



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JORDAN SUCCESS REALTY & INSURANCE LTD.
and [tenants name suppressed to protect privacy]

DECISION

Dispute Codes MNR MND FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for: a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Tenant RG confirmed receipt of the landlord's Application for Dispute Resolution package and 48 pages of evidence. The landlord was able to confirm receipt of the tenants' 2 pages of evidence submitted for this hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, damage to the unit and any other loss as a result of this tenancy? Is the landlord entitled to recover the filing fee?

Background and Evidence

This tenancy began on August 1, 2014 as a one year fixed term that continued as a month to month tenancy after the first year. A copy of the residential tenancy agreement, as well as the attached addendums and "form k" were submitted as evidence for this hearing. The rental amount of \$1500.00 was payable each month. The

tenants vacated the rental unit on July 31, 2017. The 'form K' indicated that the tenants were required to know and abide by the rules and regulations of the strata management company.

On July 31, 2017, the tenants returned the keys to the landlord. Tenants RG testified that he provided his and his co-tenants' forwarding address to the landlord on or about August 6, 2017. The landlord subsequently applied to retain the tenants' \$750.00 security deposit (paid by the tenants on July 17, 2014) and an additional monetary amount for damage to the rental unit and other financial loss.

The landlord testified that there was damage to the rental unit at the end of the tenancy. A condition inspection was done at move-in and at move-out. The tenants were present for both inspections. Tenant RG testified that he actually sought a condition inspection *prior* to his move out. On a date prior to his move-out, an employee of the landlord attended and pointed out some damage to the walls and other small items. After that inspection, the tenants made repairs to address the issues raised. A copy of the final condition inspection report completed at move-out (July 31, 2017) was submitted as evidence for this hearing. The report indicates that some painting was required at the end of the tenancy, that there were some broken blinds and that a glass door in the master bedroom was broken.

The landlord submitted a monetary worksheet providing the breakdown of the landlord's loss as follows,

Item	Amount
Repair of sliding Glass Door	\$1652.00
Outstanding Utilities	560.34
Strata By-Law Fines (2 x \$200.00)	400.00
Less Security Deposit	-750.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order Sought by Landlord	\$1962.34

The landlord testified that the sliding glass patio door in the rental unit was damaged during the course of this tenancy. She testified that, after a landlord employee attended the rental unit for a refrigerator repair, the employee noticed that the patio door was cracked. The tenants were told verbally and with a follow-up written letter to attend to the repair of the patio door (or he will be evicted). The landlord also submitted a copy of a letter sent to the tenants prior to the end of the tenancy (on March 27, 2016). The landlord wrote that they were aware that the glass door was cracked and advised the

tenants that he and his co-tenant were solely responsible for the damage to the property. The landlord required that the tenants make repairs within 15 days. Tenant RG testified that he did not believe the cracked glass door was his responsibility and so he did not have the door repaired. The landlord submitted one quote for the replacement of the door at the end of the tenancy. The quote amount was \$1921.46. The landlord's representative testified that this was the lowest quote the landlord received. The landlord's representative also testified that the company stated that the door would have to be replaced: that it could not be repaired.

The landlord testified that 2 strata bylaw fines (each \$200.00) were issued to the tenants during their tenancy. One fine was for failing to pay the utilities for the rental unit. The landlord also submitted a copy of the letter sent to the tenants about the fine and the breakdown of the outstanding utilities. The tenants acknowledged that he is responsible for the utilities outstanding and the attendant by-law fine.

A second by-law fine was issued to the tenants by the strata for placing unauthorized waste material (not household or recycling) in the garbage room of the building. The tenants testified that he should have attended a hearing to dispute this fine but he did not and therefore he acknowledges that he is also responsible for this second fine of \$200.00. The landlord submitted a copy of the each letter regarding the bylaw fines issued to the tenants to show that those letters were sent directly to the tenants. Tenant RG acknowledged receipt and responsibility for the fines.

Tenant RG argued that he is not responsible for the damaged door. He wrote that this building is notoriously shabby with easily broken parts. Therefore, he submits that the damaged door was a result of regular wear and tear to the unit. He testified that his refrigerator broke down several times over the course of the tenancy and that several other items were easily broken, requiring replacement because of the poor standards in the building. He testified that he asked the landlord to repair the door. He refers to an email that he sent on April 5, 2017 with respect to the patio door. It is a letter in response to the landlord's letter advising him of his responsibility for the door's repair. He wrote that there was a design flaw in the door in that the glass door comes off its tracks easily making it hard to close. As a result of struggling to close the door, the glass was damaged.

The landlord testified that the residential premises were built in 2010, that the unit had one previous tenants and that the units was in good condition prior to the tenants' move-in as shown by the move-in condition inspection report. She testified that the tenants should have raised his difficulties with the door prior to the damage discovered

by the landlord if the tenants had trouble opening it and it was damaged in the course of doing so. The tenants submitted that the landlord only submitted one quote for the work to repair the patio door and that the invoice submitted refers to two doors. The landlord testified that she could not explain the reference to two doors. Tenant RG submitted that the door should have been repaired and not replaced to mitigate the expense.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss (in this case, the landlord) bears the burden of proof.

The landlord must prove the existence of the damage/loss. I find that the landlord has proven a loss by virtue of the provision of the strata bylaw letters regarding fines during this tenancy as well as the provision of the utilities outstanding at the end of this tenancy. Tenant RG acknowledges that the tenants' are responsible for these costs [\$560.34 utilities + \$200.00 fine + \$200.00 fine].

The landlord has proven that damage to the glass door in the rental unit by the provision of the condition inspection report that records the door damage as well as the correspondence to the tenants by the landlord during the course of the tenancy. The condition inspection report is clear in describing the damaged glass door, photographs of the damaged glass door and, according to Residential Tenancy Regulation No. 21 as laid out below the condition inspection report is the best evidence of the condition of the unit unless proven.

Evidentiary weight of a condition inspection report

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The landlord also must prove that the damage/loss stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Tenant RG argued that the residential premises are in poor condition despite being built in the last 8 years however the tenants did not submit any evidence to support his position and refute his responsibility for damage to a glass door inside his own rental unit during the

course of his tenancy. It is reasonable to presume that the tenants are responsible for this damage given that;

- the damage did not exist prior to the tenancy (evidence: move-in condition inspection report);
- the landlord's representatives observed the damage to the door during the course of the tenancy; and
- the tenants wrote to the landlord explaining how the damage occurred.

Finally, the landlord must provide evidence that can verify the actual monetary amount of the loss/damage. I find that the landlord has not provided sufficient evidence with respect to monetary amount of the glass door repair or replacement. The landlord's representative at this hearing was unable to state with certainty that more than one quote had been provided prior to this repair. The landlord's representative also was unable to provide documentary evidence to confirm that the glass door required replacement and could not be repaired. The landlord's representative was unable to speak with certainty as to whether other units had issues with the sliding doors going off track. As well, the landlord's representative was unable to explain why the quote provided indicated that two doors would be replaced when only one door showed evidence of damage. Without further detailed information from the landlord and/or information from an expert contractor to indicate what steps were necessary in repairing or replacing this door and given that the tenants has provided a reasonable reason to dispute his full accountability for the sliding glass door, I find that the landlord has not provided sufficient information to order the tenants to repay the entire glass door(s) replacement.

Residential Tenancy Policy Guideline No. 40 describes windows as having a useful life in a residential tenancy premise of approximately 15 years. Given that the residential premises in this case are approximately 8 years old, I find that the landlord is entitled to a portion of their cost to replace one door (and not two). According to the quote submitted by the landlord, the cost of supplies (\$45.00); the disposal fee (\$5.00); technician time (\$85.00); and materials (\$634.98) totaled \$769.98. I find, given the age of the premises, the failure to provide sufficient information regarding the possibility of repairs and the landlord's limited information regarding the nature of the work done to the rental unit to address the sliding glass door, I find that the tenants are required to pay 25% of the cost of a sliding glass door repair as estimated for the landlord. I find that the landlord is entitled to recover **\$192.49** from the tenants for the sliding glass door damage.

In accordance with section 72, I find that the landlord is entitled to retain the tenants' \$750.00 security deposit towards the monetary amount below. As the landlord was successful in his application, I find that the landlord is also entitled to recover the \$100.00 filing fee for this application.

Conclusion

I grant the landlord a monetary order as follows,

Item	Amount
Repair of sliding Glass Door	\$192.49
Outstanding Utilities	560.34
Strata By-Law Fines (2 x \$200.00)	400.00
Less Security Deposit	-750.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order to Landlord	\$502.83

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: February 27, 2018

Residential Tenancy Branch