



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding CASCADIA APARTMENT RENTALS
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **RP, FFT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order for repairs to the unit, the Landlord has been contacted in writing to make repairs, but they have not been completed pursuant to Section 32 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Tenant received the Notice of Dispute Resolution Proceeding package ("NoDRP package") on October 25, 2022, he served the NoDRP package and evidence by registered mail around October 28, 2022, the Landlord confirmed receipt of both, sufficiently served on November 2, 2022; and,

- the Landlord's evidence was served by registered mail on January 24, 2023, Canada Post Tracking Number is noted on cover sheet of decision, the Tenant confirmed receipt, deemed served on January 29, 2023.

Pursuant to Sections 71, 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issues to be Decided

1. Is the Tenant entitled to an Order for repairs to the unit?
2. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The tenancy agreement states this periodic tenancy began on June 1, 2014; however, the Tenant stated the tenancy began as a fixed term tenancy on June 1, 2013. The fixed term ended on June 1, 2014, then the tenancy continued on a month to month basis. Monthly rent is \$1,771.00 payable on the first day of each month. A security deposit of \$750.00 was collected at the start of the tenancy and is still held by the Landlord.

The Tenant has requested that his carpets be replaced. He stated when people move out of the building, the management replaces the floor covering with laminate flooring. When the Tenant moved into the building the carpeting was not new. He said it is well over 10 years old and beyond its useful life. The uploaded documentary evidence shows very old and soiled carpets, especially in the hallway and at the front door of the rental unit.

The Tenant said his front door is repeatedly damaging and soiling the carpet as it swings into his rental unit. The Tenant has had his carpets cleaned twice this year, and has spent much money to clean the carpets especially in the front door area, but carpet cleaners tell him, *"these carpets are old and out of date now, and we can't do anything to clean them enough."*

The Tenant testified that he has caught one mouse in his rental unit a few years ago, and he has observed silverfish on his carpets. He has, on multiple occasions, written the Landlord requesting replacement of his flooring. The Tenant offered that he would help with the installation, and the Landlord told the Tenant that he has talked to management, but they've decided not to do it. Every time the Tenant has requested this change, they said 'no'. The Tenant is tired of spending money on cleaning a carpet that is so old and damaged and it is not his fault.

The Landlord's Agent testified that he has checked the Tenant's unit and he stated that it is not clean enough. The Landlord's Agent points to Section 23 of the tenancy agreement that states:

23. CARPETS. *Carpets shall be professionally cleaned or, if recommended by the Landlord, by the Tenant at the Tenant's expense annually and immediately prior to the Tenant vacating the premises.*

He said he was told the carpets have been cleaned, but he has not received any receipts. The Landlord said they can do a steamcleaning, but that they only change the carpets to laminate when the tenants move out. The Landlord's Agent said he can request management to change the carpets to laminate, but in the meantime, they can steamclean the carpets for the Tenant.

The Tenant is happy to work with the Landlord if that means leaving the apartment for three days or moving his furniture around to accommodate any work. He asserts that changing to laminate may be more costly up front, but if the Landlord is agreeing to steamclean, it does not seem expedient to do a steamclean as the costs of multiple steamcleaning jobs over time may be frustrating, as repeated carpet cleaning is not even making a difference.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

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.*

...

The Tenant is seeking the replacement of his rental unit's carpets. He has been living in the rental unit since 2013, and the carpets were not new when he moved in. In fact, the move-in condition inspection report notes that all the carpets were cleaned but marked at the start of the tenancy. The carpets are well over 10 years old. RTB Policy Guideline #40-Useful Life of Building Elements states that 10 years is the useful life of carpets.

The Tenant testified that he has already cleaned his carpets twice this year but they still look awful, even the carpet cleaners said they can never get this carpet looking clean again. The Tenant knows, and the Landlord's Agent confirmed that when old tenants leave the building, new laminate flooring is laid in the vacant rental unit. The Tenant requests this and has offered to help with moving his furniture items around to accommodate the work.

The Landlord must provide and maintain the residential property in a state of decoration and repair that having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. RTB Policy Guideline #1-Landlord & Tenant – Responsibility for Residential Premises states that the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair. The carpets were cleaned, but marked at the start of the tenancy. The Landlord's Agent said that the Tenant, at the end of his tenancy, must professionally clean the carpets. When asked, 'even when you will be changing the flooring to laminate?', he stated 'yes'. This is unreasonable.

The carpets are old, cannot be cleaned, there are silverfish crawling around on the carpets. The uploaded picture evidence clearly speaks to the disrepair of the carpets in the Tenant's rental unit. The Tenant has cleaned his carpets twice this year, they still do not come out clean. The Tenant is not moving out. It is reasonable that these old carpets must be replaced.

I find the Landlord has an obligation under Section 32(1) of the Act, and I order the Landlord to replace the old carpets in the Tenant's rental unit with laminate flooring as is

being used in the building's rental units where old tenants have moved out. The Landlord must have this replacement completed by May 31, 2023.

Should the Landlord fail to comply with this order, the Tenant is at liberty to apply for dispute resolution and request financial compensation in the form of a rent reduction retroactive to when he applies for dispute resolution until the work is completed.

As the Tenant is successful in his claim, he is entitled to recovery of the application filing fee. The Tenant may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from next month's rent due to the Landlord.

Conclusion

I order the Landlord to replace the Tenant's old carpet with new laminate flooring. This work must be completed by May 31, 2023, and if not completed, the Tenant can apply for dispute resolution and request a rent reduction.

The Tenant may withhold \$100.00 from next month's rent to recover his application filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 24, 2023

Residential Tenancy Branch