



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNR; MNDC; MNSD; FF

Introduction

This is the Landlords' application for a Monetary Order for unpaid utilities and for compensation for damage or loss; to retain the security deposit in partial satisfaction of their monetary claim; and to recover the cost of the filing fee from the Tenants.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Preliminary Matters

At the outset of the Hearing, the Landlords advised that the Tenants have paid the outstanding utility bill. Therefore, this portion of the Landlords' application is dismissed.

Issues to be Decided

- Are the Landlords entitled to compensation for damages to the kitchen floor, pursuant to the provisions of Section 67 of the Act?

Background and Evidence

The rental unit is in a house, which was built in 1961 or 1962.

The tenancy started on December 1, 2009 and ended on May 15, 2010. The Tenants paid a security deposit in the amount of \$425.00 at the beginning of the tenancy.

The male Landlord gave the following testimony and evidence:

On April 14, 2010, the Tenants advised the Landlords that there was a leak coming from under the kitchen sink. That same evening, the male Landlord went to the rental unit to investigate the leak and arrived at the same time as the Tenants were returning home from work. The Landlord noted two towels on the kitchen floor. The towels were soaking wet. The inside of the cupboard under the sink was also wet.

The Landlord discovered that a welded joint in the copper pipe was leaking water from the sink. The Landlord asked the Tenants not to use the sink until he could return with materials to temporarily fix the pipe until a plumber could properly repair it. The Landlord believed the breach in the pipe was caused by an oversize garbage can which would hit the pipe every time the cupboard was closed. The Landlord did not believe that this was negligence on the Tenant's part.

The following day the Landlord returned to temporarily fix the pipe. The plumber attended to repair the damage a few days thereafter, but the Landlord was not certain what day.

On April 21, 2010, the Tenants gave the Landlords notice that they would be ending the tenancy effective May 31, 2010.

On April 26, 2010, the Landlord returned to the rental unit and discovered that the kitchen floor had lifted. The Landlord called the insurance agent, who sent an adjuster to assess the damage. The adjuster told the Landlord that damage to the subfloor had occurred as a result of water not being quickly or adequately mopped up.

The Landlord made arrangements to have the floor repaired, starting May 17, 2010. The Tenants asked to move out on May 15, 2010, and to recover ½ of May's rent. The insurance company agreed to pay the Tenants half of a month's rent and the Tenants moved out on May 15, 2010.

The Landlords seek ½ of the insurance deductible, in the amount of \$250.00, because they allege that the water damage to the subfloor was caused by the neglect of the Tenants not cleaning up the water in a good and timely fashion. At the end of the tenancy, the rental unit was left in good and clean condition, with the exception of the damage to the kitchen floor.

The Tenants gave the following testimony:

The Tenants cleaned up the water from the leaking pipes as well as they could before they went to work. They left the towels on the floor to sop up any remaining water.

The plumbing throughout the house was a problem. Every time the Tenants did dishes, the plumbing would leak. The plumbing for the toilet and the washing machine was messed up. Whenever the toilet was flushed, the house would shake. When using the washing machine, the water would bubble up into the bathroom sink. If the pipes were proper in the first place, there would have been no problem with the kitchen pipes leaking.

The Landlord did not fix the pipe properly the day after the leak, and the plumber did not come for a week after the leak was discovered. The Tenants could not use the dishwasher because it didn't work properly and therefore they had to use the sink to wash the dishes.

The Tenants told the Landlords about the plumbing problems but nothing was fixed.

The male Landlord gave the following reply:

The Landlord stated that he meant to repair the dishwasher at the beginning of the tenancy, but had forgotten about it. The Landlord testified that the Tenants did not bring it up or remind him about the dishwasher throughout the tenancy.

The Landlord stated that the Tenants first told him about the problem with the washing machine on May 3, 2010. The Landlord arranged for a plumber to come to the rental unit on May 5, 2010.

The Landlord submitted that the house was an older house with copper piping. The Landlord disputed that the problems with the plumbing near the washing machine had anything to do with the problems with the plumbing in the kitchen, as they were on separate lines.

Analysis

The Tenants provided testimony suggesting that the plumbing in the rental unit was substandard, which caused the kitchen sink to leak.

The Landlord provided testimony alleging that the damage to the subfloor was not caused directly by the leak, but as a result of the Tenant's negligence in not properly cleaning up the water and leaving the wet towels on the floor on the day the leak occurred.

I find, on the balance of probabilities, that it would take days or weeks of water sitting on a kitchen floor, or a number of leaks over a period of time, before it caused sufficient damage to the subfloor to warrant ripping up the floor and replacing the subfloor. It is unlikely that a single leak could have caused such damage. The Landlords did not provide documentary evidence to support their claim (i.e. a letter from the insurance adjuster or the plumber).

I find that the Landlords have provided insufficient evidence that the Tenants' actions caused the damage to the subfloor and I dismiss the Landlords' application in its entirety.

I hereby order the Landlords to return the security deposit in the amount of \$425.00 forthwith. No interest has accrued on the security deposit.

The Tenants are provided with a Monetary Order in the amount of \$425.00.

Conclusion

I hereby grant the Tenants a Monetary Order in the amount of \$425.00 against the Landlords. This Order must be served on the Landlords and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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: October 21, 2010.
