Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL –S; MNDCL –S; MNRL –S; FFL

Introduction

This hearing was originally scheduled for March 12, 2019 to be hear a Landlord's Application for Dispute Resolution filed by a sub-landlord against the sub-tenants. The Application had also been joined to a Landlord's Application for Dispute Resolution filed by the owner of the property against the tenant/sub-landlord (file number referenced on the cover page of this Interim Decision).

At the originally scheduled hearing, the owner, the sub-landlord, and one of the sub-tenants appeared. I made enquiries with all of the parties and I was satisfied that a sub-tenancy agreement had formed with the written consent of the owner. I ordered the two Applications be severed and this Application was adjourned. My reasons for severing the two Applications were provided in the Interim Decision and the Interim Decision should be read in conjunction with this Decision.

At the reconvened hearing, both the sub-landlord (referred to by initials JS) and one of the sub-tenants (referred to by initials RL) appeared. I confirmed service of documents upon each other. Although JS had served the sub-tenants with documents indicating he was seeking compensation in varying amounts, JS confirmed at the hearing that he was limiting his claim to floor damage only and the amount requested was the lesser amount he was ordered to pay the owner of the rental unit: $1,133.73. RL confirmed that he was prepared to proceed to respond to the limited claim. Both parties had the opportunity to be make relevant submissions and to respond to the submissions of the other party.

Under the definition of "landlord", as provided in section 1 of the Act, a landlord includes:

(c) a person, other than a tenant occupying the rental unit, who
(i) is entitled to possession of the rental unit, and
(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

The above described description of a “landlord” captures a person who is a tenant but gives occupancy to a third party under a sub-tenancy agreement. In this case, there was no dispute that JS had a tenancy agreement with the owner of the property and he sub-let the unit to RL and RL’s co-tenant CH. Accordingly, for the remainder of this decision I refer to JS as “landlord” and RL and CH as “tenants”.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenants for floor damage, as amended?
2. Is the landlord authorized to retain or make deductions from the tenants’ security deposit?

Background and Evidence

The parties entered into a sub-tenancy agreement that commenced on June 20, 2018 and was set to end on September 3, 2018. The tenants paid a security deposit to JS in the amount of $1,050.00 and were required to pay JS rent in the amount of $2,100.00 on the first day of every month. The tenancy came to an end earlier, on August 20, 2018 when the tenants vacated the rental unit. Possession of the rental unit was returned to JS approximately one week prior to August 31, 2018 and JS returned possession of the rental unit to the owner on August 31, 2018.

The landlord seeks compensation of $1,133.73 for floor damage caused during the period of sub-tenancy. This is the amount JS has been ordered to compensate the owner of the property under a dispute resolution decision issued in resolution of the Application filed by the owner for the cost of three boxes of new laminate floor boards, labour to remove and reinstall floor boards, and remove and reinstall the cabinetry.

The landlord submitted that the fridge in the rental unit had “issues”. When the tenants reported to him they were having issues with the fridge, the landlord reported it to the owner. The owner had a fridge technician attend the property. Food from the fridge/freezer was left on the floor and as a result the floor boards warped.

RL testified that he and/or his co-tenant CH had noticed the fridge would get too warm on occasion and originally they thought it was their kids playing with the fridge settings but eventually it was determined not to be the case and the issue was reported to JS. According to RL, JS indicated it had been a recurring problem.

RL testified that a fridge technician eventually attended the property, on July 24, 2018 while CH was home with the children. RL stated the contents of the fridge and freezer were emptied out onto the floor by the fridge technician and the fridge was unplugged. According to RL, the fridge technician was young, unprofessional and inexperienced and did not come with any coolers and give them advance notice that the fridge would need to be emptied. Further, the fridge technician indicated he would be back in a couple of hours but he did not return for two days, on July 26, 2018. The tenants presented evidence that the weather in the area was extremely warm on July 24 and 25, 2018 with highs of 32 degrees Celsius.

Initially, RL testified that the food removed from the fridge/freezer was left on the floor for a few hours in anticipation that the fridge technician would be returning and that the floor boards warped when the food thawed. Then, RL changed his testimony to say he was uncertain as to how long the food remained on the floor before it was placed in coolers and boxes since it was CH that was at home but RL was not home at the time and that the food may have been put in coolers and/or boxes immediately after the food was removed from the fridge/freezer. RL stated the food remained in the coolers and boxes waiting for the fridge technician to return.

RL testified that he noticed the warped floor boards on July 26, 2018 and he showed the warped boards to the owner approximately two weeks later. According to RL, the owner displaced a very nonchalant response and RL assumed that meant nothing would be done about the warped boards; however, after the tenancy ended, the owner started demanding the floor be replaced through JS. JS passed the information on to the tenants.

RL acknowledged that he originally agreed to look into floor repair options and accepting some responsibility but now the tenants take the position that they are not responsible for any portion of the floor repair. RL is of the position the floor damage is the result of negligence on part of the fridge technician in unplugging the fridge without giving the tenants advance notice of such or coming equipped with coolers for the tenants to use. RL also submits that the tenants are not responsible for compensating JS for floor damage because the owner was being unreasonable.

As for the owner being unreasonable, RL submitted that the few damaged boards could have been replaced by removing cutting the tongue of the damaged boards with a saw rather that removing several boards and the cabinets starting from the wall and working toward the damaged boards. RL submitted that he researched this technique on the internet and spoke with people in the industry.

Finally, RL argued that the lack of a reliable fridge and the loss of their food should be taken into consideration in making this decision.

Analysis

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their way of their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

In this case, it is undisputed that floor boards in the kitchen warped during the subject tenancy as a result of frozen food thawing while the fridge was not operational. The issue to determine is whether the floor was damaged as a result of negligence of the tenants.

I heard that a fridge technician attended the rental unit on July 24, 2018 while co-tenant CH was home. Unfortunately CH did not appear at the hearing. Rather, RL appeared at the hearing to provide testimony as to what occurred on July 24, 2018.

I find RL's testimony contains a lot on hearsay (what CH told RL) and double hearsay (what CH told RL the fridge technician said to her).

RL also testified that food was put on the floor by the fridge technician but was uncertain as to how long food remained on the floor before it was put in coolers and boxes by CH. However, from the emails and text messages written by CH it would appear the frozen food had been left in the freezer by the fridge technician and the tenants put the food in coolers. In an email CH wrote on July 25, 2018 she states:

> Okay, I will be here.
> I am not sure what [first technician's name] plan was but he unplugged the fridge and *unfortunately* all our venison meat, salmon, and berries etc that was in the freezer has thawed is thawing. Unfortunately I just discovered this. I'll try to plug it back in but I am not sure it can be salvaged. I will let [name of second technician] know. It's very disappointing.

In a text message CH wrote on September 18, 2018 she writes, in part:

> "There was a small amount damaged and also remember that that happened bc the fridge repairs and we needed to put our food in coolers."

Further, some of the information provided by RL was inconsistent with other evidence, including emails between the owner and CH. RL testified that it took two days for the fridge technician to return to the property, on July 26, 2018. Yet, the emails between the owner and CH indicate a fridge technician came on July 24, 2018 followed by another visit on July 25, 2018.

It would appear to me, based on what was described by CH, the one party at home during the visits by the fridge technician, the fridge/freezer was unplugged, frozen food was left in the freezer, which began thawing before it was moved to coolers on July 25, 2018.

In any event, the food belongs to the tenants and tenants have an obligation to manage their possessions in such a way so as to not cause damage to the rental unit. CH was at home when the faulty fridge was being serviced and unplugged by the fridge technician. I find that given the lack of an operational fridge/freezer a reasonable person would have taken appropriate action to store or contain their food appropriately so as to not cause damage.

Whether frozen food was left in the unplugged freezer for a day and water leaked on to the kitchen floor, or whether the food was placed in coolers and boxes and water leaked from the containers on to the floor I find that either circumstance points to the tenants not acting in a reasonably prudent manner to ensure their thawing food did not damage the rental unit. Therefore, I find the tenants were negligent in dealing with their frozen food in light of the non-working fridge/freezer so that it did not cause damage and I hold the tenants responsible for repairing the floor.

I find the tenant's argument that the fridge technician is to blame to be very weak. Where a fridge is not working properly and a fridge technician attends the property it is not upon the fridge technician to come equipped with coolers for the occupant to store their food and if the tenants had that expectation it is unreasonable. Also, having a technician attend the property to respond to a request for service does not necessarily mean the fridge will be functional upon the technician leaving a short time later as it is not uncommon for appliances to require replacement parts or further service to resume functionality. As such, I decline to find the floor damage the result of negligence on part of the fridge technician.

As for the tenant's argument that the owner was unreasonable in the manner in which the floor boards were replaced, I reject that argument. The owner's email communication to the tenants indicated that the floor boards were laminate that was approximately 1.5 years old. The landlord indicated that she wanted the floor boards replaced by professional flooring contractors which I find to be reasonable given the floors were relatively new with many more expected useful years. Given the damaged floor boards were in a high traffic area in the kitchen and relatively new I find it reasonable that the owner would defer to the flooring contractor's recommendation as to the method of replacing the damaged boards over the do-it-yourself approach the tenant found on the internet that does not offer any warranty that the approach will last over several years of use.

Finally, as for the tenant's argument that their loss of use of a properly working fridge and loss of food should be taken into consideration in making this decision, I am bound to resolve the claim before me. The tenants have not yet made a claim against their landlord for damages or losses related the fridge. The tenants remain at liberty to pursue a claim for damages or loss against their landlord by filing their own Application for Dispute Resolution and prove their losses.

In light of all of the above, I grant the landlord's request to recover $1,133.73 from the tenants. I further award the landlord recovery of the $100.00 filing fee he paid for this Application.

I authorize the landlord to retain the tenant's $1,050.00 security deposit in partial satisfaction of the amounts awarded to the landlord and I provide the landlord a Monetary Order for the balance owing of $183.73.

Conclusion

The landlord has been awarded compensation against the tenants for floor damage. The landlord is authorized to retain the tenant's security deposit of $1,050.00 and has been provided a Monetary Order for the balance owing of $183.73.

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: March 20, 2019

Residential Tenancy Branch