



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, LRE, OLC, FFT

Introduction

On January 31, 2021, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") for an order requiring the Landlord to comply with the Act, for an order for regular repairs, for an order to restrict the Landlord's access to the rental unit and to recover the filing fee for this application. The matter was set for a conference call.

Two Agents for the Landlord (the "Landlord") and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

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 Matters - Unheard Issues

During the hearing, it became apparent there would be insufficient time to hear the evidence and submissions relating to the full application filed by the Tenant.

Accordingly, I find it appropriate to dismiss with leave to reapply, the Tenant's claims for an order requiring the Landlord to comply with the *Act*, and for an order to restrict the Landlord's access to the rental unit.

I will proceed with this hearing on the Tenant's claim for an order for regular repairs and to recover the filing fee for this application.

Issues to be Decided

- Is the Tenant entitled to an order for regular repairs to the rental unit?
- Is the Tenant entitled to the recovery of the filing fee of her application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement records that this tenancy began on May 1, 2004, as a six-month fixed term tenancy that rolled into a month-to-month tenancy. The current rent in the amount of \$771.21 is to be paid by the first day of each month, and that the Tenant paid the Landlord a \$265.00 security deposit. Both parties submitted a copy of the tenancy agreement into documentary evidence.

The Tenant testified that they have been requesting repairs to the rental unit for months but that the Landlord has refused to complete the needed repairs to the unit. The Tenant testified that each time a rental unit in their rental building flips a tenant, the Landlord completes a full renovation of that unit. However, the Tenant's rental unit has not been properly maintained throughout their 17-year tenancy.

The Landlord testified that they are upgrading the rental units on the property each time the tenancy flips but that they are not required to upgrade the Tenant's unit, only provide regular maintenance. The Landlord testified that the Tenant is requesting a full upgrade to their unit, which they are willing to do, but only if they are able to increase the rent.

The tenant agreed that some of the requests they had made were for upgrades but argued that several are just regular maintenance and that the Landlord should still complete those without requiring a rent increase.

The Tenant testified that the list of required maintenance includes patching a hole in the bathroom floor and wall, inspecting, and repairing or replacing a rusted light, repairing a malfunctioning bathroom fan, investigating the cause of mould in the bathroom, repairing or replacing a leaking fridge and malfunctioning stove, repairing a hold in the kitchen sink, repairing a screen door that is falling off its hinges and repairing or replacing a bunching carpet.

Additionally, the Tenant testified that their rental unit had not been painted by the Landlord throughout the entire term of their tenancy. The Tenant is requesting that the Landlord paint the rental unit.

The Landlord testified that they will have the rental unit fully inspected, noting all of the concerns presented by the Tenant during these proceedings, and committed to having all required repairs completed.

The Landlord argued that the painting requested by the Tenant was the responsibility of the Tenant to complete during their tenancy, as per their contract. The Landlord was advised during these proceedings that the *Act* places the obligation on the Landlord to maintain the rental property and that pursuant to section 5 of the *Act*, a landlord can not contract out of that obligation.

The Tenant was advised during these proceedings that the *Act* does not require a landlord to make upgrades to the rental unit and that any request for an upgrade to the rental unit would have to be negotiated with their Landlord. The Tenant acknowledged understanding of this during the hearing.

Analysis

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

I accept the testimony of the Tenant that they have presented a list of required repairs to the Landlord, consisting of a hole in the bathroom floor, a rusted light fixture, a hole in the bathroom wall, a malfunctioning bathroom fan, the presence of mould in the

bathroom, a leaking fridge, a malfunctioning stove and oven, a whole in the kitchen sink, a screen door that is falling off its hinges and bunching carpet. I also accept that as of the date of these proceedings, the Landlord has not investigated the Tenant's claim of these needed repairs or made any of the requested repairs to the rental unit. Section 32 of the Act states the following:

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.*

During the hearing, the Landlord agreed to have the rental unit inspected and all required repairs completed. Accordingly, I order the Landlord to conduct a maintenance inspection of the entire rental unit no later than May 15, 2021, that specifically include at the bathroom floor, the bathroom light fixture and fan, the bathroom walls, the fridge, the stove and oven, the kitchen sink, the screen door and the possible presence of mould in the rental unit.

If the inspection reveals, repairs or regular maintenance are required, I order the Landlord to complete all repairs to this rental unit no later than June 5, 2021. The landlord must use a certified technician were required for any necessary repairs.

Additionally, it was revealed during the hearing that this rental unit has not been painted during this tenancy. I have reviewed the tenancy agreement, noting that this tenancy began in May 2004, 17 years ago, making the interior paint of the rental unit at least 17

years old as of the date of these proceedings. The Residential Tenancy policy guideline #1 Landlord & Tenant – Responsibility for Residential Premises states the following:

“Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.”

In order to determine if repairs or maintenance are required to this rental property, I must refer to the Residential Tenancy Branch guideline # 40 Useful Life of Building Elements. The guideline sets the useful life of interior paint at four years; as the interior paint of this rental unit is at least 17 years old, I find that the interior paint of this unit is well past its natural life expectancy and now requires regular maintenance. Therefore, I order the Landlord to paint all of the interior walls of this rental unit no later than June 30, 2021.

Additionally, I recommend that this Landlord review the Residential Tenancy policy guidelines #1 Landlord & Tenant – Responsibility for Residential Premises and #40 Useful Life of Building Elements, to ensure they are in compliance with the requirements set out in section 32 of the *Act* for the proper maintenance of their rental properties and long term tenancies. Also, the Landlord is reminded of section 5 of the *Act*, which states the following:

This Act cannot be avoided

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Finally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application. I grant permission to the Tenant to take a one-time deduction of \$100.00, from their next month's rent in full satisfaction of this award.

Conclusion

I hereby order the Landlord to inspect the rental unit no later than May 15, 2021.

I hereby order the Landlord to make all necessary repairs to the rental unit no later than June 5, 2021.

I hereby order the Landlord to paint the interior of the rental unit no later than June 30, 2021.

I grant the Tenant permission to take a one-time deduction of \$100.00, from their next month's rent.

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: May 5, 2021

Residential Tenancy Branch