



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ENTRE NOUS FEMMES HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

RR, MNDCT, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for a rent reduction, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that in October of 2020 the Dispute Resolution Package and evidence the Tenant submitted to the Residential Tenancy Branch in October were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents in October and the evidence was accepted as evidence for these proceedings.

In November of 2020 the Tenant submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was left in the Landlord's mail slot on November 15, 2020. The Agent for the Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On December 01, 2020 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was posted on the Tenant's door on December 01, 2020. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Issue(s) to be Decided:

Is the Tenant entitled to compensation/aggravated damages for deficiencies with the rental unit?

Is the Tenant entitled to compensation for repairs she made to the rental unit?

Background and Evidence:

The Agent for the Landlord and the Tenant agree that the tenancy began in 2003 and that the current rent is \$1,286.00 plus \$200.00 for utilities.

The Tenant is seeking compensation of \$1,6000.00, in part, because the carpet was not replaced in the rental unit until 2020. In support of this claim the Tenant stated that:

- When this tenancy began in 2003 an agent for the Landlord promised her that the carpet would be replaced in 2004;
- She has nothing in writing that shows the Landlord promised to replace the carpet prior to 2020;
- The Residential Tenancy Branch recommends that carpet be replaced every 10 years;
- The carpet was 35 years old when it was replaced in 2020;
- Old carpet can be a health hazard;
- She submitted no evidence to show the carpet in her unit posed a health hazard;
- She submitted photographs of the carpet, which were taken in August of 2020; and
- She believes the photographs shows the carpet need replacing.

In response to the claim for compensation for aging carpet the Agent for the Landlord stated that:

- She has no record of the Tenant being promised new carpet prior to 2020;
- She understands there have been on-going discussions with the Tenant about replacing the carpet;
- She thinks the photographs of the carpet submitted by the Tenant show the carpet was in reasonably good condition;
- The Landlord is a subsidized housing complex and, as such, has limited funding for replacing carpet;
- The carpet was 34 years old it was replaced in 2020; and
- She does not believe the photographs of the carpet submitted by the Tenant establish that the carpets do not comply with housing standards.

The Tenant is seeking compensation of \$16,000.00, in part, because the Landlord did not paint the rental unit at reasonable intervals. In support of this claim the Tenant stated that:

- The unit was not recently painted prior to the start of her tenancy in 2003;
- She painted the unit in 2003, at her own expense;
- She did not seek permission to paint the unit in 2003;
- She painted the rental unit, with the exception of the kitchen and bathroom, in 2012;
- She painted the kitchen and bathroom in 2020, including the cabinets;
- She painted in 2012 and 2020 before she became aware the Residential Tenancy Branch required the Landlord to paint at regular intervals;
- She received no compensation for any of the painting;
- She did not ask for permission to paint the unit in 2012; and
- In 2020 an agent for the Landlord promised to compensate her if she submitted receipts for painting.

In response to the claim for compensation for painting the Agent for the Landlord stated that:

- The rental unit was not newly painted prior to the start of the tenancy;
- She understands the Tenant painted the unit shortly after the tenancy began;
- She has no record of the Tenant being given permission to paint the unit in 2003;
- The Landlord has no record of the unit being painted by the Tenant in 2012;
- She understands the Tenant painted in the rental unit in 2020;
- She became aware the Tenant had painted in 2020 after the Tenant provided receipts for painting;
- She has seen the “before” pictures of the inside of the kitchen cabinets and would have recommended shelf lining, rather than painting the interior of the cabinets;
- The unit is within a subsidized housing complex and, as such, has limited funding for painting;
- The Landlord did not paint the unit during this tenancy; and
- The Tenant has not been granted any compensation for painting.

The Tenant is seeking compensation of \$16,000.00, in part, because the Landlord did not repair two electrical outlets, one in the bedroom and one on her exterior deck. In support of this claim the Tenant stated that:

- She reported the issue, in writing, in 2009 or 2010;
- She did not submit the aforementioned written report;
- She reported the issue again, in writing, on July 03, 2020; and
- The outlets were repaired in the summer of 2020.

In response to the claim for compensation for the electrical outlets the Agent for the Landlord stated that:

- There is no record of a problem with the outlets being reported prior to 2020;
- The problem with the outlets was reported in July of 2020; and
- The outlets were repaired in the summer of 2020.

The Tenant is claiming compensation, in the amount of \$1,235.11, for repairs she made to the rental unit. This includes:

- \$60.00 for replacing a mirror that was cracked at the start of the tenancy and that she replaced in 2020;
- \$95.00 for replacing vinyl flooring in the bathroom;
- \$240.00 for replacing kitchen flooring, which she replaced in 2020;
- \$700.00 for paint and supplies used to repaint in 2020;
- \$60.00 to replace vinyl baseboards;
- \$40.00 to replace an old and moldy shower rod; and
- \$38.00 to replace an old toilet seat.

In support of these claims the Tenant stated that:

- In early 2020 she discussed the need for all of the aforementioned repairs with an agent for the Landlord, whom I will refer to as “S”;
- “S” agreed the repairs were necessary;
- “S” told her to make the necessary repairs and to send the receipts to the Landlord for reimbursement;
- She submitted receipts for the above repairs to the Landlord; and
- The Landlord has not compensated the Tenant for any of the repairs.

In response to the claim for compensation for repairs, the Agent for the Landlord stated that:

- She does not believe that “S” would have told the Tenant she would be compensated for all repairs she made in 2020; and
- She believes “S” would have told the Tenant to submit receipts for repairs and the Landlord would consider if compensation was due for repairs made.

The Tenant contends that the text message sent by the “S” on July 02, 2020 establishes that “S” agreed the Tenant would be compensated for the repairs she made in 2020. In the exchange the Tenant asked “S” to come to the rental unit so she could show her the bathroom and kitchen and “request reimbursement”. “S” responds to that text message by telling her to send the “invoice which includes receipts for material”.

Analysis:

When making a claim for compensation under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss. As this is the Tenant’s claim for

compensation, the burden of proof rests with the Tenant.

Section 32(1) of the *Residential Tenancy Act (Act)* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord breached section 32(1) of the *Act* as a result of the carpets in the rental unit not being replaced until 2020.

In considering the matter of the carpet, I considered the photographs of the carpet submitted by the Tenant which were taken in 2020. Although the photographs show the carpet was stained and has some minor damage, they do not establish that the condition of the carpet rendered the unit unsuitable for occupation or that the carpet does not meet health/housing/safety standards.

In considering the matter of the carpet, I accept the Tenant's submission that older carpets may pose a health risk. In the absence of any independent evidence that establish the carpet in this rental unit posed a health risk, however, I cannot conclude that the carpet rendered the unit unsuitable for occupation or that the carpet does not meet health/housing/safety standards.

In considering the matter of the carpet, I accept that the carpet was over 30 years old when it was replaced in 2020. I cannot conclude that the mere age of the carpet rendered the unit unsuitable for occupation or that the carpet does not meet health/housing/safety standards.

The Tenant appears to be of the opinion that the Landlord was obligated to replace the carpets every 10 years, which she bases on the Residential Tenancy Branch Policy Guideline which declares that the "useful life" of carpets is 10 years. Residential Tenancy Branch Policy Guideline 40 provides the estimated useful life of various building elements, which is intended to be considered when considering claims for damages and applications for additional rent increases. Residential Tenancy Branch Policy Guideline 40 is not, in my view, intended to suggest that the carpets need to be replaced every 10 years. The determination of when carpets need to be replaced, in my view, must be based on the standards established by section 32(1) of the *Act*.

In considering the claim for carpet I have placed little weight on the Tenant's testimony

that she was told in 2003 that the carpet would be replaced in 2004. In reaching this conclusion I was influenced by the absence of evidence that corroborates this testimony. I find it is not sufficient to allege an agent working for the Landlord 17 years ago promised new carpets, as it would be difficult, if not impossible, for the Landlord to refute that testimony after the agent has left the employ of the Landlord.

In considering the issue of whether the Tenant was promised new carpet prior to 2020, I was further influenced by the letter written by the Tenant, dated December 04, 2012. In this letter the Tenant declared that when the tenancy began, she asked an agent for the Landlord for new carpets and was told it was “not in the budget for the current year but should not be a problem”. I find that this is clearly not a promise to replace the carpets in 2004. I find that the Tenant’s testimony that she was told the carpets would be replaced in 2004 is subject to all of the frailties of hearsay evidence, as there is no way to determine if the Tenant correctly understood the information being provided to her in 2003.

As the Tenant has submitted insufficient evidence to establish that the Landlord was obligated to replace the carpet prior to 2020, pursuant to section 32(1) of the *Act*, or that the Landlord promised to replace the carpet prior to 2020, I cannot conclude that she is entitled to any compensation for living with the old carpet.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord breached section 32(1) of the *Act* as a result of failing to paint the rental unit during the tenancy. I find that none of the photographs submitted in evidence establish that condition of the paint rendered the unit unsuitable for occupation or that the paint does not meet health/housing/safety standards. Although I accept the photograph of the interior of the kitchen cabinets show they are well used, I find they are still fully functional.

On the basis of the undisputed evidence, I find that the Tenant painted the unit in 2003, 2012, and 2020. As the unit has been painted at least twice during the 17 year tenancy, I cannot conclude that the condition of the paint rendered the unit unsuitable for occupation or that the paint does not meet health/housing/safety standards.

The Tenant appears to be of the opinion that the Landlord was obligated to replace the carpets every several years, which she bases on the Residential Tenancy Branch Policy Guideline which declares that the “useful life” of paint is 4 years.

As previously stated, Residential Tenancy Branch Policy Guideline 40 is not, in my view, intended to suggest that the unit needs to be repainted every 4 years. The

determination of when the unit needs re-painting must, in my view, be based on the standards established by section 32(1) of the *Act*. Given that the Tenant opted to paint the unit prior to the Landlord opting to do so, I cannot conclude that Landlord was subsequently obligated to paint the unit.

As the Tenant has submitted insufficient evidence to establish that the Landlord was obligated to repaint the unit, pursuant to section 32(1) of the *Act*, I cannot conclude that she is entitled to any compensation for living in a unit the Landlord did not regularly paint.

I find that the Tenant has submitted insufficient evidence to establish a problem with the electrical outlets was reported prior to July 03, 2020. As there is insufficient evidence to establish that it was reported prior to July 03, 2020, I cannot conclude that the Tenant is entitled to compensation for living with faulty outlets prior to July 03, 2020.

On the basis of the undisputed evidence, I find that the faulty electrical outlets were reported to the Landlord in July of 2020 and were repaired shortly thereafter. As the outlets were reported within a reasonable time of receiving a report, I find that the Tenant is entitled to compensation for living with faulty outlets after July 03, 2020.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental units suitable for occupation which warrants that the landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building envelop would deteriorate occupant comfort and the long term condition of the building. I do not find such compensation warranted in these circumstances, as the Tenant has failed to establish that the unit was in a significant state of disrepair.

Clause 22 of the tenancy agreement that declares that the Tenant will not make changes to the rental unit without the written permission of the Landlord. The clause declares that changes include painting and putting up wallpaper. The purpose of such clauses is, typically, to avoid any confusion about whether or not permission for such changes has been given by the Landlord. As the evidence is that the Tenant did not

obtain written permission to make any of the repairs she made in the rental unit in 2020, I find that she did not have the right to make those repairs, much less receive compensation for them.

In circumstances where it is clear that a tenant had verbal permission to make changes to a rental unit even when their tenancy agreement requires written permission, I might be inclined to award compensation for repairs agreed upon by the parties. I find, however, that the Tenant has submitted insufficient evidence to establish that an agent for the Landlord clearly gave her authority to make the various repairs she made in 2020 and that she would be reimbursed for them.

Without evidence from the agent for the Landlord who spoke with the Tenant about these repairs, I find that Tenant's testimony that she was told she would be reimbursed is subject to the frailties of hearsay evidence. I find it entirely possible that the agent asked the Tenant to submit the receipts for consideration, as the Agent for the Landlord suggests, and did not intend to imply that she would receive compensation for repairs made.

In adjudicating the claim for repairs, I was influenced by the Tenant's submission that the text message sent by the agent for the Landlord I have referred to as "S" on July 02, 2020 establishes that "S" agreed the Tenant would be compensated for the repairs she made in 2020. In the exchange the Tenant asked "S" to come to the rental unit so she could show her the bathroom and kitchen and "request reimbursement". I interpret this text to be a request for reimbursement, rather than a request for permission to complete the repairs. "S" responds to that text message by telling her to send the "invoice which includes receipts for material". I interpret this response to be nothing more than a request for information, rather than an agreement to compensate the Tenant for any repairs.

In considering the claim for compensation for the cost of repairs I am influenced, to some degree, by my extensive experience with tenancies, and by my understanding that it is rather unusual for a building manager or similar agent for the Landlord to have authority to approve these types of expenditures. Rather than approving expenditures, I find it much more likely that an agent for the Landlord would simply tell a Tenant they would submit receipts for approval, which should not be interpreted as a promise to reimburse a Tenant for repairs that have not been authorized by a proper authority.

As the Tenant has submitted insufficient evidence that she had the right to make changes/repairs to the rental unit and/or that the Landlord agreed to compensation the

Tenant for those changes/repairs, I dismiss the Tenant's claim for compensation for any repairs she made in 2020.

I find that the Tenant has failed to establish the merit of her Application for Dispute Resolution and I dismiss her claim to recover the fee paid to file this Application.

Conclusion:

The Tenant has failed to establish she is entitled to compensation and I dismiss her Application for Dispute Resolution, without leave to reapply.

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: December 16, 2020

Residential Tenancy Branch