



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      RP OLC FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on May 4, 2020, and June 18, 2020. The Tenants applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the *Act*).

Both parties attended the hearings and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. At the first hearing, both parties confirmed receipt of each others' evidence packages. However, the first hearing was adjourned to provide the Landlord with an opportunity to attend the unit, navigate COVID-19 restrictions, and have an opportunity to assess the nature of the carpet issue. Both parties were given further opportunity to submit evidence, as long as it was served in accordance with the Rules of Procedure, leading up to this hearing, on June 18, 2020.

Both parties submitted further evidence, and both parties confirmed receipt of each others second evidence packages. Neither party raised any issue with the service of any of the documents or evidence. I find all parties have sufficiently served their evidence for the purposes of this hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Tenants applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not repairs (to the carpets) are required. As a result, I exercised my discretion to dismiss all of the grounds the Tenants applied for, with leave to reapply, with the exception of the following claim:

- Are the Tenants entitled to an order requiring the Landlord to make repairs to the rental unit?

The remainder of the Tenants' application is dismissed, with leave to reapply.

### Issue(s) to be Decided

- Are the Tenants entitled to an order requiring the Landlord to make repairs to the rental unit?

### Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing in relation to multiple different issues with the tenancy. However, in this review, I will only address the facts and evidence which underpin my findings and I will only summarize and speak to points which are essential in order to make my findings about the need for repairs. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

The Tenants testified that the carpets are 13 years old, and they need replacement. The Tenants stated that one of them signed the move-in inspection report, but they were not all that happy with the condition of the carpets. The Tenants stated they only took this rental unit because they had no other place to move to at the time. The Tenants stated that ever since they moved in, they have had discussions with the Landlord about replacing the carpet, but she has flat out refused. The Tenants stated that, as per the

move-in inspection report signed by both parties, the carpets had black spots noted, and had some staining.

The Tenants stated that the stains look like black mould and so they hired a professional company come to inspect the carpets and take samples. The Tenants provided a copy of this report. The Tenants stated that the report recommends carpet replacement, and it found algae in the samples taken, but no mould. The report states the following:

*Conclusions and recommendations*

- 1/ We found no evidence of mould infestation within the condominium.*
- 2/ We found no visible fungal contamination within the condominium.*
- 3/ The tape lift samples do, however, show that algae is present in the condominium, a result of high humidity in the internal envelope of the condominium.*
- 4/ We recommend the introduction of one stand alone de-humidifier into the condominium. Set humidistat to 50% RH.*
- 5./ To help reduce odours in your home and greatly improve air quality we recommend that you remove old carpets from the house.*

The Landlord stated that the Tenant's were well aware of some staining on the carpets because they viewed the rental unit prior to signing the tenancy agreement, and they also signed the move-in condition inspection report. The condition inspection report shows that there are stains and some black marks on the carpets, but that the condition of the carpets was "Fair" or "Good". The staining was noted in the condition inspection, and one of the Tenants signed off on this report as being a fair representation of the rental unit. The Landlord pointed out that this report the Tenant signed stated that no repairs were required at the start of the tenancy.

The Landlord uploaded her own photos into evidence to show that the photos taken by the Tenants were doctored, and darkened to make the carpet issue seems worse. The Landlord stated that although these carpets are over 12 years old, they are still safe to live on, and are in reasonable shape. The Landlord stated that at the start of the tenancy, she had the carpets professionally cleaned, but some stains remained. The Landlord pointed out that the company who came, on behalf of the Tenants, to inspect the carpets, found no mould and only found some "algae". The Landlord stated that there is no evidence that algae is unhealthy.

The Tenants want full replacement of the carpets, as they feel they "have a right to clean carpets".

## Analysis

In this review, I will not attempt to resolve all evidentiary conflicts, and will focus on evidence and testimony as it relates directly to my findings

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

### 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.

The *Residential Tenancy Act Regulation – Schedule: Repairs* provides further instruction to the Landlord as follows:

- 8** (1) Landlord's obligations:
- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.

(b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

Also, I turn to *Residential Policy Guideline #40 - Useful Life of Building Elements*, which states as follows:

This guideline is a general guide for determining the useful life of building elements for determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

The useful life of interior carpets is approximately 10 years, as per the policy guidelines. However, this is a guideline only, and it is entirely possible for building elements to last longer than this, or to be safe and reasonable to use beyond that time period. In this case, I decline to order the replacement of the carpets based solely on their age.

I find it important to note that the Tenants viewed and inspected the rental unit prior to moving in. One of them signed the condition inspection report, including the acknowledgement that there was some staining of the carpets, but that the carpets were in fair or good condition overall, varying from room to room. The Tenant also signed off on the condition inspection report which states that no repairs were required at the start of the tenancy. I note that both tenants are not required to sign off on the condition inspection report in order for it to be valid. I find the condition inspection report shows that there was some staining which the Tenants were aware of, but they chose to enter into an agreement to rent the space, despite the carpet condition.

I accept that the Tenants have become increasingly displeased with the condition of the carpets since they moved in last fall of 2019. The Tenants are concerned about having their children live in and around the older carpets. I accept that the staining is unsightly, and could be concerning. However, I find there is insufficient evidence that the staining of the carpets, as noted in the photos and the inspection, poses a health risk. There is no evidence of the stains being caused by black mould, or some other hazardous pathogen. Although some algae was detected in the surface sample, I find there is insufficient evidence that this is a health and safety issue which warrants the replacement of the carpets.

I do not find the Tenants have sufficiently demonstrated that the rental unit is not compliant with health, safety and housing standards required by law, and I do not find they have sufficiently demonstrated that the rental unit is not in a reasonable state of decoration and repair. I do not find the Tenants have sufficiently demonstrated that their rental unit is not suitable for occupation, due to the issue with the carpets. I dismiss the Tenants' request for repairs, without leave to reapply.

As the Tenants were not successful with their application, I decline to award the recovery of the filing fee.

### Conclusion

The Tenant's application for repairs, is dismissed, without leave.

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 18, 2020

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Residential Tenancy Branch