



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application filed by the landlords seeking:

1. A monetary Order for compensation for damage and/or loss in the sum of \$20,000.00;
2. An Order to be allowed to retain the security deposit; and
3. Recovery of the filing fee paid for this application in the sum of \$100.00.

Both parties appeared at the hearing and gave evidence under oath.

Issue(s) to be Decided

Has the landlord met the burden of proving their claims?

Background and Evidence

This tenancy began on October 1, 2009 and ended in February 2011. The landlord included an addendum to the Tenancy Agreement which contains a clause stating that the tenancy agreement:

...excludes any management or maintenance from the Landlord. This means; Landscaping, HOT Tub maintenance, Utilities, windows cleaning, gutter cleaning, **appliance maintenance**, furnace/heater maintenance, snow removal, painting should be taken care of by tenant.

(reproduced as written)

On September 9, 2009 a relocation specialist, JM, attended the rental unit with PB to perform an inspection. The landlord submits that on her report JM noted some floor damage in the living areas, carpet spots that were missed by the cleaners, painting required in the laundry room and window sills and windows that needed repair. The landlord says that everything noted on that report was repaired save four areas where

the hardwood floors on the main floor were slightly scratched or damaged. On December 9, 2010 the landlord received an email from the tenant stating there was a problem with the refrigerator. The landlord gave the tenant authority to have repairs performed and deduct the cost from the rental payment. The landlord submits that the repair involved replacing a faulty adaptive control board which the landlord submits has nothing to do with leaking.

The landlord says that during the course of the tenancy the landlord requested a fully executed copy of the lease from the tenants but a fully executed copy was never returned to the landlord. The landlord says she did not complete a condition inspection report but the relocation specialist involved in this tenancy did complete but however did not provide a copy to the landlord.

On February 2, 2011 the landlord says the male tenant e-mailed her to advise that JM would arrange for the keys, inspection and security deposit to end the tenancy. The landlord says that it was at this point that the tenant mentioned that there was a small leak in the area of the fridge which he claimed to have appeared over the last couple of days.

The landlord says they arranged for fridge repairs the following day. The landlord testified that the repair person advised the landlord that a pipe at the back of the fridge was leaking. The leaking pipe was replaced with a copper pipe.

The landlord submitted a copy of a report dated February 10, 2011 from Belfor Property Restoration which states in part:

Belfor Property Restoration attended site on February 7, 2011 with the homeowner's daughter. At the time of inspection, it was noticed the fridge was pulled out and there were signs of water damage to approximately an 8'x 4' area.

When taking a closer inspection of the hardwood flooring, there were noticeable signs of rot and material deterioration (the hardwood flooring was soft to the touch, and in some areas you can push your finger through it). Also there are signs of mould growth to the kitchen cabinetry and behind the baseboards (as per attached photos).

It is in this writer's opinion, this has been an ongoing leak for some time.

(Reproduced as written)

The landlord submitted several other reports from Restoration firms stating that the damage was extensive and noting that the "...hardwood has been exposed to water for many months and has not be attended to by the teannats. The wood is now soft and rotting..." (reproduced as written). The landlord submitted evidence to demonstrate that her insurance company has declined to pay for repairs because they believe this was a long-standing problem and the damaged were exacerbated because the matter was not dealt with in a timely manner.

Further in her submissions the landlord claims that the tenants had 2 cats illegally and that the cats urinated on the carpets and damaged them.

Counsel for the tenants argued that the *Residential Tenancy Act* forbids tenants being held responsible by landlords for appliances and therefore the clause in a Tenancy Agreement that sets such a term is not enforceable under the Act. Counsel argues that the damaged wood was a pre-existing condition noted on the condition inspection report prepared by the Relocation Specialist (JM) who involved in securing and inspecting the rental unit for the tenants. Counsel argues that as soon as the tenants noted further problems with the fridge they were proactive in informing the landlord of the problem. Counsel describes the fridge as very large and while there may have been water leaking it was not visible.

JM, the Relocation Specialist attended the hearing as a witness. JM testified that she performed the initial walk-through on September 9 along with the landlord PB. While performing the inspection JM says she noted some water damage near the fridge. When she pointed this out to the landlord the landlord responded that there had been previous problems with the fridge that caused the damage. JM testified that she prepared her own Condition Inspection Report as is her custom as a Relocation Specialist and she noted the damage on her report. A Condition Inspection Report was submitted in evidence it is typewritten and there is a comment under the "Kitchen" column next to the category "Floor" stating "Near frig. Had a leak". Other damages are also noted as well such as: "window sill were missed by painter", "scratch repaired on floor near door", "near fireplace water mark on fl", "carpets were missed by cleaners" in the bedrooms 2 and 3, spots on the carpets in the basement, "off hot-tub is stuck", "2 windows need repair and painting was missed in the laundry room. There is a notation that the decking required replacement and that there was some wear on the hardwood adjacent to the kitchen.

The tenants moved in on October 1, 2009 and on December 9, 2010 the tenants reported a problem with the fridge leaking. The tenants contacted the landlord who told

them to engaged a repair person to make repairs and this work was done on December 11, 2010, a receipt was submitted in evidence for \$290.01 for an "ADAP. DEF. ASSY".

On February 2, 2011 the tenant wrote to confirm the move-out, final inspection and return of the keys with respect to a planned end of tenancy. The email was submitted in evidence it states:

You should also be aware that you appear to have a small water leak behind the main fridge which has appeared over the past couple of days. This is showing as a damp stain on the kitchen flooring – it would appear to be an issue you've had before since the flooring is already damaged in front of the fridge. Let me know how you would like to handle this.

To which the landlord responded on the same date in part:

When can we come and take a look at the leak?

To which the tenant responded, again on the same date:

You can come look at the leak any time, but ideally before the packers arrive on Saturday. Please just call me in advance to make sure that someone will be at home.

With respect to the photographs presented by the landlord counsel for the tenants submits that he has no idea when those photographs were taken.

The landlord responded that the photographs were taken by the restoration company who attended to make repairs to the damaged area. The landlord submitted an invoice from the repair company who attended to repairs. The cost shown on the invoice is \$20,000.00. The landlord says that the repair company agreed to that overall price and the landlords are seeking recovery of that sum from the tenants.

Counsel for the tenants noted that that when the landlord communicated with him via email her address as shown on the email indicated that she was writing from the office of the company who completed repairs on the rental unit. Counsel questioned the landlord who owned the company. The landlord gave a name that was not her own and states that she works at the company and agreed that her employer did perform the repairs.

Analysis

With respect to the issue of who is to repair and maintain appliances, counsel for the tenants is correct: the *Residential Tenancy Act* does require landlords to maintain and repair appliances and clauses in Tenancy Agreement which contravene the Act are not enforceable.

The *Residential Tenancy Act* also requires a landlord to prepare a Condition Inspection Report at move-in and move-out. The landlord and the tenant must perform inspections together and complete the report before the tenants move into the rental unit and after their furnishings are removed at the end of the tenancy. The Act goes on to say that when a landlord does not prepare a Condition Inspection Report the landlord loses the right to make claim against the security deposit. The evidence before me is that the landlord did not prepare such a report, however the tenants' agent did make a report and I am satisfied, based on that report that there was a leak problem involving the fridge at the start of this tenancy. I accept the testimony of JM that the landlord PM told her that the leaks were an ongoing problem. In fact, the evidence shows that shortly after move-in the tenants discovered a leak which was reported to the landlord right away and the tenants took steps to engage a contractor to have repairs made on the instructions of the landlord. From this I find it is reasonable and probable to conclude that if the tenants were aware that the fridge had another leakage problem they would have done the same, that is that they would have contacted the landlord to arrange for repairs.

Neither party denies that there was a leak in the fridge. Where the testimony conflicts is in that the landlord believes the tenants knew about the leak and did not inform her allowing the damage to become worse. The tenants say this is not true and the point to the fact that they had informed the landlord of leaks in the past. When the testimony of the parties is conflicting the onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find this to be the case here. I find the landlord has failed to prove that the tenants knew about the leak and failed to advise the landlords of it and I find the landlord has failed to prove the tenants had animals in the rental unit and that those animals damaged the carpets.

Conclusion

The landlords' application is dismissed.

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 16, 2011.

Residential Tenancy Branch