



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for An order for regular repairs pursuant to sections 32 and 62.

The tenant attended the hearing and the landlord was represented at the hearing by the building owner, AN ("landlord"). As both parties were present, service of documents was confirmed. The landlord acknowledged the building manager forwarded her the tenant's Application for Dispute Resolution and evidence and had no issues with timely service of documents. The landlord did not provide any documentary evidence for this hearing.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the *Act*.

Preliminary Issues

The tenant advised that her cell phone provider was having issues and that she may get disconnected during the hearing. As a safeguard, the tenant's mother also called in to assist, should the tenant's phone disconnect. The tenant's line remained stable throughout the hearing which commenced at 11:00 a.m. and concluded at 11:35 a.m. The tenant's mother did not speak at any time during this hearing.

The landlord testified that the building manager was supposed to attend this hearing and represent the landlord, however the building manager left town on August 14th for

an emergency involving a relative. The landlord expected the building manager to come back before the hearing, but the building manager was unable to return. Although the building manager provided the landlord with the tenant's Application for Dispute Resolution and evidence, the landlord sought an adjournment of the hearing so that the building manager could represent her at the hearing. The landlord submits that the building manager has inspected the tenant's rental unit while the landlord herself has not.

I considered the criteria for granting an adjournment in accordance with rule 7.9 of the Residential Tenancy Branch rules of procedure.

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I determined the following:

- the tenant submits that she has been waiting for years for the landlord to address the repairs whereas the landlord submits that she was not prepared for the hearing since she has not personally inspected the tenant's unit
- giving the landlord the opportunity to inspect the tenant's unit may potentially assist the landlord in agreeing to make repairs however I found the landlord/owner could have sought to inspect the tenant's unit far in advance of this hearing
- the building manager's absence from this hearing was unintentional and neither party should be penalized because of it
- the landlord, tenant and I would all be working from the evidence supplied by the tenant. I would be making my decision based solely on that evidence and the parties' testimony. While personally inspecting the tenant's unit would better inform the landlord for her testimony, the landlord could have inspected it well in advance of the hearing.
- while the landlord's ability to dispute the evidence would be limited to what she sees in the photographs, I find the prejudice to the tenant in waiting for a reconvened hearing would be greater as it would be scheduled many months in the future.

As a result of these findings, I declined to adjourn the hearing. I find the tenant has already waited close to 4 months for this hearing and making her wait several more

months would be prejudicial to her. I also find that the landlord/owner could have made arrangements to personally inspect the tenant's unit prior to this hearing and be better prepared in the event the building manager was unable to attend.

Issue(s) to be Decided

Should the landlord be required to do repairs to the rental unit?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The tenancy began on February 1, 2006. The tenant gave the following testimony. When she moved in, the carpets were already old. Since moving in, the landlord has not painted the unit, provided her with any new appliances or replaced any fixtures.

The tenant has had the carpets professionally cleaned in the past and the last carpet cleaner advised her the carpet underlay is so old that the carpets would get damaged if she were to clean them again. Photos of the carpets were provided however no written statements from carpet cleaners were provided and nobody was called as a witness to provide expert testimony.

In the bathroom, the porcelain finish on the bathtub is starting to crackle away. The remaining finish is sharp and it hurts the tenant to stand on it or take baths in the tub. The tenant argues that the fiberglass under the finish is exposed, making the bathtub dip and feel soft under her feet. The tenant also alleges the bathroom faucet sprays sideways, however no photograph of this was provided.

The walls have never been painted in the past 15+ years she has lived there. A previous tenant must have smoked in the unit, causing the walls to drip nicotine stain

bleeding. No matter how much she washes the walls, nicotine continues to bleed on the walls.

Lastly, ten years ago, the landlord replaced the tenant's fridge with a used fridge from the basement with a cracked bottom shelf. The shelf has become worse and the crispers are now broken and un-useable. The fridge no longer holds a proper temperature. The tenant provided photos of the bathroom tub, walls and fridge as evidence.

The landlord gave the following testimony. The assistant manager sent her the initial condition inspection report done with the tenant which states there are only minor repairs to be done at the beginning of the tenancy. No notation that painting needs to be done. The landlord is unaware of how long the previous tenants lived in the unit before this tenant moved in.

The landlord argues that it is the tenant's responsibility to care for the carpets and keep them clean. The landlord is not expected to clean them during the tenancy. The tenant has not provided the landlord with any receipts for carpet cleaning. No expert reports from carpet cleaners was provided to indicate the underlay is bad and the landlord has not personally seen the condition of the underlay.

The landlord is unaware of whether the tenant has been diligently cleaning her bathtub and the walls. The landlord questions why the tub area has mold issues.

Regarding the fridge, the landlord has an appliance repair company come in regularly to fix issues with the appliances. The tenant has never complained of cracks in her fridge or to have the bottom shelf and crispers replaced.

The tenant responded to the landlord's concerns, stating that she didn't provide reports from the carpet cleaners because the statements were made years ago and the company is no longer operating. She could not afford to hire another one to provide their opinion for this hearing. The tenant acknowledges she never complained to the building manager regarding the fridge, preferring to file this dispute seeking an order for repairs.

Analysis

Upon consideration of the evidence before me, I find Section 32 of the *Act* and Residential Tenancy Regulations, Schedule: Repairs 8 are applicable to this situation.

32 Landlord and tenant obligations to repair and maintain

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.

8 Repairs

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.

Further, a landlords' and tenants' Responsibility for Residential Premises is discussed in **Residential Tenancy Policy Guideline PG-1 [Landlord & Tenant – Responsibility for Residential Premises]**.

It states:

... the Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation

given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park.

... The tenant is not responsible for reasonable wear and tear to the rental unit or site.

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.

Policy Guideline PG-40 [Useful Life of Building Elements] establishes how long a building element under reasonable wear and tear is expected to last.

Item	Useful life in years
Carpets	10
Painting – interior	4
Refrigerator	15
Tubs, toilets, sinks	20
Faucet	15

The legislation clearly requires the landlord to provide a rental unit in a state of repair and decoration that complies with health, safety and housing standards. It also requires that the rental unit be suitable for occupation by a tenant. I find that during the course of this tenancy, the state of repair and decoration has fallen short of that which is required under the legislation.

In this case, it is undisputed that the tenant has been living in the rental unit since 2006. The length of the tenancy since inception is therefore more than 15 years. During this time, it is reasonable to expect that the carpets would deteriorate from regular wear and tear. I accept the tenant's testimony that the carpets were not new when she moved into the rental unit and I have closely analyzed the tenant's photographs and I find that the carpets have outlived their useful life. As the useful life of carpets is 10 years, I find

that in order to provide the tenant with a rental unit that complies with the legislation, the landlord must replace the carpets and underlay. Pursuant to section 32, I order that the carpets must be replaced with a reasonably similar quality carpet and new underlay by October 31, 2021.

The useful life of interior paint is 4 years. I have viewed the tenant's photo and find the testimony that the walls bleed nicotine to be factual. As the landlord did not dispute the tenant's testimony that the unit had not been painted since prior to her moving in, I find the useful life of the interior paint has long since expired. Pursuant to section 32, I order that the landlord must paint the tenant's rental unit with a sealing coat and top coat of paint to prevent further nicotine staining by October 31, 2021.

The tenant acknowledges she did not advise the building manager that her refrigerator had a cracked shelf, broken crispers and would not keep cold. I accept the tenant's testimony that the fridge can no longer stay cold, which is a hazard to her health should the contents of the fridge spoil. Further, I am not confident that repairing a refrigerator that is already beyond its useful life would be a prudent option for the landlord. Lastly, and perhaps most importantly, I find that the life of the refrigerator is already beyond the useful life of 15 years as prescribed under PG-40. For these reasons, I order pursuant to section 32 that the landlord replace the tenant's refrigerator by October 31, 2021.

I have reviewed the photos of the tenant's bathtub and I find she has satisfied me that the glazing is sharp and chipping. I accept that this constitutes a danger to the tenant in stepping into the tub with bare feet or getting into it unclothed. I further accept the tenant's testimony that the fiberglass below the tub no longer has the integrity to withstand her weight. For the landlord to comply with her obligation under section 32 of the *Act*, I order that the landlord replace the tenant's bathtub with a replacement bathtub by October 31, 2021.

The tenant did not supply any photographs of the bathroom faucet which she states sprays water in all directions. As such, I cannot determine the validity of this portion of the tenant's claim for it and I dismiss this portion of the tenant's claim with leave to reapply. I expect it would be inspected by the landlord while performing the other repairs in the bathroom and repaired if the landlord deems it necessary.

Lastly, the tenant seeks a regrouting of the tilework in her bathroom. She has supplied a single photograph of missing grout as evidence of this. From this single photo, I cannot determine the entire bathroom tile enclosure be re-grouted and I do not order the landlord to do so. I caution the landlord, however that should water penetrate behind

the wall due to defects in the grout, any failure to repair the grout may be determined to be the responsibility of the landlord.

Conclusion

Pursuant to sections 32 and 62 of the *Act*, I order that the landlord must complete the following repairs by October 31, 2021:

- the carpets must be replaced with a reasonably similar quality carpet and new underlay by October 31, 2021.
- the landlord must paint the tenant's rental unit with a sealing coat and topcoat of paint to prevent further nicotine staining by October 31, 2021.
- the landlord must replace the tenant's refrigerator by October 31, 2021.
- the landlord must replace the tenant's bathtub with a replacement bathtub by October 31, 2021.

I ORDER that if the above repairs are not completed within the prescribed time, **the tenant** may pay a reduced rent of 50% of her current rent until such time that the repairs are completed.

I find the following cannot be overstated. The tenant wants the landlord to make repairs and the landlord now has a legal obligation to perform repairs. Given the scope of the landlord's legal obligation it will require co-operation, reasonable accommodation by both parties and possible compromise by both parties in order to achieve the repair.

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: September 02, 2021

Residential Tenancy Branch