



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CORNERSTONE PROPERTIES and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, RR, OLC, MNDC, FF

Introduction

On July 6, 2020, the Tenants applied for dispute resolution under the *Residential Tenancy Act* ("the Act") seeking the following relief:

- for an order for the Landlord to make repairs to the rental unit.
- to allow the Tenant to deduct the cost of repairs, services, or facilities from the rent.
- for a monetary order for money owed or compensation for damage or loss under the Act.
- for the Landlord to comply with the Act, Regulation, or tenancy agreement.
- to recover the cost of the filing fee.

The matter was scheduled for a teleconference hearing. The Tenants and the Landlords agents were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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 and Procedural Matters

The Tenants' application indicates they were concerned about a rent increase letter. At the start of the hearing the Tenants clarified that they are not disputing a notice of rent increase.

Issues to be Decided

- Are the Tenants entitled to an order that the Landlord make repairs to the unit?
- Are the Tenants entitled to a rent reduction?
- Are the Tenants entitled to money owed or compensation for damage or loss?
- Are the Tenants entitled to an order for the Landlord to comply with the Act?

Background and Evidence

The Tenants and Landlord provided testimony agreeing on the following terms of tenancy. The parties testified that the tenancy began on December 15, 2016 and is currently on a month to month basis. Rent in the amount of \$1,312.00 is due to be paid to the Landlord by the first day of each month. A security deposit of \$600.00 was paid to the Landlord.

Repairs

The Tenants' are seeking a repair order for the replacement of the carpet. The Tenants testified that the carpet in the rental unit is old and past its useful life. The Tenants' testified that the carpet is approximately ten years old had had a hole that was recently fixed. The Tenant testified that the hole was a safety issue.

The Tenant J.C. testified that he went to the hospital due to breathing problems and the Doctor told him it was because of the carpet. When the Tenant was asked if the Tenants had cleaned the carpet since December 2016, he replied that they have vacuumed the carpet but have not paid for it to be professionally cleaned. The Tenants did not provide any documentary evidence from a doctor regarding a medical condition or a medical opinion that the Tenant's breathing problem was related to the condition of the carpet.

The Tenants testified that other units in the building have laminate flooring installed. The Tenants submit that the Landlord does not have a good reason for not wanting to replace the carpet with laminate flooring. The Tenants testified that they are willing to work with the Landlord to accommodate having the carpeting replaced.

The Tenants' testified that the Landlord offered them a different unit that has laminate flooring at a lower monthly rent. The Tenants testified that they declined the offer because the unit was not suitable and comparable to their current unit.

The Tenants provided copies of emails dated July 2109 and August 2019 sent to the Landlord regarding replacement of the carpet.

In reply, the Landlord testified that when the Tenants' moved in the carpet was nine years old.

The Landlord provided testimony confirming that they have replaced carpeting in some units with laminate flooring. The Landlord testified that they had the carpet repaired immediately after the Tenants' reported damage. An email dated August 9, 2019 from the Landlord to the Tenant indicates that the Landlord made arrangements to have the carpet repaired.

The Landlord testified that the tenancy agreement requires the Tenants' to conduct periodic cleaning of the carpets. The Landlord submitted that simply vacuuming is not sufficient.

The Landlord stated that the Tenants are not being reasonable, and the Landlord is not in agreement to replace the carpet at this time.

Rent Reduction

The Tenants testified that due to the carpet being past its useful life, they are seeking a reduction of past and future rent. The Tenants are seeking \$600.00 for the twelve-month period of August 2019 to July 2020. The Tenants' are also requesting that effective August 1, 2020 the monthly rent be reduced to \$1,200.00 which was the original amount of rent they paid under the tenancy agreement.

The Tenants provided three photographs of the carpet. One photograph shows a tear and the other two photographs show the carpet is loose or slack in areas.

In reply, the Landlord testified that he is not in agreement for a past or future rent reduction. The Landlord testified that the unit rent is already below the market value. The Landlord testified that he offered the Tenants' another rental unit and they declined.

In an email dated September 20, 2019 the Landlord asked the Tenant for permission to fix the seam and stretch the carpet.

Monetary Compensation

The Tenants are seeking to be reimbursed for the cost to purchase an air purifier; a camera; postage; and for stress they have suffered and loss of quiet enjoyment.

The Tenants submitted that they purchased the air purifier under direction of their Doctor. The Tenant provided a copy of an advertisement/ receipt for the purchase of an air purifier.

The Tenants are seeking to be reimbursed for the cost of purchasing a camera to record evidence of noise. The Tenants provided a copy of an advertisement for the camera.

The Tenants are seeking to recover the cost of postage related to filing the dispute and serving the Landlord with documents. The Tenants are seeking the amount of \$81.23.

The Tenants are also seeking compensation in the amount of \$500.00 for stress and loss of quiet enjoyment due to the anxiety caused by the Landlord giving them a letter regarding noise complaints. The Tenants testified that it is difficult to address the alleged complaints and they are now afraid to make any noise in the unit. The Tenants testified that the Landlord has never come to investigate the complaints. The Tenant testified that he has suffered a loss of sleep.

The Tenants testified that they did respond in writing to the Landlord refuting that they were responsible for making the noise. The Tenants stated that their neighbors have reported that they not heard noise from the Tenants.

In reply, the Landlord testified that with respect to the air purifier and camera, it was smart for the Tenants to purchase these items; however, the Tenants did not approach the Landlord for authorization to purchase the items and be reimbursed. The Landlord is not in agreement to reimburse the Tenants for these items.

With respect to the noise complaints, the Landlord testified that when the Landlord receives complaints regarding noise their practice is to put the complaint in writing and send it to Tenants for response.

Order that the Landlord Comply with the Act

The Tenants are concerned about what they consider to be fraudulent noise complaints they received from the Landlord. The Tenants submit that they are not responsible for the noise.

Analysis

Section 32 of the Act states that 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.*

Section 65(1) of the Act provides, if the director finds that a Landlord or Tenant has not complied with the Act, the regulations or a tenancy agreement, the director may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides the following information:

Damage or loss is not limited to physical property only, but also includes less tangible impacts including:

- *loss of quiet enjoyment (see Policy Guideline 6);*
- *damage to a person, including both physical and mental.*

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and,
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

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

Repairs

The Tenants' request for a repair order to replace the carpeting is not successful. The Tenants provided insufficient evidence to establish that the carpet in the unit presents a health or safety risk and not in compliance with health or safety standards. I find that the Landlord immediately fixed the tear/ hole in the carpet. While I accept that the age of the carpet is old; age alone in the absence of evidence that the carpet presents a health or safety issue is not enough to require the Landlord to replace the carpet at this time.

The Tenants request for a repair order is dismissed.

Rent Reduction

The Tenants request for past and future compensation due to having an older carpet in the unit is dismissed.

I find that the Landlord has not breached the Act by refusing to replace the carpet and therefore is not obligated under the Act to compensate the Tenants.

Monetary Compensation

The Tenants failed to get prior authorization from the Landlord for the purchase of the air purifier and camera. The Landlord is not in agreement to reimburse the Tenants for these purchases. Accordingly, these claims are dismissed.

With respect to postage costs, or costs for preparing for dispute resolution, these cost are not compensable under the Act and are dismissed.

With respect to the Tenants' claim for \$500.00 for stress and loss of quiet enjoyment, I find that a Landlord has a duty to protect the quiet peaceful enjoyment of every Tenant living at the residential property. When a Landlord receives a complaint about a Tenant making noise, it is reasonable and appropriate for the Landlord to notify a Tenant that a complaint was received.

I find that the Landlord was taking reasonable steps by notifying the Tenant of noise complaints. While I note that the Tenants disagree that they are the source of the reported noise, and while I understand that they are feeling stress on this issue, I note that they have provided the Landlord a written response to the allegations.

I find that the Landlord did not breach the Act by notifying the Tenants that the Landlord has received noise complaints from other occupants of the residential property.

I find that the Landlord is not responsible to compensate the Tenants for stress or loss of quiet enjoyment resulting from the notification of complaints and any warning letters.

The Tenants claim for \$500.00 is dismissed.

Order for the Landlord to Comply with the Act

I find that the Landlord actions are in compliance with the Landlords obligations under the Act. Therefore, I find there is no reason to order the Landlord to comply with the Act on any issue before me.

I note that it appears that the Landlord has not taken any further steps regarding the noise complaints such as issuing a notice to end tenancy. Should a One Month Notice to End Tenancy for Cause be issued due to noise disturbances, the Tenants have the right to dispute that notice and have an Arbitrator hear the evidence, including the Tenants' evidence refuting that they are the cause / source of the noise.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were not successful with their application, I decline an order for the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

Conclusion

The Tenants' application for flooring replacement, a rent reduction, and compensation due to a breach of the Act is not successful.

The Tenants' application is dismissed in its entirety.

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: August 11, 2020

Residential Tenancy Branch