



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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 complete repairs and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The teleconference hearing was initially scheduled to be heard on January 28, 2019 and was adjourned to be reconvened on April 4, 2019. The Tenant and Landlord were present at both teleconference hearing dates. Through an interim decision dated January 28, 2019 the Tenant was ordered to serve a copy of his evidence to the Landlord and the Landlord was provided the opportunity to submit evidence in response. No further documentary evidence was to be submitted by the Tenant.

At the reconvened hearing on April 4, 2019 the Landlord confirmed receipt of a copy of the Tenant’s evidence and the Tenant confirmed receipt of a copy of the Landlord’s evidence. However, the Tenant submitted further documentary evidence following the initial hearing of January 28, 2019 and therefore was advised that only the evidence submitted prior to the initial hearing would be accepted and considered in this decision, as stated in the interim decision.

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.

Issues to be Decided

Should the Landlord be ordered to complete repairs?

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

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy. The tenancy began on May 1, 2013 and a security deposit of \$470.00 was paid at the outset of the tenancy. The Tenant signed a new tenancy agreement for May 1, 2014 and this agreement was submitted into evidence. Current rent in the amount of \$1,110.00 is due on the first day of each month.

The Tenant stated that there is damage to the carpet in the hallway of his rental unit that he has requested the Landlord to repair or replace. The Tenant stated that the carpet was new when the tenancy began, and he takes care of the carpet by vacuuming regularly. The Tenant stated that the carpet started to shred with fibers getting caught in his vacuum cleaner. He noted that this started in one area but has since occurred in multiple areas, all in the hallway.

The Tenant stated that due to allergies, he purchased a hospital-grade vacuum in 2005 that is specifically designed for people with allergies. He stated that this vacuum is not designed for commercial use and instead is a residential vacuum. The Tenant noted that the vacuum is high quality and will sense different floor types as well as adjust to the height of the carpet as it goes.

The Tenant submitted photos of the carpet which show a line down the middle that the Tenant noted was from the removal of tape that he had placed there for golf-putting practice. In other areas of the carpet, the photos show lines where the carpet is missing. The Tenant stated that the loops of the carpet would start to come up and get caught in the roller brush of his vacuum, which would then shut off and the Tenant would have to cut the carpet loose.

The Tenant testified as to his belief that the carpet in the hallway of the rental unit is likely flawed given that the carpet in the bedrooms has not had any issues. The Tenant stated that he takes responsibility for the tape mark on the carpet as well as a coffee

stain but noted that there is no point in cleaning if the hallway carpet needs to be replaced to address the damage caused by flaws with the carpet.

The Landlord stated that although it is hard to determine the initial cause of the issues with the carpet, he believes it is due to the Tenant's high-powered vacuum. The Landlord stated that the carpet was new at the start of the tenancy and is the same carpet they have used in other rental units. The Landlord stated that no other residents on the residential property have noted any concerns with their carpets.

The Landlord stated that they first noticed the tape residue in 2016 and asked the Tenant to clean this, although he has not done so. The Landlord questioned whether the tape had led to stretching of the carpet which caused the initial issues.

The Landlord stated his belief that this damage is not reasonable wear and tear and is willing to arrange replacement of the carpet, but at the Tenant's expense. The Landlord stated that this same carpet is no longer available and therefore a repair isn't possible, and a full replacement of the hallway carpet would be needed.

Both parties submitted email correspondence from October 2018 and November 2018 in which the Tenant notified the Landlord of the carpet issues and the parties discussed who would be responsible.

The Landlord stated that they had a professional from a carpet company attend the rental unit in October 2018. The letter from this company, dated December 11, 2018 states in part the following:

This zippering process can happen when a thread, or loop is pulled using a high powered vacuum. Loop style carpets are woven during production with continuous fibre. Once pulled, it will zipper across the carpet until it reaches a wall, or the end of the continuous fibre. The continued damage to the carpet could likely have been avoided by using a less powerful vacuum or not engaging the beater bar.

[Reproduced as written]

The letter further states that the carpet appears to be 5 to 6 years old and to have 5 to 6 years of useful life left. Therefore, the Landlord wrote to the Tenant advising that they would not pay for the carpet replacement.

The Landlord submitted photos of the damaged carpet, as well as photos sent to them from the Tenant including a photo of the vacuum cleaner and a photo showing the carpet pieces stuck in the roller area of the vacuum.

The Landlord stated that the initial carpet issue has turned into 5 areas in the hallway where the carpet is missing fibers and has created gaps or lines of missing carpet. The Landlord further stated that they took reasonable steps to assess the issue and have determined that this is beyond reasonable wear and tear and instead is damage caused by the Tenant's vacuum cleaner.

Analysis

As stated in Section 32(3) of the *Act*, a tenant must repair damage to the rental unit for which they are responsible. Section 32(4) of the *Act* states that this does not apply to reasonable wear and tear. The parties were not in agreement as to whether the damage to the carpet in the hallway of the rental unit was due to damage caused by the Tenant, through reasonable wear and tear, or due to a defect or other issue with the carpet.

As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim. Therefore, in this matter the Tenant has the burden of proof to establish their claim that the Landlord should be ordered to repair the carpet.

Both parties submitted photos that show the damaged areas of carpet. The Landlord also submitted a photo of carpet pieces stuck in the Tenant's vacuum cleaner.

I find the letter from the carpet company, dated December 11, 2018, to be compelling evidence, particularly in the absence of sufficient evidence to determine whether the carpet had defects or flaws. The letter states that the damage appears to have been caused by a high-powered vacuum pulling up loops from the carpet. As the Tenant stated that these loops were then cut from the vacuum, it seems that this is how the holes or gaps in the carpet occurred.

The photos do not show any loops sticking up in other areas of the carpet which may have indicated a flaw in the carpet that caused the carpet to be more likely to get caught in a vacuum. I also find insufficient evidence from the Tenant to establish that there is an issue with the carpet or installation of the carpet that led to the holes.

As stated in *Residential Tenancy Policy Guideline 40: Useful Life of Building Elements*, the useful life of carpet is 10 years. The letter from the carpet company indicates that the carpet is approximately 5-6 years old and has approximately 5-6 years of useful life left, which would be in line with the estimates provided in Policy Guideline 40.

I accept the Landlord's evidence that indicates that the carpet may have been damaged, at least in part, due to getting caught in the Tenant's vacuum and then being cut out of the vacuum. Therefore, I find that the Tenant did not meet the burden of proof to establish that the carpet repairs are solely the Landlord's responsibility.

I do not make any monetary findings regarding the cost of repairs as this is not the matter before me. However, although I find that the Tenant did not meet the burden of proof to establish that the repairs should be solely the Landlord's responsibility, I suggest that the parties come to their own mutual agreement regarding completion of the carpet repairs. I also note that the carpet is approximately halfway through its useful life which should be taken into consideration when coming to an agreement about who is responsible for the cost of the repair.

Should the parties not be able to reach an agreement regarding payment for the repairs, and the Landlord decides complete the carpet repair, the Landlord is at liberty to file an Application for Dispute Resolution to seek compensation. As the Tenant was not successful with the application, I decline to award the recovery of the filing fee.

Conclusion

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: April 12, 2019

Residential Tenancy Branch