of the rental unit, I do not find sufficient evidence to establish that the Tenant is not able to reside in the rental unit and has lost full use of the rental unit for four months.

The Landlord submitted a move-in inspection signed by the Tenant which confirms the condition of the rental unit on January 27, 2017. The Landlord also submitted a maintenance request form from October 2018 that notes the carpet is in fair condition and that no odour or mould was detected.

I also accept the testimony of the Landlord that they offered to make arrangements to replace the flooring in October 2018, which was declined by the Tenant due to additional concerns with the rental unit. As such, I do not find that the Tenant took reasonable steps to mitigate potential losses and I am also not satisfied that she has been unable to reside in the rental unit for four months. Therefore, I decline to award the Tenant any compensation as I do not find she established her claim for four months of rent.

As for the Tenant's claim for a reduction in rent, I also do not find that she established this claim. I do not find sufficient evidence to determine that she has been unable to reside in her rental unit and will not be able to do so until March 31, 2018 when the flooring is replaced. I find that the evidence of the Landlord shows that no mould or odour issues have been noticed and I do not find sufficient evidence from the Tenant to establish the presence of mould or an odour. Although the Tenant submitted doctor's notes indicating the Tenant has allergies and other health conditions, there is insufficient evidence to establish that the health issues are due to the condition of the

rental unit. As such, I decline to award the Tenant a full reduction in rent for February and March 2019.

As the parties settled their dispute and the remainder of the Tenant's claims were dismissed, I decline to award the Tenant the recovery of the filing fee.

Conclusion

The parties came to a settlement agreement to resolve the Tenant's claims for the completion of repairs. The parties are ordered to follow the terms of the settlement agreement as outlined above.

The remainder of the Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

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: January 25, 2019

Residential Tenancy Branch