

## **DECISION**

**Dispute Codes:** RP, ERP and FF

### **Introduction**

By application received December 23, 2010, the tenant seeks an Order for repair to the rental unit, specifically, replacement of a cracked pane of glass in a bay window, and recovery of the filing fee for this proceeding.

### **Issues to be Decided**

This matter requires a decision on whether the issuance of an order for replacement of the window is warranted.

### **Background and Evidence**

This tenancy began on May 1, 2010. Rent is \$1,050 per month and the landlord holds a security deposit of \$525.

During the hearing, the tenant gave evidence that while cleaning the window frame on November 30, 2010, she noted a crack in the large window running vertically for about three quarters of its height.

She stated that on or about December 1, 2010, she advised the building manager of the crack and on subsequent inspection, she found that the crack at extended to the full height of the window.

The building manager gave evidence that the building had been having new siding applied from August to October 2010 and that the owner had conducted a detailed inspection of the building at the completion of the work. She stated that he had been adamant that there had been no damage to the window at that time.

In the course of the following exchange of communications between the owner, the building manager and the tenant, the landlord proposed that the tenant should pay half the replacement cost. The tenant held that she had done nothing to cause the crack and that she should not be responsible for a portion of the replacement cost.

The landlord submitted an estimate of \$1,437.50 plus HST for replacement of the window.

The tenant submitted a detailed analysis and estimate from another supplier who set the replacement cost at \$1,250 to \$1,700 plus HST plus any other damage that might be discovered.

That supplier's analysis noted that:

1. The window is 58" x 53" single glazed glass;
2. There is an external impact mark on the outside of the 4<sup>th</sup> floor window from which the running crack originated as a result of temperature fluctuation and/or lateral pressure such as wind or pressure from the inside;

3. There are two or three spalding points that are of concern which, according to the tenant's recollection of her discussion with the supplier, could indicate a danger of the window shattering.

## **Analysis**

In the absence of definitive proof to the contrary, I find on the balance of probabilities that the tenant did not cause the crack in the window and that she is not responsible for any portion of the repair.

Section 32(1) of the *Act* imposes a duty on landlords to maintain rental units in a state that complies with applicable law and, taking into account age, character and location makes it suitable for occupation.

Section 62(3) of the *Act* empowers the director's designate to issue any Order necessary to give effect to the obligations of a party under the *Act*.

By that authority, I hereby order that the landlord must have the window replaced forthwith and no later than February 15, 2011 at no cost to the tenant, and the building manager has given assurance that it will be done.

In the event the work is not completed by February 15, 2011, the tenant may, at her discretion, treat the window replacement as an emergency repair under section 33 of the *Act*. Under this provision, she would be entitled to engage a service provider to do the work and deduct the cost from future rent until it is fully recovered.

As the application has succeeded on its merits, I find that the tenant is entitled to recover the filing fee for this proceeding from the landlord and may do so by withholding \$50 from the next rent payment due following receipt of this decision.

## **Conclusion**

The landlord is ordered to replace the damaged window in question as soon as possible and no later than February 15, 2011.

If the window is not replaced as ordered, the tenant may treat the work as an emergency repair and recover the cost by diverting rent.

The tenant is entitled to recover the filing fee for this proceeding from the landlord and may withhold \$50 from the next rent due for that purpose.

January 18, 2011