



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order that the landlord make repairs to the rental unit or property and to recover the filing fee from the landlord for the cost of the application.

The landlord and one of the named tenants attended the hearing, who also represented the other named tenant. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

Issues with respect to service of evidence were raised by the tenant, who applied for substitutional service and was granted an order permitting the tenant to serve the landlord by email. However, the landlord did not receive such an order but served the tenants with the landlord's evidence by email.

The landlord replied that the landlord's application for substitutional service has not yet been processed; the landlord has not heard back from the Residential Tenancy Branch. Once the tenants served the landlord, the landlord found out that the tenants had COVID-19 so the landlord served the evidence by email thinking that the tenants would not be able to pick up registered mail.

The tenant also disputes a photograph provided by the landlord of the stairs in the rental unit which was taken during an inspection without the tenants' consent.

It is clear that both parties have received each other's evidence, however a party may not serve documents by email without the consent or authorization from the party being served. Therefore, all other evidence provided by the tenants, and the testimony that I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

Have the tenants established that the landlord should be ordered to replace the carpets in the rental unit?

Background and Evidence

The tenant testified that this month-to-month tenancy began on October 1, 2021 and the tenants still reside in the rental unit. Rent in the amount of \$1,850.00 is payable on the 1st day of each month and there are no rental arrears. On September 15, 2021 the landlord collected a security deposit from the tenants in the amount of \$925.00 and on October 1, 2021 the landlord collected a pet damage deposit in the amount of \$925.00, both of which are still held in trust by the landlord. The rental unit is a condominium apartment in a complex containing a total of 6 units, built in about 1992. A copy of the tenancy agreement has been provided as evidence for this hearing.

The move-in condition inspection report was not completed with the landlord, but with the previous tenant. The parties had a discussion about a date for move-in and the tenant was concerned about booking a moving truck. The landlord said that she couldn't be there for the move-in condition inspection, and the tenant didn't believe he had any choice but to complete the report with the previous tenant. It appears that the landlord didn't do so with the previous tenant either. The tenant and previous tenant completed the move-out condition inspection report of the previous tenancy, as well as the tenants' move-in condition inspection report; they were completed in the same handwriting.

The tenants have provided photographs of rooms that have carpeting, as well as text message strings between the parties. The tenant is not an expert in carpets, but large holes exist in the carpet. The tenants have cleaned the carpets with their own steam cleaner, but the odor was worse. The tenant has tried to tack the carpet back into place where it has pulled away from the wall, but there is no carpet left to secure it to. It has pulled away from the kicks on the stairs, and the tenant can't tack it fully so it keeps coming loose. No maintenance or cleaning has been done by the landlord. The tenants also trimmed cat hair from the carpets when they moved in.

The tenants talked about the previous tenants on September 19, 2021 in the absence of the landlord and the tenant asked about cleaning. They said it hadn't been cleaned and the landlord talked to them about replacing carpets. The tenant emailed the landlord that day asking that the carpets be cleaned, but received no response by email. The

tenant called the landlord in October, 2021 and talked about cleaning and replacing carpets because the previous tenant had mentioned that it was a possibility, but the landlord's response was that the rental unit was accepted by the tenants "As Is."

On November 10, 2021 the tenant sent the move-in condition inspection report to the landlord by email, however the carpets got increasingly worse. The tenant contacted the Residential Tenancy Branch, also due to a plumbing issue, and the tenant discovered that the tenants could require that carpets be replaced.

On April 29, 2022 the tenant sent another email to the landlord requesting replacement of the carpets. The landlord's response was that the carpets were not yet 10 years old and the request was denied.

The landlord was never at the rental unit until May 24, 2022 to serve notice stating that the rental unit is being sold. At that time the landlord verbally told the tenants that the landlord didn't have to do the repairs, and that the tenants would be evicted. The house was listed, but is no longer on the market.

The inspection report shows carpet at move-in, and a series of emails that the tenant sent to the landlord starting on September 18 requesting cleaning resulted in no response.

The tenants have a cat and a dog and have managed to maintain the carpets to some degree, with cat scratchers around.

The landlord testified that the carpets are not beyond cleaning or need replacing, and the landlord has offered over and over to do that. The landlord believes this is retaliatory. The move-in condition inspection report does not mention anything about carpets and it was not brought to the landlord's attention. The tenant is angry and the landlord does not believe it's about the carpet; nothing was mentioned until the parties had another issue. A toilet was clogged and the tenant was upset that the landlord suggested that the tenant call a plumber.

The carpets in the rental unit are throughout the 2nd floor and up the stairs except for the bathroom and stairs to the deck. The landlord understood that the tenants wanted to move in early, and the previous tenant told the landlord that they cleaned the carpet. The landlord told the tenants to write down everything on the move-in condition inspection report, and understood that to be agreeable by the tenants.

The tenants have been told to get contractors for other repairs, and they have done so and sent the landlord a list, but some of the items were not on the condition inspection report. The landlord said that was not a problem, and the landlord would pay the bills and did so. There was no mention of carpeting at all. The first the landlord heard of the carpet issue was in June when the tenant sent a demand letter for the landlord to clean the vents and replace the carpet by a certain time. Just because the tenant requests it, doesn't mean that it's called for. Also, the landlord doesn't know what the tenants' pets are like.

The carpets are not to the point that they need replacing. The landlord went to the previous owner to confirm that the carpets were new when he was owner and then provided that response to the tenant, but the tenant rejected it as untruthful.

SUBMISSIONS OF THE TENANT:

The tenant's concern is that the carpets must be clean, healthy and safe to use. The tenants also have a toddler.

SUBMISSIONS OF THE LANDLORD:

The tenants' application is a vendetta, and the landlord is more than willing to do what the landlord can to repair and clean the carpets, but does not feel that replacing them is fair at this point, especially considering that the tenants have animals.

Analysis

Firstly, the *Residential Tenancy Act* places the onus on the landlord to ensure that the move-in and move-out condition inspection reports are completed by the landlord and by the tenant, not by a previous tenant and a new tenant.

The *Act* also states that:

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.

A tenant leaving a rental unit is required to clean carpets at the end of their tenancy if the tenant resided in the rental unit for more than 1 year or had pets that were not kept in a cage. In this case, the parties agree that the previous tenant had pets as well. The previous tenant told the landlord that carpets had been cleaned, but I am not satisfied that the landlord had confirmed that.

I have reviewed all of the tenants' evidence, including the photographs and I am not satisfied that the carpets were cleaned by the previous tenant. I have also reviewed the portion of the move-in condition inspection report which indicates some holes and stains in the utility room carpet. It also shows that the carpet in the stairwell is damaged and stained, and there are scratches on the floor or carpet in the dining room and master bedroom.

The onus in this case is on the tenants to establish that the carpets need replacing and not repairing or cleaning. The photographs provided do not satisfy me that the landlord should be ordered to replace the carpets. In the circumstances, and considering that the tenants also have a dog and a cat, I order the landlord to retain the services of a professional carpet cleaning company to clean all of the carpets within the next 2 weeks. I also order the landlord to retain the services of a carpet layer or carpet repair person to make the necessary repairs to the carpets within the next 2 weeks.

Since the tenants have been partially successful with the application, the tenants are also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in that amount in favour of the tenants as against the landlord, and I order that the tenants be permitted to reduce rent for a future month by that amount, or may otherwise recover it by filing the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgement.

Conclusion

For the reasons set out above, I hereby order the landlord to retain the services of a professional carpet cleaner and a carpet layer or carpet repair person to clean and repair the carpets in the rental unit within the next 2 weeks from the date of this Decision.

I further grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00, and I order that the tenants be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

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 30, 2022

Residential Tenancy Branch