



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes:** *MNDC, FF.*

### **Introduction**

This hearing dealt with an application by the tenant, for a monetary order for compensation and to recover the fee to file this application, pursuant to Sections 67 and 72 of the *Residential Tenancy Act*.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

### **Issues to be decided**

Is the tenant entitled to a monetary order for compensation in the amount of \$1333.00 due to costs incurred to fix damage caused to the tenant's vehicle while it was parked in the parking lot of the building complex?

### **Background and Evidence**

The tenant testified that upon returning home one night, the parking spot assigned for the tenant's vehicle, was occupied by another vehicle. The tenant was unable to contact the office manager as it was after hours and unable to have the vehicle towed as per policy of the management team. The tenant parked in another spot in the parking lot. The next morning, the tenant found that the vehicle had been rear ended and damaged. The tenant stated that there were no witnesses. The tenant has submitted into evidence page two of a four page document which is an estimate for the cost of the repair in the amount of \$1,334.41 and after the deductible of \$300.00 from the insurance company, the estimate is \$1,034.41. The tenant has also submitted copies of two letters of complain, to the rental office regarding other vehicles parked in the spot assigned to the tenant.

The landlord testified that there is no documentary evidence to show that the vehicle was rear ended in the building parking lot and damage to the tenant's vehicle is not as a result of negligence on the part of the landlord.

**Analysis**

It is important for the claimant to know that to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

**Test For Damage and Loss Claims**

- Proof that the damage or loss exists,
- Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the claimant, that being the tenant, to prove 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 landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the tenant's claim for damage to the vehicle does not meet all the components of the above test. The tenant did not submit any documentary evidence to support her claim. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

**Conclusion**

The tenant has not proven her case and hence the tenant's application for compensation for loss under the Act in the amount of \$1333.00 is dismissed. The tenant must bear the cost of filing this application.

Dated January 12, 2009.

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Dispute Resolution Officer