



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kentland Investments Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, FFT

Introduction

This hearing dealt with the tenant's application for repair orders.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

The landlord had a contractor in attendance at the start of the hearing. The contractor was treated as a witness and excluded until called to testify.

I confirmed that both parties had exchanged their hearing documents and materials upon each other, and I admitted their materials into evidence.

Issue(s) to be Decided

It is necessary and appropriate to issue repair orders?

Background and Evidence

The tenancy started on February 1, 2014. The tenants are currently paying monthly rent of \$1689.00 plus parking and locker fees for a total monthly payment of \$1749.00.

The rental unit is located in the basement level of a multi-unit building. The rental unit has three bedrooms and is occupied by the two tenants and their two children.

In filing this Application for Dispute Resolution, the tenants indicated two primary repair issues: (1) the need for window locks and (2) replacement of the carpeting.

With respect to the window locks, the tenant stated the landlord had a contractor install window locks and this is no longer an issue that requires resolution. The remainder of the hearing focused on the tenants' request for carpet replacement.

In filing the Application for Dispute Resolution, the tenant described the need for carpet replacement because they were old (the tenant estimated 15 years) and they were damp and dusty.

Since the tenant indicated the carpeting was damp, I proceeded to explore whether there were signs of water leaking into the rental unit since a water leak would need to be addressed before carpeting is replaced. The tenant testified that she had a bylaw officer with the City inspect the rental unit approximately two months ago and he found that the unit was not leaking and there was no mould but that the unit would benefit from increased ventilation. The tenant described how the windows have a lot of condensation that requires daily wiping. The tenant indicated she was satisfied that the rental unit is not leaking; however, she still seeks carpet replacement because the carpets are old, thin, ripped, crumbling and contain a lot of "white dust". In addition, the tenant stated she has problems with her breathing and having laminate flooring installed would be better for her breathing problems. The tenant pointed to doctor's notes in support of her position. The tenant also pointed to carpeting having a useful life of 10 years in support of her position that the carpets need replacing.

The landlord's agents testified that the rental unit was constructed approximately 11 years ago and the existing carpets are approximately 11 years old; however, in the landlord's experience the carpets do not normally require replacement until they are at least 15 years old.

The landlord's agents requested the building manager inspect the carpets after the tenant complained to them that the carpeting was "old, dirty, wet and damp", and the building manager inspected the unit on December 10 or 11, 2019. The building manager testified that he observed the tenants had placed area rugs over the carpeting and he found a pile of "white dust" under an area rug that was easily vacuumed up. The building manager acknowledged that he saw a few stains on the carpets and an area where the seam was coming apart. The building manager took photographs that he provided to the landlord. In the building manager's opinion, the carpets reflected their age but were still in an acceptable condition. The tenant was of the position the building manager was only describing the carpeting in a bedroom and not other areas of the rental unit such as the living room.

After the building manager inspected the rental unit, the tenant's advocate wrote a letter to the landlord describing the carpets as being mouldy and in need of replacement given the mould and their age. The advocate's letter does not indicate how it was determined that there was mould in the carpets. The landlord relied the assessment of the building manager in determining the carpets did not require replacement. The landlord had a lawyer respond on their behalf and in doing so notified the tenant that the landlord did not agree that the carpets required replacement. Also, the tenant was expected to clean the carpets. The tenant then filed this Application for Dispute Resolution seeking repair orders.

The landlord's agents requested their contractor attend the rental unit after receiving the tenant's Application for Dispute Resolution. The contractor attended the unit in early March 2020 according to his invoice. The contractor was called to testify. The contractor testified that he was asked to inspect the rental unit by the landlord and pay particular attention to the tenant's complaint that the carpets were damp and install window locks. The contractor testified that he checked the carpeting below the windows in two of the bedrooms and the living room and he found them to be dry and there were no signs of leaking. Rather, he found the rental unit was humid, as many basement units are, and would benefit from a dehumidifier and opening of the drapes to keep the windows from accumulating so much condensation. The contractor testified that he reported to the landlord's agents that the carpeting was in relatively good condition given its age.

As to whether the contractor inspected other areas of the carpeting, the contractor stated that he walked through the rental unit when he was going from the bedrooms to the living room and he made a general observation of the condition of the carpeting. The tenant pointed out that she understood the contractor was there to install window locks and check for leaks but that if she knew he was there to inspect all of the carpeting she would have pointed out areas of concern to him, but she did not get that opportunity.

Analysis

Section 32 of the Act places obligations upon both a landlord and a tenant to repair and maintain a rental unit, including:

- 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.

Residential Tenancy Policy Guideline 1 provides information with respect to repairing and maintaining a rental unit including the following, in part:

CARPETS

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet, he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.
4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

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.

Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.

Considering many building elements, such as carpeting, deteriorates with age and wear and tear, and have limited useful lives, it is expected that carpeting will be replaced by the landlord in reasonable intervals.

I accept the landlord's submission that the carpeting is 11 years old based on the year they constructed the rental unit. The tenant submitted that it was over 15 years old; however, I am of the view the landlord would have greater knowledge as to when the carpeting was installed since it was installed before the tenancy started.

Residential Tenancy Branch Policy Guideline 40: *Useful Life of Building Elements*, provides information on the average useful life of various building elements and carpeting is listed as having an average useful life of 10 years. The tenant appears to be relying upon this policy guideline, at least in part, in support of her request that the carpets be replaced. However, the policy guideline also indicates that useful lives of building elements that are provided in the policy guideline are relevant to a landlord's application for an additional rent increase or where the landlord alleges the tenant has damaged the rental unit and the building element requires replacement. As such, I reject that all carpeting must be replaced just because it reaches the age of 10 years. Rather, I find an evaluation of the carpeting to determine whether it is suitable for occupation and meets health, safety and building standards is more useful and on point.

The parties were in dispute as to whether the current condition of the carpeting warrants replacement of the carpet. The photographs provided of the carpeting were not overly helpful. The tenant's photographs appeared to be focused on the windows and a broken or rotted baseboard. There was one photograph the tenant provided that appears to show a darker area of carpeting, but I am unsatisfied by this one photograph that the carpets require replacement. The landlords provided some low quality photographs and I am able to see a rip or run in the carpeting, but the carpeting was mostly covered by area rugs. Also, in hearing from the contractor and the tenant, I am of the view the contractor was in the unit with the primary purpose of determining whether there were leaks and dampness around the windows and on the carpets near the windows I was unsatisfied that he conducted a thorough inspection of all of the carpeting. Also, the building manager's inspection appears to have been limited as, according to the tenant he did not inspect all of the carpeting, and this position appears

consistent with the photographs he took that show much of the carpeting covered in area rugs.

I also note that the tenant's own evidence was conflicting. The tenant had provided a doctor's note indicating there was mould in the rental unit carpeting, yet the tenant testified that there was no mould and I cannot ascertain how the doctor determined there was mould in the carpeting. Another doctor referred to "investigations" being conducted without any further detail as to when an investigation was conducted, by whom, and what the findings were. Nor, was there any investigative report presented to me by the tenant. Another doctor's note describes how dust exacerbates the tenant's allergic asthma and that carpets hold dust; but, the landlord is not responsible for removing ordinary dust from the rental unit carpets.

Both the tenant and the building manager described a pile of "white dust" on the carpets and I found that description very unusual. The description of "white dust" and the tenant's description of the carpets being thin and crumbling, leads me to question whether the carpeting or under pad have significantly deteriorated.

Considering all of the above, and having found that there has not yet been a thorough inspection of all of the carpeting in the rental unit, I find it necessary and appropriate to order the following:

I order:

1. The landlord shall inspect all of the carpeting in the rental unit to determine whether it requires replacement so that the rental unit is suitable for occupation and the carpets meets health, safety and building standards. The landlord's inspection should include pulling up a section of carpeting and/or under pad to determine whether the carpeting or under pad is mouldy or significantly deteriorating underneath.
2. During the inspection described above the tenants are to point out areas of particular concern to them and the landlord shall pay particular attention to inspecting those areas.
3. The tenants must not attempt to pull up the carpeting themselves.
4. Should the landlord determine it appropriate to replace the carpeting the landlord is expected to undertake such action within a reasonable amount of time. If the landlord determines it is unnecessary to replace the carpeting the landlords shall communicate that, and its reasons for making that determination, to the tenant in writing.

In recognition of the COVID-19 pandemic, and especially considering the tenant has stated she has breathing difficulties, the landlord is to inspect the rental unit after the **Ministerial Order MO89** being lifted but within two weeks of the Ministerial Order being lifted.

Should the parties remain in dispute as to whether the carpeting requires replacement so as to comply with section 32(1) after the landlord's fulsome inspection, the tenants may make another Application for Dispute Resolution and in doing so I suggest they provide better evidence to substantiate their position.

As for the filing fee, I order both parties to share in the cost equally. Since the tenants paid for the Application for Dispute Resolution, I award the tenants recovery of one-half, or \$50.00. The tenants are authorized to make a one-time deduction of \$50.00 from a subsequent month's rent to satisfy this award.

Conclusion

I have issued orders to the parties with respect to inspecting the carpeting and replacing the carpeting if appropriate.

The tenants are awarded recovery of one-half of the filing fee, or \$50.00. The tenants are authorized to make a one-time deduction of \$50.00 from a subsequent month's rent payment to satisfy this award.

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: April 08, 2020

Residential Tenancy Branch