



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNDC

RR

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence on the case file prior to the Hearing. All parties gave affirmed evidence and this matter proceeded on its merits.

Issue(s) to be Decided

- (1) Is the Tenant entitled to a Monetary Order or rent reduction for the Landlord failing to remove snow from the common areas around the Tenant’s rental unit and the Tenant’s walkways?

Background and Evidence

Tenant’s evidence

The Tenant testified that on January 13, 2009, he served the Landlord with a copy of the Application for Dispute Resolution and hearing package by personally delivering it to the Landlord’s business address.

The Tenant testified that there was heavy snowfall from December 17, 2008 to January 7, 2009, and that the Landlord did not clear the driveways, parking areas or sidewalks around the Tenant's rental unit. The Tenant testified that mail delivery was effected because the walkways were not cleared. The Tenant stated that he cleared areas of snow that were the responsibility of the Landlord to clear and that he also paid others to clear areas of snow. The Tenant testified that initially the Landlord did not clear any snow and that snow removal was done by tenants and by neighbours, who loaned their backhoe. The Tenant stated that the neighbours used their backhoe to clean snow from around the roadways and parking lot and pushed the snow around the garbage cans and on the walkways. The Tenant stated that the Landlord eventually cleared about 10 feet of snow from around the garbage cans so the City could pick up garbage, but that none of the rest of the common areas were cleared by the Landlord.

The Tenant testified that the Landlord has not done proper upkeep on the roof eaves of his rental unit and as a result, the melting snow from his roof spilled over onto his walkway and turned into ice.

The Tenant testified that he had to go to the hospital on January 1, 2009, and was attempting to get his vehicle out of the parking lot. The Tenant testified that there were approximately 4 to six inches of mixed snow and ice in areas on the parking lot and that he was spinning his tires and rocking back and forth attempting to get out of the parking lot. The Tenant stated that he heard a loud noise and a part of his vehicle fell to the ground. The Tenant testified that the CV shaft had fallen from his van. The Tenant believes that the part broke as a direct result of his maneuvers while trying to drive out of the snow-and-ice on the parking lot.

The Tenant testified that his van is a front-wheel drive vehicle and is usually really good in ice and snow. The Tenant stated that he purchased his 1997 Ford Aerostar van 2 ½ years ago for \$7,800.00.

The Tenant testified that he attempted to call the Landlord before he tried to get out of the parking lot, but got an answering machine. The Tenant testified that he was not aware of a phone number or emergency contact number for the caretaker.

The Tenant claims a monetary order as follows:

- Snow removal, Tenant's labour (Dec 17, 21 and 27: 6 hours @ \$15.00 per hour for a total of \$75.00);
- Recovery of money he paid to other tenants to remove snow (December 22 and December 28: 4 hours for a total of \$45.00);
- Replacing his van's CV shaft (\$125.00); and
- Labour to install CV shaft (\$120.00).

The Tenant provided copies of invoices for the CV shaft and the cost to install it.

Evidence of Tenant's witness

The Tenant's witness gave affirmed evidence. The Tenant's Witness stated that she observed the Tenant attempting to get out of the parking lot on January 1, 2009. She stated that she saw his wheels spinning as he was rocking back and forth on the icy pavement. She stated she heard a loud bang and realized that part of his vehicle had come off and fallen to the pavement.

The Witness testified that some time ago, the Landlord gave her a number to call in an emergency.

Landlord's evidence

The Landlord's agent DR testified that the Landlord has done maintenance of the gutters and eaves. She further testified that it was the Landlord, and not the neighbours, who provided the snow removal equipment and labour to remove the snow from the parking lot and common areas. The Landlord's agent testified that they also own a neighbouring rental property and were clearing both properties. The Landlord

suggested that the Tenant saw the same equipment clearing the common areas around his rental unit and the neighbouring property's buildings and may have believed that the snow removal equipment belonged to the neighbouring property. The Landlord's agent stated that they hired a snow removal company to use a "rubber tire hoe" to remove the snow on at the Tenant's rental property on December 17/08 (1 hour); December 21/08 (2 hours); December 23/08 (1 hour); December 24 (1 hour), for a total of \$535.00. The Landlord's agent did not provide copies of the invoices from the snow removal company into evidence.

The Landlord's agent stated that after the last snow removal, she was advised by another tenant that everything was fine and that they didn't require further snow removal on the rental property's common areas.

The Landlord's agent stated that she does not believe the Landlord should be responsible for repairs to the Tenant's van, as it is an older vehicle and there may have been a prior condition which caused the CV joint to break.

The Landlord's agent testified that there is an emergency number for Tenants to call and that all Tenants are given the number. She stated that prior to December 24, 2008, after hours a person would get an automatic message giving a pager number to call. She testified that after December 24, 2008, there is a "live line" emergency phone number for outside office hours.

Analysis

There was an unusually large snow fall, over a number of days in December, 2008 and early January 7, 2009. I accept the Landlord's evidence that they attempted to keep up with the snow removal between the dates of December 17, 2008 and December 24, 2008. I accept the Landlord's evidence that it was the Landlord's snow removal company's "rubber tire hoe" doing the snow removal, and that the Tenant may have confused it with a "neighbour's back hoe". With respect to the Tenant's claim for his

own labour and for money he paid other tenants to remove snow from the rental property, as outlined in his Application, I allow the portion of his claim for snow removal that occurred after December 24, 2008, in the amount of \$50.00. Pursuant to Section 72(2)(a) of the Act, the Tenant may deduct the \$50.00 from rent due to the Landlord.

The Tenant has not proven his claim for reimbursement of the cost to replace his CV joint on his vehicle and I dismiss this portion of his claim. There is contradictory evidence with respect to the amount of snow/ice that was left on the parking lot January 1, 2009. The Tenant did not provide corroborating evidence to support his claim (i.e. photographs). In any event, the Tenant's vehicle is more than 12 years old, and there is no corroborating evidence of the overall condition of his vehicle at the time it lost its CV joint.

Conclusion

The Tenant has established a total monetary claim in the amount of \$50.00 against the Landlord. Pursuant to Section 72(2)(a) of the Act, the Tenant may deduct the \$50.00 from rent owing to the Landlord.

March 3, 2009
