



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ONNI PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) regarding a dispute as to whether or not the tenants should be responsible for paying for the replacement of a bedroom window that was broken during the course of their tenancy.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the landlord's representatives confirmed that the landlord was handed a copy of the tenants' dispute resolution hearing package on January 9, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*.

As both parties confirmed that they received one another's written evidence, I find that these documents were duly served in accordance with section 88 of the *Act*.

At the hearing and with the agreement of both parties, I corrected the spelling of the landlord's name to that which appears in the first page of this decision.

During the hearing, I advised the parties that one of the pages of the landlord's 8 page evidence package, containing what Landlord AL (the landlord) described as a photograph of the window from outside the building, was of such poor quality that I could attach no significance to that photograph. The landlord described this photograph during the hearing.

Issues(s) to be Decided

Should any orders be issued with respect to the reimbursement for a bedroom window broken during the course of this tenancy?

Background and Evidence

This tenancy began on September 1, 2010 as a one-year fixed term tenancy. At the expiration of the initial term, the tenancy continued as a month-to-month tenancy. Tenant CF (the tenant) gave undisputed sworn testimony that the current monthly rent is set at \$975.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$430.00 security deposit paid when this tenancy began.

Although the landlord's representative asserted that this building was about 35 years old, the tenant testified that this building was actually 44 years old. The landlord's representatives did not dispute the tenant's claim that the windows in the tenants' rental unit had never been replaced since this building was constructed.

The parties provided undisputed sworn testimony supported by written evidence that on October 15, 2017, Tenant JHJ broke a bedroom window in this rental unit. The parties also agreed that a professional glass company replaced the broken window on October 27, 2017. When the landlord received an invoice for the \$335.18 cost of this work from the glass company, the landlord sent the tenants a November 15, 2017 request to pay a total of \$385.46 to cover the landlord's costs in attending to this matter. The landlord's written evidence included a copy of the glass company's invoice, the November 15, 2017 request for payment and a subsequent January 9, 2018 letter outlining a payment schedule for the tenants' proposed repayment of this damage. The payments have not paid anything towards this damage, pending the outcome of their application for dispute resolution regarding this matter.

Tenant JHJ gave sworn testimony that the window shattered when they opened the window "a couple of inches." Tenant JHJ testified that this window had been opened hundreds of times during their lengthy tenancy without any problems. On this occasion, he speculated that the warping of the window frame had led to the shattering of the window.

When they reported this breakage to the landlord, the tenants both testified that the landlord's handyman for this building confirmed upon inspection of the window the tenants' claim that "the window was warped, but not very much."

The landlord's representatives maintained that Tenant JHJ exerted unusual force in trying to open the window on October 15, 2017. They also entered into written evidence a signed statement from the landlord's handyman in which the handyman claimed that "the window frame is in good working order and is fully functional." Landlord representative AL (the landlord) referred to the invoice of \$335.18 issued by the professional glass replacement company that repaired the window on October 27, 2017 that was included in the landlord's written evidence. The landlord testified that there is no reference to repairs of the window frame in this invoice; the sole charges were for materials and labour. When questioned on this aspect of the landlord's written evidence by the tenant, the landlord did not dispute the tenant's observation that there is no written evidence from the glass replacement company that the frame was not warped.

Both parties agreed that the joint move-in condition inspection report entered into written evidence by the landlord indicated that the window was in satisfactory condition when this tenancy commenced in 2010.

Analysis

While I have turned my mind to all the documentary evidence, including invoices, miscellaneous letters and reports, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of this dispute and my findings are set out below.

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 bears the burden of proof. Although there is no current application for a monetary award from the landlord, the issue in contention identified in the tenants' application clearly involves a dispute as to who bears responsibility for paying for the cost of repairs to the broken bedroom window that was repaired on October 27, 2017. Sections 58(1) and 62 of the *Act* provide me with the discretion to issue orders that result from applications before me. As such, I consider the issue as to who is responsible for the repairs of the tenants' broken window properly before me.

In this case, in order to consider the tenants' assertion that they should not be held responsible for the repairs to the bedroom window, the party requesting reimbursement, in this case the landlord, would normally bear the burden of proving the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established,

the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage **and** that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, the age of this rental building is variously estimated at between 35 and 44 years old. The landlord's representatives did not dispute the tenants' claim that the windows and window frames in the tenants' rental unit have not been replaced since this building was constructed.

Residential Tenancy Branch Policy Guideline #40, entitled "Useful Life of Building Elements", provides guidance to arbitrators and those involved in dispute resolution hearings as to the anticipated useful life of various building elements in residential tenancies. The following portion of Policy Guideline #40 applies to situations such as this one where one of the building elements has been damaged:

...When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement...

In this case, a window in a residential tenancy has a useful life of 15 years. The parties provided estimates of the age of the building that varied between 35 years and 44 years. There is also undisputed sworn testimony that the window broken on October 15, 2017 was an original window in this building. While the parties dispute the extent to which the window frame was warped, it too is well past its useful life.

Under circumstances such as this one, there is no doubt the broken window was well past its useful life and due for replacement. However, until it was damaged on October 15, 2017, and as noted by Tenant JHJ in his sworn testimony, it had been opened and closed without incident hundreds of times during this tenancy. For this reason, I conclude that there was still some remaining utility provided by this window even after its useful life would normally have ended. I find that the tenants should be held

responsible for at least a portion of the repairs that became necessary when this window shattered when Tenant JHJ was trying to open it on October 15, 2017.

Selecting the proper percentage of costs which the tenants should be asked to provide for the replacement of this window is an admittedly inexact process. While I have considered issuing a nominal monetary award, I have decided that the tenants should be required to reimburse the landlords a total of \$83.80, which represents one-quarter of the invoiced cost of repairs that the glass company charged the landlord for the replacement of this window. I issue a monetary award in the landlord's favour in this amount, and would encourage the parties to arrive at a suitable method of implementing this award. In the event that the parties cannot settle on a suitable time frame for the payment of this monetary award, the landlords are provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

Conclusion

I issue a monetary Order in the landlord's favour in the amount of \$83.80, which allows the landlord to recover that portion of the landlord's repairs to the tenants' bedroom window damaged on October 15, 2017 for which the tenants are responsible. 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 20, 2018

Residential Tenancy Branch