



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, MNDCT, RP, RR

Introduction

On January 28, 2019, the Tenant applied for a Dispute Resolution proceeding seeking a Repair Order pursuant to Section 32 of the *Residential Tenancy Act* (the “Act”), seeking a Rent Reduction pursuant to Section 65 of the *Act*, seeking to Dispute a Rent Increase pursuant to Section 41 of the *Act*, and seeking a Monetary Order pursuant to Section 67 of the *Act*.

The Tenant attended the hearing with D.M. as his witness and D.J. as his advocate. C.M. and J.M. attended the hearing as agents for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package to the Landlord by hand on or around the end of January 2019 and the Landlord confirmed receipt of this package. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Landlord was served the Notice of Hearing package.

The Tenant advised that he served his evidence to the Landlord by hand on February 28, 2019 and the Landlord confirmed that they received this package. As service of this evidence complies with Rule 3.14 of the Rules of Procedure, I have accepted this evidence and considered it when rendering this decision.

The Landlord advised that they served their evidence to the Tenant by sliding it under his door with a witness on March 7, 2019 and the Tenant confirmed that he received this package. The Tenant also confirmed that he had read the evidence and he was prepared to respond to it. While service of their evidence did not comply with the time frame requirements of Rule 3.15 of the Rules of Procedure or with the acceptable

methods of service of documents pursuant to Section 88 of the *Act*, as the Tenant acknowledged that he was prepared to respond, I have accepted this evidence and considered it when rendering this decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. In addition, a letter was submitted into evidence where the Tenant signed and agreed to settle some of the disputes pertaining to this Application. The Tenant's advocate narrowed down the Tenant's specific claims as seeking compensation of **\$15.00** for the purchase of replacement blinds, for a Repair Order for the carpets in the common areas of the property, and for a rent reduction in the amount of **\$22.50** per month from June 2017 until the carpets are repaired. Consequently, only these issues will be addressed in this decision and the remaining items applied for in the Application and requested on the monetary order worksheet are dismissed without leave to reapply.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Repair Order?
- Is the Tenant entitled to a rent reduction?
- Is the Tenant entitled to monetary compensation?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the current Landlord took over the rental unit in April 2017. Rent was established at \$511.75 per month currently, with the Tenant owing \$461.75 per month and the remaining \$50.00 being covered by a rent subsidy. The rent is due on the first of each month. A security deposit was not paid.

The Tenant advised that he has curtains that he can close on his windows, but he never had blinds for his windows. He stated that he requested draw-down blinds for his windows and was advised that they were ordered, but they were never installed. He cited a need for blinds as his apartment gets extremely hot or cold depending on the season. The Tenant is seeking compensation in the amount of **\$15.00** for the cost of blinds that he purchased himself.

J.M. advised that he offered to install the blinds in good faith if the Tenant cancelled the Dispute Resolution proceeding, and he acknowledged that these can be installed within a week.

With respect to the Tenant's claim about the carpet in the hallway and stairwells, he advised that he informed the Landlord for the first time about his concerns with the carpets, in writing on November 27, 2018. He stated that they are extremely dirty and damaged and in such a state of disrepair, that they are a dangerous safety hazard. He submitted that he has tripped and fallen due to this and that the condition of the carpets poses a health and tripping hazard in many common areas. However, he advised that he did not submit any pictures that support his claims for the condition of the carpet. He did submit multiple, identical "Request for Services and Repairs" documents signed by other tenants in the building that echo the condition of the carpets.

D.M., who is another tenant in the building, advised that the carpet is ripped in the stairwells and that he happened to catch a lady who fell due to the carpet. He stated that he advised the agents for the Landlord of this incident over a year ago and nothing was done to rectify the matter. However, he stated that he had not raised his concerns in writing to the Landlord about this issue. He submitted that the carpets are in bad shape, that there are rips in the hallway carpets, that there are areas that have curled up but were held down by duct tape, and that the carpet in the stairwells were in particularly poor condition. He reiterated his concerns with safety due to the condition of the carpets.

C.M. agreed that the condition of the aforementioned carpets is "deplorable", and he confirmed that there were areas that were held down with duct tape. He stated that the marble under the carpets in the stairwells was crumbling, and he agreed that the carpets in the stairwells need replacement. However, he advised that the carpets in the common areas and hallways need carpet cleaning only. He submitted that he is not sure when this issue was brought to the owner's attention, but the owner was definitely advised that this was an issue. He confirmed that this will be followed up on; however, he has not received word from the owner about when this will be fixed.

J.M. agrees that the carpet needs upgrading, but he advised that the duct tape on the stairs is bright orange and the purpose of it is to aid the visually impaired. He stated that it was not his belief that the condition of the carpets is a “major hazard”. He also advised that extensive and costly replacement of items such as the carpets are a capital project and require approval of the owners.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 32 of the *Act* requires that the Landlord provide and maintain residential property in a stated 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 a tenant.”

When reviewing the totality of the evidence before me, the consistent evidence is that the carpets in the hallways, stairwells, and common areas are in varying states of disrepair. The Tenant has not submitted pictures to illustrate the condition of the carpets in any of these areas, but he did provide identical requests from multiple tenants of the building confirming that the carpets are “extremely dirty and damaged, and pose both a health and tripping hazard in many common areas”.

While the agents for the Landlord confirm that the carpets may not be in the most serviceable condition, the consistent evidence of the parties is that the carpets in the stairwells have significantly deteriorated past their useful life and pose the most serious of safety concerns. While it is the Tenant’s belief that the carpets in all the hallways, stairwells, and common areas need replacement, I find that only the stairwells have been proven to be in such a state of disrepair that it poses a safety hazard. As such, I find that there is sufficient evidence to substantiate that the age or state of the existing carpet in the stairwells is beyond its useful life and must be replaced. However, I do not find that the Tenant has sufficiently proven that the carpet in the hallways or other common areas are in the same manner of disrepair. As such, the Tenant’s claims for a repair order with respect to the carpets in the hallways and common areas is dismissed without leave to reapply.

Consequently, I Order that the Landlord repair this issue by replacing the carpet in the stairwells of the building with new carpet or a reasonable substitute, and that these repairs be completed by **July 31, 2019**. In addition, I Order that the Tenant's rent be reduced by **\$20.00** per month from May 2019 until this issue in the stairwell is rectified. Should the Landlord not complete these repairs by July 31, 2019, the Tenant is at liberty to apply for further compensation.

With respect to the Tenant's claims for compensation on the relevant issues, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that 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, and that it is up to the party claiming compensation to provide evidence to establish that compensation is warranted. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

When reviewing the totality of the evidence before me, as the evidence before me is that Tenant first brought this issue to the Landlord's attention in writing in November 2018, I find that the Tenant should be awarded additional compensation of \$20.00 per month from November 2018 to April 2019, totalling **\$120.00**. The Tenant is permitted to withhold this amount of compensation from future months' rent until exhausted.

With respect to the Tenant's claim of \$15.00 for his cost of purchasing blinds, the evidence before me is that the Tenant was provided with curtains as window coverings, and there has been no evidence presented that the Landlord was obligated to provide an alternative to this. As such, I dismiss this portion of the Tenant's claims in their entirety.

Conclusion

I Order the following:

- The Landlord must repair or replace the existing carpet in the stairwells of the building with new carpet or a reasonable substitute, and this must be completed by **July 31, 2019**.
- The Tenant is permitted to withhold **\$20.00** per month, from May 2019 onwards, until the repairs of the carpet in the stairwells of the building are complete.
- The Tenant has been granted a monetary award in the amount of **\$120.00** and is permitted to withhold that amount from future months' rent until exhausted.

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 10, 2019

Residential Tenancy Branch