



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REALSTAR GROUP, INC. and BRAEMAR GARDENS
APARTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR ERP FFT RP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 46; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

This hearing took place over the course of three days. All parties attended the hearings and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlords were represented by their area manager and property manager.

At the outset of the first hearing the property manager advised me that they agree to withdraw the Notice. Accordingly, in my interim decision issued following the first hearing, I ordered that the Notice is cancelled.

The tenant testified, and the property manager confirmed, that the tenant served the landlords with the notice of dispute resolution form and supporting evidence package. The property manager testified, and the tenant confirmed, that the landlords served the tenant with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Issue(s) to be Decided

Is the tenant entitled to:

- An order that the landlord make repairs to the rental unit?
- Recover his filing fee for this application from the landlord pursuant to section 72?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting January 1, 2018. Monthly rent is \$1,400.00 and is payable on the first of each month. The tenant paid the landlords a security deposit of \$700.00 and a pet damage deposit of \$700.00. The landlords still retains these deposits.

The essence of this dispute is that the tenant believes he has not received the quality of rental unit that he understood he would receive when he entered into the tenancy agreement.

The tenant testified that on November 16, 2017, an employee of the landlords showed him the rental unit, but that it was under construction. He testified that the employee told him that all rental units would be renovated to be "luxury units". He testified that on November 22, 2017, he attended the rental property and signed the tenancy agreement. Later that day he wrote to the property manager, which, in part, stated:

If you don't mind I would like to know what exactly you do the renovations entail in the unit I will be acquiring. Based on your website, I was under the impression that the units would all have laminate/wood flooring, in-suite laundry, new cabinetry, doors, lighting, kitchen countertops, appliances etc. and would have the look and feel as per the gallery. When we visited you at [rental property] you mentioned that the kitchen floor and carpeting would remain the same in the unit (with the exception of an area that would be replaced). I asked [employee] and she mentioned that the units displayed in the website are your luxury suites. I asked [employee] to show me a luxury suite and they are beautiful! I further asked if she had a unit (such as mine) available for me to view with the renovations completed as for me to have a

better visual of what this would look like but unfortunately there were none available for viewing.

(“Tenant’s November 22 Email”)

That same day, the property manager replied. She wrote, in part:

The two bedroom viewed by you and your mom on separate occasions will have the following renovations/upgrades:

- Replacement and alterations to kitchen cabinets with new countertop finish
- All new white appliances including stove, fridge, dishwasher and other range microwave
- All new lights and switches and outlets
- The existing flooring will remain with the exception of the stain in the hallway
- New countertop in washroom
- New shower rail, towel rail and toilet roll holder
- New door handles
- Replacement of broken bedroom door
- Replacement of broken glass mirrored doors
- Prepare to hole in the wall in living room
- New roller blinds on all windows
- New faucets
- Read wrote tub
- Total repaint of entire suite and cabinets
- Professional clean of all flooring

The luxury suites are one bedroom only. We have only had one two bedroom become available in the last six months, they do not become up for rent very often, and therefore provide a waiting list for interested renters.

(“Landlords’ November 22 Email”)

The tenant testified that he viewed the rental unit on December 29, 2017, and was not pleased with its condition. He testified that the repairs were not done to his expectations, and that he had expected the rental unit to be renovated to the standard as shown on the landlord’s website (that is, to the standard of a “luxury suite”).

On December 29, 2017, the tenant testified that a move-in condition inspection was conducted by the landlord, and that he signed and received a copy of the report. However, he testified that they did not go through the rental unit in great detail.

The tenant testified that in January and February 2018 he addressed his dissatisfaction with the condition of the rental unit renovations to the landlord, but was met with resistance. He testified, and the landlord's agent agreed, that a second condition inspection report was conducted, on February 3, 2018, and the landlord's agent noted damage to the rental unit that the previous condition inspection had not recorded. The landlord did not, however, agree to make any upgrades to the unit to bring it to the standard the tenant testified he believed he was entitled to.

The tenant entered into evidence a great deal of correspondence between himself and the landlords' agents regarding the damage to the unit and the need for a second inspection report. These emails do not, however, reference the tenant's dissatisfaction with the quality of the rental unit or that it is not of a level of a "luxury suite", as one might expect, given the tenant's testimony.

The property manager and area manager deny that the landlords or any of their agents led the tenant to believe that the rental unit would be of a quality on par with a "luxury suite". They testified that such suites are significantly more expensive to rent than the rental unit.

There is no correspondence in evidence relating to the quality of the rental unit or the inspection report from February 2018 to October 2018.

The property manager testified that the landlords did not receive any complaints from the tenant regarding the condition or quality of the rental unit during this time. She testified that she understood the tenant's complaints regarding the condition inspection report to have been dealt with by having conducted the second condition inspection report.

However, the landlord's property manager testified that the landlord received a noise complaint about the tenant in July 2018. She issued a warning letter to the tenant on July 18, 2018. The property manager received another noise complaint on September 18, 2019 and issued a warning letter on the next day, in which she advised the tenant that the tenancy may be terminated if the issue persisted.

On September 25, 2018, the tenant replied to the warning letter in a three page email to the property manager, and requested that he discuss the matters with the property manager's "superiors". The property manager arranged for the tenant to meet with the area manager and the complainants on October 3, 2019. The property manager testified that at this meeting the tenant was provided with suggestions on minimizing noise (the use of headphones and rubber mats). She testified that, at the meeting, the tenant stated that since the property manager is "poking" him and that he would "poke back".

On October 4, 2018, the tenant sent an email to the landlord which, in part, read:

Thank you for taking the time to meet with me yesterday[...]to address the noise complaint letters, 10 day notice to end tenancy and discussing/coming into my unit to see the lack of quality and promise as per the imagery/verbiage on the [landlords'] webpage and misleading information for the unfinished unit prior to my tenancy.

This email is the first mention from the tenant in evidence as to the level of quality of the rental unit.

This email was followed on November 8, 2019 by a nine-page letter entitled "Resolution Letter" by the tenant, which included a number of complaints about the state of affairs between the landlords and the tenant (many of which have no bearing on this application). It includes a comprehensive list of modifications to the rental unit that the tenant says are necessary to bring the rental unit up to the standard he expected the rental unit to be. I will not reproduce the list in this decision, but spans two pages and included requests for significant amounts of work to be done to the:

- Rental unit entrance;
- Bathroom;
- Bedrooms;
- Storage doors and mirrors;
- Living room; and
- Kitchen.

In the Resolution Letter, the tenant wrote:

Overall, the [rental unit] does not resemble in any way the renovated unit I saw in November 2017, it does not reflect the imagery on the website nor

does it satisfy the verbiage on the website or what [landlords' property manager] or [landlords' employee] mentioned prior to move in.

On December 10, 2018, the tenant met with the area manager and the landlords' operations director to discuss the Resolution Letter. He recorded this conversation without their knowledge (I have addressed this issue in a prior interim decision, and admitted the recording). In the recording, the operations director states that changes can be made to the rental unit, but does not concede that these changes were ever promised to the tenant prior to, or shortly after, entering into the tenancy.

On January 21, 2019, the area manager emailed the tenant with a proposal to do a variety of the work requested in the Resolution Letter. The landlords' area manager testified the cost of such work would have been roughly \$10,000.00. She testified that this offer was a "kind and expensive gesture", but that the landlords were willing to make it in order to "make the tenant happy". She denied that this offer represented an acknowledgement that the tenant was entitled to the upgrades he requested in the Resolution Letter. She testified that the offer was made because the landlords wanted to "make peace and move on".

The tenant replied to the area manager's email later that same day. In his reply he requested that the landlords complete all the work he requested in the Resolution Letter.

On January 28, 2019, the area manager wrote to the tenant:

We have responded to your many requests and we already sent you an email with the scope of work that we have offer. I will not sign [...] your renovations lists that you sent us because it is way beyond anything that we have offered. There were no promises made to you, verbally or written regarding a "luxury" suite.

Following this response, the tenant applied to the Residential Tenancy Branch seeking that repairs be made to the rental unit as set out in the Resolution Letter.

I must note that the parties entered a great deal of evidence regarding other points of conflict between them including an alleged improper rental increase, notices to end tenancy that were later withdrawn, and issues regarding storage fees. I have not described these matters in this decision, as they are not relevant to determining the issues before me.

Tenant's Position

The tenant argues that, when he entered into the tenancy agreement, the landlords represented to him that the quality of rental unit he was renting would be that of a “luxury suite” as depicted and described on the landlords’ website. He argues that the landlords failed to provide him with what he bargained for, and the landlords are obligated to provide it to him.

In his written submissions, the tenant provided comments on the status of the work the property manager described would be done to the rental unit in the Landlords’ November 22 Email. He wrote:

- Replacement and alterations to kitchen cabinets with new counter top finish
 - (Not true to kitchen cabinetry and doors as only the one above the stove was changed and it does not reflect the luxury units. The rest are the old ones that were just repainted. Countertops are not the Quartz countertops with under mount sink)
- All new white appliances including stove, fridge, dishwasher and over the range microwave
 - (Not the stainless steel appliances, but true)
- All new lights, switches and outlets
 - (True with the exception of one receptacle)
- The existing flooring will remain with the exception of the stain in the hallway.
 - (True, but carpet in hallway not replaced)
- New countertop in washroom.
 - (True, but not as per the quartz countertops displayed on their website)
- New shower rail, towel rail and toilet roll holder
 - (True for shower rail and toilet roll, but not for towel rail)
- New door handles
 - (True for cabinetry and closet door handles (although some were the old brass flowery handles in which Sherwin changed some and I changed the rest), but the old brass door knobs are still on all doors))
- Replacement of broken bedroom door
 - (Not replaced, just patched and repainted)
- Replacement of broken glass mirror doors
 - (True)
- Repair to hole in wall in living room
 - (True, but poorly done)
- New roller blinds on all windows
 - (They came about a week or two late, but true)
- New faucets
 - (True, but not the under mount sinks)

- RegROUT tub
 - (Not done)
- Total repaint of entire suite and cabinets
 - (True)
- Professional clean of all flooring
 - (True)

The work listed above that the tenant indicates has not been completed is included in the repairs that the tenant is seeking to have made, as set out in the Resolution Letter.

Landlord's Position

The landlords deny that they or their agents ever represented to the tenant that the rental unit was going to be of "luxury" quality. They argued that the only issue the tenant had with the rental unit upon moving in was that parts of the rental unit were damaged and not recorded on the move-in condition inspection report. They argue that this matter was resolved in February 2018, by conducting a second move-in inspection.

The landlords argue that the tenant manufactured his claim that he was entitled to a "luxury" level suite once the landlords issued warnings to him following noise complaints.

Analysis

Form of Claim

I must first note that this application was brought by the tenant as an application for the landlord to make repairs. Upon hearing the testimony of the parties, and reviewing the evidence, it is clear that the work the tenant is seeking to have the landlords perform are not "repairs" in the traditional sense of the word (with one exception, which was dealt with by the landlords prior to the hearing, so I have not mentioned it in this decision). Rather, the tenant is seeking that upgrades be done to the rental unit to bring it to the level of quality he says he understood it would have when he entered into the tenancy agreement.

The tenant's claim is more properly characterized as an application for the landlords to comply with an implied term of the tenancy agreement. Section 62 of the Act allows for the tenant to bring such an application.

The landlords did not make any distinction between “repairs” and “upgrades”, and, despite the inaccurate characterization of the claim by the tenant, they appeared sufficiently prepared to address the substance of the tenant’s claim. As such, I decline to dismiss the tenant’s claim on the basis that the changes to the rental unit he seeks to have done are not “repairs”.

Terms of the Tenancy Agreement

Rule of Procedure 6.6, in part, states

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim.

In this case, the tenant bears the burden of proof to show that the landlord represented to him that, prior to entering into the tenancy agreement, the rental unit would be of a “luxury” quality.

Upon my review of the evidence and the considering the testimony of the parties, I find that the tenant has failed to discharge his evidentiary burden.

There is no reference in the tenancy agreement that the rental unit is to be of “luxury” quality. The tenant has not provided any documentary evidence which supports his claim that the landlords represented to him that the rental unit would be of such a level of quality.

I find that that the landlords’ employee who showed the tenant the rental unit prior to the parties entering into the tenancy agreement did not represent to the tenant that the quality of the rental unit would be of that of a “luxury suite”. In the Tenant’s November 22 Email he states he understood the rental unit will have the “look and feel as per the [online] gallery” “based on the website”. He does not state that the basis for this belief is his conversation with the landlords’ employee. The tenant wrote that he sought clarification of the landlords’ employee as to the level of quality of the rental unit. He wrote:

I asked [employee] and she mentioned that the units displayed in the website are your luxury suites. I asked [employee] to show me a luxury suite and they are beautiful! I further asked if she had a unit (such as mine) available for me to view with the renovations completed as for me to have a better visual of what this would look like but unfortunately there were none available for viewing.

In fact, in the Landlords' November 22 Email the landlords' property manager indicates to the tenant that the rental unit would *not* be of the quality of a "luxury suite". She wrote:

The luxury suites are one bedroom only. We have only had one two bedroom become available in the last six months, they do not become up for rent very often, and therefore provide a waiting list for interested renters.

I find that the Landlords' November 22 Email is reasonably understood to mean that the rental unit viewed by the tenant (which was two bedrooms) was not a luxury suite, as "luxury suites are one bedroom only".

The Landlords' November 22 Email additionally set out the renovations and repairs that would be made to the rental unit prior to the start of the tenancy. The description of these renovations and repairs differs greatly from that of the upgrades the tenant is seeking in this application, as set out in the Resolution Letter.

I find that the Landlords' November 22 Email could not have been reasonably understood to mean that the rental unit would be renovated to the level of quality of as a "luxury suite".

As such, I find that the landlords were obligated to provide the rental unit with the renovations and repairs the property manager stated would be made in the Landlords' November 22 Email. Of these renovations and repairs, it is the tenant's position that:

- A number of the repairs and renovations have been made, but the finishes and materials used are not of the quality of a luxury suite (quartz countertops, style of sink cabinets, stainless steel appliances, carpet in hallway)
- The kitchen cabinets (other than the one above the stove) have not been changed. They have only been repainted.
- All the lights, switches, and outlets are new with the exception of "one receptacle"
- The towel rail has not been replaced.

- Not all door handles are new. While the cabinet and closet door handles are new, the brass door knobs have not been replaced.
- The bedroom door has not been replaced, only repaired.
- The tub has not been regROUTED.
- The hole in the living room wall has not been properly repaired.

I will address each of these in turn.

Quality of Finishes and Materials

I find that neither the landlords nor their agents made any representations as to the quality of finishes and materials used in the rental unit. The tenant seeks to have the rental unit finished in keeping with the photographs he saw on the website of the “luxury suites”. However, in the Landlord’s November 22 Email, the project manager told him that the rental unit would not be of the level of quality of a “luxury suite”. As such, there is no basis for the tenant to be entitled to quartz countertops, under-mount sinks, stainless steel appliances, or a replacement carpet in the hallway.

Kitchen Cabinets

I find that the landlords did not represent to the tenant that the kitchen cabinets would be replaced. Rather, I find that they represented the cabinets would be replaced and altered. In the context of this application, I find understand this to mean that the cabinets would be replaced *or* altered. The replacement of a cabinet necessarily means that it could not be altered. To alter a cabinet means to make changes to an existing cabinet. If a cabinet is replaced it cannot, by definition, be altered. Therefore, to give effect to the language used by the property manager, I find that this terms gives the landlord to option to replace the cabinets, or alter the cabinets, as necessary.

I find that by repainting the cabinets, the landlord provided alterations to the cabinets as represented by the Landlords’ November 22 Email.

New Receptacle

The tenant submitted a photo into evidence of a “receptacle”. However the receptacle in the photo is not of an electrical outset, but rather of what appears to be a television cable receptacle. The property manager stated that the landlords would install “new lights, switches and outlets”. I find that a television cable receptacle is not a “lights,

switches and outlets". The landlords are not, therefore, required to replace the TV cable receptacle.

Towel Rail

The landlords made no submissions on whether the towel rail had been replaced. I accept the tenant's uncontroverted evidence that it has not been replaced. I find that, per the Landlords' November 22 Email, the landlords are obligated to install a new towel rail in the rental unit.

I order that the landlord install a new towel rail in the rental unit.

Brass Door Knobs

The tenant entered photos of two old brass door knobs into evidence on what appear to be two lower cabinet doors. The tenant submitted photos of other cabinets which appear to have new handles. The landlord gave no evidence as to whether it had replaced all the cabinet door handles. I accept the tenant's uncontroverted evidence that landlords failed to replace all the brass door handles in the rental unit. I find that, per the Landlords' November 22 Email, the landlords are obligated to have done so.

I order that the landlords replace all door handles in the rental unit that they did not replace prior to the start of the tenancy.

Bedroom Door

The tenant submitted photos of the bedroom door into evidence. The door appears to have some holes or dents patched on the exterior face and dents on the edge near the latch. It does not appear to be a new door. The landlords gave no evidence as to whether they had replaced the bedroom door. I accept the tenant's uncontroverted evidence that landlords failed to replace the bedroom door. I find that, per the Landlords' November 22 Email, the landlords are obligated to replace the bedroom door.

I order that the landlord replace the bedroom door with a new, undamaged, door.

Tub RegROUT

The tenant submitted photos of the bathtub grouting into evidence. The grouting appears to be quite old. The landlords gave no evidence as to whether they had regROUTed the bathtub. I accept the tenant's uncontroverted evidence that landlords failed to regROUT the bathtub. I find that, per the Landlords' November 22 Email, the landlords are obligated to regROUT the bathtub.

I order that the landlords regROUT the bathtub.

Poorly Repaired Hole in Living Room Wall

The tenant submitted close-up photos into evidence of a patched hole in a wall. He also submitted wide-angle photos of the living room. In these wide photos the patched hole is not noticeable. Additionally, while in the close-up photo the patched hole is noticeable, I do not find that the standard of repair of the hole to be unreasonable. The walls themselves are textured, and any repair to them will be noticeable. I do not find it reasonable to require that the patching hole in the wall blend seamlessly with the wall, as given the wall's texture, it would not be possible to do, short of replacing the wall itself.

As the landlords have been largely successful in this application I dismiss the tenant's application for the landlords to reimburse him his filing fee.

Conclusion

Pursuant to section 62 of the Act, I order that the landlords:

- 1) Install a new towel rail in the rental unit.
- 2) Replace all door handles in the rental unit that they did not replace prior to the start of the tenancy.
- 3) Replace the master bedroom door in the rental unit with a new, undamaged, door.
- 4) RegROUT the bathroom tub in the rental unit.

I decline to order that the landlords make any other repairs, renovations, or upgrade.

Pursuant to section 72 of the Act, I dismiss the tenant's application for the landlords to reimburse him the filing fee.

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: May 23, 2019

Residential Tenancy Branch