Off-campus living

Fix it—it's in my contract

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The article is the third in a series focusing on the landlord-tenant relationship. Subsequent articles will cover: subletting, roommates, raising rent and forums for complaints.

THE AIR CONDITIONER is out. The dishwasher gushes like Ol' Faithful. And the light fixture just fell upon the dining table. Who is responsible for making these necessary repairs? As with most problems encountered by the student-tenant, the rental contract holds the answer.

MANY RENTAL leases used in the Bryan-College Station area, including the standard TAA rental contract, contain a clause which states that the owner will: (1) keep all common areas in a clean condition; (2) provide appropriate receptacles for garbage; (3) properly maintain hot water, heating and/or air conditioning equipment; (4) comply with all state and local laws (NOTE: this provision would include city building codes); and (5) make all reasonable and necessary repairs.

IF THE RENTAL contract signed by the student-tenant contains such a clause, the owner is obligated to repair the air conditioner, dishwasher and light fixture.

Frequently, the same clause of the rental lease provides that the tenant may terminate the rental lease under the following conditions: (a) if the owner has not attempted to make the repairs within a reasonable period of time after being requested, in writing, to do so and, (b) if the owner has not attempted to make repairs in a week after receiving written notice of the student-tenant's intention to terminate unless the repairs are made. Thus, the owner has a reasonable period of time, plus one week, to make the repairs.

The length of time constituting a "reasonable period of time" within which to make repairs depends on the nature of the repair, availability of necessary parts and repair personnel and the cost of the repair.

IN THE ABSENCE of an "owner will repair" clause, the management is not obligated to repair that portion of the premises over which he has no control. That is, the owner would be obligated to repair only the common areas, (laundry rooms, sidewalks, parking lot, etc.).

The landlord-tenant relationship creates no obligation on the part of the landlord to repair the premises leased by the student-tenant. In fact, if the lease does not contain an "owner will repair" clause, the owner is not obligated to reimburse the student-tenant for repair expenditures. Furthermore, in Texas a tenant may not withold or decrease the amount of the rental payments while repairs are being made unless the lease so provides.

ALTHOUGH some leases which do not contain an "owner will repair clause, such a clause can be implied. This will be implied from the clause which states that the student-tenant will notify the manager of any plumbing, electrical or mechanical difficulty. An implication may also be made from the clause which provides that the owner shall have access to the leased premises to make necessary repairs. An implied "owner will repair" clause has the same legal effect as an express clause, i.e., the owner must make all reasonable and necessary repairs.

RENTAL contracts generally provide that the tenant will return the leased premises in good order and condition. Also, the tenant cannot be charged for reasonable wear and tear. This provision is important with regards to liability for repair expenditures.

If a piece of furniture, equipment, or fixture ceases to function properly under normal use, the owner must make repairs even if an "owner will repair" clause is not in the contract. For instance, if the refrigerator stops working during the sixth month of a 12-month lease, assuming normal and reasonable use of the appliance, the owner may not charge the tenant with the cost of repair or replacement.

A COMMENT ON improvements to the leased premises is appropriate. Suppose a student-tenant repaints a room or installs attached bookshelves. To whom do these improvements belong? Most rental leases use in the Bryan-College Station area require the written consent of the owner or his representative before any improvements or alterations become a part of the leased premises and will remain when the tenant leaves. Thus, in most situations the tenant is not entitled to remove any improvements, regardless of whether the owner's permission was granted.

IN SUMMARY, check the lease to determine whether the owner has the duty to repair. If an "owner will repair" clause is present, then the responsiblity is clear. If such a clause is not present one may be implied in the lease. Improvements to the leased premises made by the tenant will become the property of the owner unless the owner consented to the improvements and agreed that the tenant would have the right of removal.