



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capreit Limited Partnership
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an order for regular repairs, and to recover the \$100.00 cost of Application their filing fee.

The Tenants and an agent for the Landlord ("Agent") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Are the Tenants entitled to regular repairs?

- Are the Tenants entitled to recovery of their \$100.00 Application filing fees?

Background and Evidence

The Parties agreed that the tenancy began on June 1, 2011 – running to November 30, 2011, and then operating on a month-to-month basis. The Parties agreed that the Tenants currently pay the Landlord a monthly rent of \$1,350.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$527.50 and no pet damage deposit. The Agent said that the residential property is an apartment building of approximately 40 to 50-years-old.

The Tenants brought this Application, because they feel the rental unit carpets are “worn out and exceeding their useful life.” In their Application, they said:

We have been living in our unit for almost nine years. After these nine years, the carpets are worn out and do not have any texture and tuft. Instead, the landlord offered us an upgrade option with the new flooring, conditional upon if our rent increases by \$100 per month. We would like to be clear about who is responsible for paying our flooring replacement.

The Tenants submitted photographs of the carpeting throughout the rental unit. In the hearing, they said that the carpeting was not new at the start of the tenancy. They said they were told there would be a renovation, but there never was one. In the hearing they said:

New carpet doesn't have discolouring or hard to clean spots. We asked the operational manager, [N.], and she hired professional cleaners, but I paid for it. But they couldn't clean it. The condition of the carpet – see our pictures – both show dark spots that are hard to clean. The stains are permanent.

I reached out to Landlord in 2017, 2018, and 2020 about this and they said that carpeting is not good and is a problem most of the time. They gave us the option of an upgrade. This would result in an increase in the rent. I don't want an upgrade; I want something that I can maintain.

Rents out there are very high; we can't move out. We'll be living here for next five years, and we want to live in a unit that's in good condition. There are spots on the carpet that I can't clean. It's aesthetically unpleasing. Our rent is \$1,350.00 now. I need a minimum of maintenance. I don't ask too much from the Landlord - don't complain at rent increases. We don't want an upgrade to laminated flooring.

The Tenants could not remember if the carpet stains were there when they moved in. They said it was normal wear and tear. They said: "It is going to get old. At some point you need to replace that."

The Landlord said:

They moved in on June 1, 2011, and the carpets were installed the year before. We've deemed the carpet is in good condition. We don't let the tenants do the flooring renovations, as we have a certain specification. Carpet replacement depends on the carpet and its condition. Some carpets are still perfect after 20 years. In this case, they're not ten years old yet.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Landlords' and tenants' rights and obligations for repairs are set out in section 32 of the Act. Section 32 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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(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.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Policy Guideline #40 ("PG #40") is a general guide for determining the useful life of building elements for determining damages. The useful life is the expected lifetime, or the acceptable period of use of an item under normal circumstances. If an arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost of the replacement.

Another consideration is whether the claim is for actual damage or normal wear and tear to the unit. Section 32 of the Act requires tenants to make repairs for damage caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets. However, section 32 also provides that reasonable wear and tear is not damage and a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

In PG #40, the useful life of carpets is ten years. The evidence before me is that the carpets were new in 2010, so they are approximately ten years old now and have no years or 0% of their useful life left. However, useful life calculations are an approximate. The Tenants remain responsible for demonstrating on a balance of probabilities that the existing carpets require replacement, having regard to the age, character, and location of the rental unit. In the case before me, the residential property is approximately 40 to 50 years old.

I agree that there are some stains on the carpets, but I find that this is part of normal wear and tear. I find it difficult to determine from the Tenants' photographs that the carpets are otherwise unusable. The Parties agree that the Landlord has offered to upgrade the rental unit; however, the Tenants prefer a different kind of upgrade – they prefer carpeting to the laminate flooring the Landlord has offered (with a correlated rent increase).

Based on the evidence before me overall, I find that the Tenants have not demonstrated that the carpeting in the rental unit must be replaced, because it renders the rental unit unsuitable for occupation by the Tenants.

Accordingly, I dismiss the Tenants' Application wholly without leave to reapply.

Conclusion

The Tenants are unsuccessful in their Application for new carpeting. They did not provide sufficient evidence to demonstrate that the existing carpeting is unsuitable for occupation. Given their lack of success, I also dismiss the Tenants' Application for recovery of the \$100.00 Application filing fee.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 21, 2020

Residential Tenancy Branch