



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP

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 33.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

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

The landlords did not provide any documentary evidence in support of their response to the tenant's application.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the that the landlord make certain repairs to the rental unit?

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 tenancy agreement starting November 1, 2013. Monthly rent is \$1,080.63. The tenant paid the landlords a security deposit of \$475. The landlords retain this deposit.

The rental unit is a suite located in the basement of a single detached home. The upper suite is rented by the landlords to another tenant.

The facts of this case are not in dispute. There have been a series of floods (the “**Floods**”) in the upper suite that have caused water damage to the rental unit since September 2017. Some of the damage caused by the Floods has been remediated by the landlords, although not to the tenant’s satisfaction. The repairs sought by the tenant are:

- 1) clean or replace the hallway carpet which suffered water damage;
- 2) replace the hallway closet door;
- 3) clean the vents of the rental unit;
- 4) repair the water stains on the ceiling and walls of the rental unit;
- 5) repair the cracks along the joint between the ceiling and the tops of the walls;
and
- 6) re-caulk the bathroom sink fixture.

Settlement

At the hearing, the parties entered into a partial settlement agreement whereby the parties agreed that:

1. Within four weeks of the hearing (December 14, 2019) the landlords will:
 - a. Clean the hallway carpet to eliminate the unpleasant smell, or, in the event the smell cannot be eliminated by cleaning, replace the hallway carpet;
 - b. Reinstall the hallway closet door; and
 - c. Clean the vents;
2. The landlords will, in compliance with section 29 of the Act, give at least 24 hours written notice prior to entering the rental unit to conduct this remediation; and
3. The tenant will refrain from hosting any loud parties.

The parties agreed that these terms are final and binding upon each of them. I make no factual findings with regards to scope or extent of the repairs the landlords agreed to make, or as to any aspect of the tenant’s conduct while residing at the rental unit.

Water Staining and Cracks

The tenant submitted several photos into evidence which show water stains on the ceiling and walls throughout the rental unit. The tenant testified that these stains are currently dry to the touch. However, she testified that she is worried that there may be water damage or mold behind the walls caused by the flooding which caused the water damage that is not readily apparent.

The tenant also submitted photographs showing cracks where the wall and ceiling meet in the hallway. She testified that these appeared as a result of the flooding. She again expressed concern that there is mold behind the walls caused by the floods.

The tenant argued that any repair of the staining or cracks should include a full investigation to determine if there is mold behind the walls.

The landlords deny that there is any water damage beyond the staining and visible cracks. They argued that the damage is cosmetic only and is therefore not their responsibility to repair.

Bathroom Sink

The tenant submitted photographs of the bathroom sink which show the caulking between the sink basin and the fixture to be blackened. The tenant testified that this needs to be re-caulked.

The landlords testified that the damage to the sink was caused by the tenant's misuse (overfilling the sink with dishes), and that the sink merely needs to be cleaned. They testified that this cleaning is the tenant's responsibility.

Analysis

Section 32(1) of the Act states:

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.

Rule of Procedure 6.6 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 most circumstances this is the person making the application.

I note that the tenant has provided no evidence as to what health, safety, and housing standards are required by law in her jurisdiction. So, she must prove that it is more likely than not the repairs sought cause the rental unit not to be in a state of decoration and repair that suitable for her occupation.

Water Staining and Cracks

There is no dispute between the parties that the water-staining and cracks were caused by the Floods.

Per Rule 6.6, I find that the tenant bears the onus to prove that there is mold behind the stained and damaged areas of the walls. She could do this by commissioning an expert report or by providing photographic evidence of the mold. She did not do this. As such, it is not appropriate for me to order that the landlord conduct testing to determine if there is mold behind the walls. She bears the onus to prove this, and, if successful, she can then apply to have the landlord remediate the areas proven to contain mold.

However, I find that the cracks and the water stains themselves cause the rental unit not to be in a state of decoration suitable for habitation by the tenant. The stains are large and in prominent locations in the hallway and living room. The cracks are readily visible in the hallway. These deficiencies, even though cosmetic, should to be repaired (as section 32's usage of "decoration" implicitly contemplates cosmetic repairs).

I note that Policy Guideline 1 states:

PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals.

While I am not ordering that the landlord repaint the walls and ceiling of the rental unit, I find that to do so would be a suitable manner in which to repair them. It would seem to me that a reasonable time to repaint the rental unit would be following a flood that caused damage to the décor of the rental unit.

Instead, I order that the landlords remediate the walls and ceiling of the rental unit (specifically the water stains and cracks) to return them to the state of decoration they were prior to the Floods. This may be achieved by a throughout cleaning of the water-stained areas and a limited filling and repainting of the cracked areas. However, given the extent of the staining, repainting the interior walls and ceiling of the rental unit may be necessary. I specifically make no order as to the means used by the landlords to comply with the remediation order.

Bathroom Sink

Section 32(3) of the Act states:

32(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I find that the tenant failed to provide adequate evidence as to the cause of the caulking to become blackened. Per Rule 6.6, the tenant bears the onus to prove such things.

Additionally, I have inadequate evidence to determine if the blackened caulking can be removed by cleaning. I am uncertain if re-caulking is necessary. If the blackened caulking can be fixed by cleaning, I find that this is a task that the tenant is responsible for, as cleaning around a bathroom sink faucet is a routine task that occupants of a rental unit are responsible for.

I find that the tenant has failed to discharge her evidentiary burden to prove the cause of the blackened sink caulking. As such, I decline to make any order relating to the remediation of the bathroom sink.

Conclusion

Pursuant to section 32 of the Act, I order that the landlords remediate the walls and ceiling of the rental unit (specifically those with water stains and cracks) to return them to the state of decoration they were prior to the Floods.

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: November 19, 2019

Residential Tenancy Branch