

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the Act, served personally to the Resident Property Manager by the Tenant on May 20, 2009. The Landlord confirmed receipt of the hearing documents.

Both the Landlord and Tenant appeared, acknowledged receipt of evidence submitted by the Tenant, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order under sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant has occupied his rental unit since August 2006 under consecutive fixed term leases, with the current rent payable on the first of each month in the amount of \$798.00 which includes 1 parking stall.

The Tenant testified that during his tenancy he has gone on extended trips abroad and during these trips his rental unit has been left vacant. The Tenant argued that prior to

leaving on his trips he always informed the Resident Property Manager and informed her of the arrangements he had in place.

The Tenant referred to his evidence in support of his claim that he had to incur costs of \$1,471.89 because his car was towed from the Tenant's assigned parking stall when the Tenant was out of the Country.

The Landlord testified that the situation is a result of a "consolidated mess". The Landlord argued that the Tenant's parking spot is located at a different rental unit, adjacent to the Tenant's rental unit, and that the previous Property Manager made the agreement with the Tenant to occupy the parking spot. The Landlord confirmed that the previous Property Manager managed both properties however she no longer manages these buildings and now there are two separate property managers.

The Landlord stated that in addition to having two separate property managers, the parking lots are now managed by a professional parking company.

The Landlord testified that the previous Property Manager left in September 2008, that the parking company was hired but chose not to tow cars during the winter months but then began a campaign to remove "uninsured" vehicles from the parking lots.

The Landlord claimed that there was no way for the property manager of the adjacent property to know that the vehicle belonged to the Tenant in the adjacent property and they should not bear the burden of the full expenses incurred by the Tenant.

The Tenant testified that he attempted to collect this claim directly from the Landlord however his requests were always met with the Landlord's response that they are continuing to investigate what happened.

The Landlord “admitted” that he has never attempted to contact the previous Property Manager to investigate this claim and stated that this was in light of the Tenant using the previous property manager’s name as a potential witness.

Analysis

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the Tenant, bears the burden of proof and the evidence furnished by the Applicant Tenant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by doing whatever is reasonable to minimize the damage or loss

In regards to the Tenant’s right to claim damages from the Landlord, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

The Landlord claims that the parking was arranged by the previous Property Manager, that there was no way for the existing Property Managers to know who the “uninsured” vehicle belonged too, that the towing was initiated by the parking company who was hired to manage the parking lots, and that the Landlord should not be held responsible for the full costs incurred by the Tenant as a result of the Tenant’s vehicle being towed.

I find that all three Property Managers and the parking company are Agents of the Landlord, authorized to act for or in place of the Landlord; that being said the Agents and Landlord are fully responsible for the actions taken while conducting the Landlord’s business.

The Landlord claims there was no way for the Property Manager of the adjacent building to know the vehicle belonged to the Tenant however the Landlord’s tenancy agreement lists the parking stall number and building name. I also note that the Landlord claimed that “uninsured” vehicles were towed from the parking lot yet the evidence supports the Tenant’s testimony that his vehicle was insured to be stored in the Tenant’s parking spot assigned to him by the Landlord’s Agent.

The Landlord claimed that vehicles were not towed during the winter time yet the Tenant’s vehicle was towed on January 13, 2009.

The Tenant attempted to collect the money owed directly from the Landlord shortly after his return from his holiday in March 2009 and was told that the Landlord was investigating the situation. The Landlord testified that he “admitted” that he did not make any attempts to contact the previous Property Manager because the Tenant listed her as a Witness. I note that that the Tenant has attempted to collect from the Landlord since March 2009 and the Tenant’s application was not filed until May 19, 2009, at which time the previous Property Manager was listed as a witness, which leaves up to eight weeks for the Landlord to have conducted his alleged investigation.

I find that the Landlord and his Agents failed to investigate who owned the vehicle and to determine if in fact it was insured, instead they acted on the assumption that it was not insured and requested that it be towed and stored elsewhere. I find that costs were incurred as a result of the Agents' actions and that the Landlord and Agents are responsible for their actions; actions which contravened the Tenant's tenancy agreement.

The Tenant has claimed \$1416.45 in towing and storage charges, \$20.00 for the insurance permit to move the vehicle, and \$8.44 for registered mail costs to send information to the Landlord for a total amount of \$1,444.89. I find that the Tenant has proven the test for loss as listed above, and I hereby approve his claim.

The Tenant claimed \$27.00 for taxi fare to travel to the tow yard to claim his car. I note that there is no evidence to support his claim and therefore I find that the Tenant has failed to prove the test for loss as listed above and I hereby dismiss his claim for \$27.00.

The Tenant has been primarily successful with their claim and I find that they are entitled to recover the \$50.00 filing fee from the Landlord.

Monetary Order – I find that the Tenant is entitled to a monetary claim, and that the Tenant is entitled to recover the filing fee from the Landlord as follows:

Towing and Storage Cost	\$1,416.45
One day insurance permit to move the car	20.00
Registered mail costs	8.44
Filing fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE TENANT	\$1,494.89

Conclusion

I HEREBY FIND in favor of the Tenant's monetary claim. A copy of the Tenant's decision will be accompanied by a Monetary Order for \$1,494.89. The order must be

served on the Respondent Landlord and is enforceable through 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: August 27, 2009.

Dispute Resolution Officer