



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, RP, FFT

### Introduction

On May 6, 2019, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") for an order requiring the Landlord make regular repairs to the rental unit, for a monetary order for compensation for monetary loss, and to recover the filing fee for this application. The matter was set for a conference call.

Both the Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary Matters

During the hearing, it became apparent that there would be insufficient time to hear the evidence and submissions relating to the Tenant's application for a monetary order for compensation due to monetary loss.

I have also reviewed the Tenant's application, and I note that her request for a monetary order for compensation due to monetary loss is not related to the Tenant's request for the Landlord make regular repairs to the rental unit. As the monetary request does not relate directly to the request for repairs, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I explained to the parties that I am dismissing with leave to reapply, the Tenant's claim for a monetary order for compensation under the Act. This hearing dealt with the Tenant's claim for the Landlord to make repairs to the rental unit.

#### Issues to be Decided

- Is the Tenant entitled to an order requiring the Landlord to make regular repairs the rental unit?
- Is the Tenant entitled to recover the filing fee for this application from the landlord pursuant to section 72 of the *Act*?

#### Background and Evidence

Both parties agreed that the tenancy began on September 1, 2011, as a one-year fixed term tenancy that rolled into a month to month tenancy at the end of the fixed term. Rent in the amount of \$1,461.00 a month is payable on the first day of each month, and that a \$625.00 security deposit had been paid for this tenancy.

The parties agreed that there had been water damage to the den in the rental unit and that the Landlord had repaired that water damage in March 2019.

The Tenant testified that the Landlord has not completed the required regular maintenance on the rental unit and is requesting that the Landlord be ordered to replace all the of carpet in the rental unit and repaint the full unit.

The Tenant testified that when she moved in the Landlord had promised to repaint the entire rental unit but that the Landlord only spot painted a few areas. The Tenant also testified that it is now eight years later and the paint in the rental unit has gotten even worse.

The Landlord testified that the full unit had been painted when the tenancy started in 2011 but agreed that it had not been painted since then.

The Tenant testified that the carpets in the rental unit are old, worn out and very stained. The Tenant testified that she has had the carpets professionally cleaned and that the cleaner had told her the carpets were too old to clean properly and that they should be replaced. The Tenant provided 15 pictures of the carpet into documentary evidence, a letter from the former occupant of the rental unit, and a letter dated May 20, 2015, from the carpet cleaner.

The Tenant also testified that she had the carpets cleaned again in April 2018 and that the second cleaner had also advised her that the carpet could not be cleaned and need to be repaired. The Tenant submitted the invoice from the carpet cleaner into documentary evidence.

The Landlord testified that the carpets are old, original to the building, that was built in 1990; however, the carpets are in serviceable condition and do not need to be replaced. The Landlords testified that there are some stains, but that is normal given the age of the carpet and that the stains do not mean the carpet must be replaced. The Landlord submitted two pictures of the carpet in the rental unit into documentary evidence.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant claim has claimed that the Landlord does not maintain the property in accordance with the *Act* and is requesting that the Landlord be ordered to replace all of the carpets in the rental unit. Section 32(1) of the *Act* states that a Landlord must maintain the residential property during a tenancy.

### ***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.***

Further guidance is provided in the Residential Tenancy Policy Guideline #40 - Useful life of building elements, which sets carpet as having a useful life expectancy of 10

years. Although, I must note that Guideline #40 is intended to be a general guide for determining the useful life of building elements when quantifying damages or additional rent increases. It is not meant to direct that landlords are to replace such elements after a set amount of time. Therefore, in order to determine if the Landlord should be ordered to replace the carpet in the full rental unit, I must first determine the current condition of the carpet.

In this case, I accept the agreed upon testimony of these parties, that the carpet in the rental unit was installed when the building was constructed in 1990. Therefore, I find that the carpet in the rental unit to be 27 years old; however, as previously stated, just because the carpet is past its useful expectancy, it does not automatically mean that the carpet is not in an adequately serviceable condition.

As the *Act* and the RTB guidelines do not provide an exact date when a carpet in a rental unit must be replaced, I must rely on the submissions before me to determine if the carpet needs to be replaced as claimed by the applicant. During these proceedings, the parties offered conflicting verbal testimony regarding the condition of the carpet rental unit, and its current serviceability versus its need for replacement. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As the Tenant, is the applicant, in this case, I find that it is the Tenant who has the burden to provide sufficient evidence over and above her testimony to establish their claim.

I have reviewed the 15 pictures of the carpet, that the Tenant had submitted into documentary evidence. I note that nine of these pictures are of the den and were taken during different stages of water damage repair. I accept the agreed upon testimony of both parties that there had been water damage to the den in the rental unit and that the Landlord had repaired that damage in March 2019. As both parties to these proceedings, have already agreed that the water damage happened and has already been repaired by the Landlords, I find that the nine pictures depicting water damage repair to be of the previous condition of the rental unit, not the current condition, and therefore I will not consider those nine pictures in my decision.

I am left with the remaining six pictures, submitted into evidence by the Tenant; two of the den, two of the hallway, one of the stairs and one of the dining room. I have reviewed these six pictures, and I find that none of these pictures identified a date when

they were taken. As this picture evidence does not provide a date, as to when the pictures were taken, I find this evidenced to be unreliable to prove the current condition of the carpets in the rental unit.

Upon review of the Landlord evidence submissions, I noted that the Landlord had submitted two pictures, and these two pictures are date stamped, April 16, 2019. Due to the recent date of these pictures, I find that these two pictures are reliable and do depict the current condition of the carpet in the rental unit. I have reviewed these two pictures and find that they are of the den in the rental unit, and I find that they depict an ageing but serviceable carpet.

The Tenant has also submitted a letter from a previous tenant, a letter from a carpet cleaner date May 20, 2015, and an invoice from a carpet cleaner dated April 27, 2018, into documentary evidence. I have reviewed this additional evidence, from the Tenant, and I find that due to the length of time since the previous tenant had lived in the rental unit and the length of time that has passed since the cleaners had been in the rental unit, I find that this evidence is also insufficient, to prove to me, what the current condition of the carpet in the rental unit to be.

Overall, I find that the Tenant has submitted insufficient evidence to prove to me, what is the current condition of the carpet in the rental unit. In the absence of sufficient evidence of the current condition of the carpet, I dismiss the Tenant's request for an order for the carpets to be replaced.

The Tenant has also requested that the Landlord be ordered to paint the rental unit. The Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises, provided guidance on the Landlord's responsibility to paint the rental unit, stating the following:

**“Painting:**

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.”

I accept the agreed upon testimony of these parties that the rental unit has not been painted since the tenancy began, in 2011.

The Residential Tenancy Policy Guideline #40 Landlord & Tenant – Useful Life of Building Elements provides further guidance on interior paint, list the useful life of interior paint at four years. I find it to be a reasonable interval, after eight years of a tenancy, that the interior paint of a rental unit would need to be repainted. Therefore, I order the Landlord to repaint the interior of the rental unit; with the work to be completed no later than July 31, 2019.

Additionally, section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been partially successful in her application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application. I grant permission to the Tenant to take a one-time deduction of \$100.00, from her next month's rent.

### Conclusion

I hereby order the Landlord to paint the full interior of the rental unit by July 31, 2019.

I grant the Tenant permission to take a one-time deduction of \$100.00, from her next month's rent.

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: June 6, 2019

---

Residential Tenancy Branch