

# Dispute Resolution Services

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

## Decision

Dispute Codes: MND, FF

## Introduction

This hearing dealt with an application by the landlord for a monetary order. Both parties participated in the conference call hearing and had opportunity to be heard.

## Issue(s) to be Decided

Is the landlord entitled to a monetary order as requested?

## Background and Evidence

The landlord's agent K.S. testified that on December 13 she arrived at the residential property in which the rental unit is situated and saw the tenant's daughter, O.S., parked in a driveway. K.S. testified that shortly after she arrived, she heard what she described as a "crunch noise" and she realized that O.S. had backed her car into the motor box for the driveway gate. K.S. testified that she called the building's caretaker, D.P. to deal with the situation. D.P. testified that he examined the box and found that it had split and cracked. K.S. testified that she told O.S. she would be responsible for the damage and that O.S. had acknowledged that she had backed into the box. K.C., who had been with K.S. at the time of the incident, testified that he too heard a "crunch" when O.S. was backing up her vehicle.

G.E. is another agent of the landlord who testified that the motor box was newly installed and had been tested and found to be working. G.E. further testified that she saw the motor box a few days before the accident and at that time it was in perfect condition. G.E. saw the box after the December 13<sup>th</sup> incident and saw that it was cracked along the side of the plastic housing. Approximately two days after the December 13<sup>th</sup> incident, G.E. met with the technicians who had initially installed the motor box. The technicians inspected the box at that time and made a note of the damage, but were unable to effect repairs due to extreme weather conditions. The box

was repaired on or about January 16 at a cost of \$393.75. \$180.00 of that cost was the cost of replacing safety beams. G.E. testified that the repair company said they could not guarantee that the safety beams were working properly after the motor box had been struck and that if the landlord chose not to replace the beams, he would have to sign a waiver of liability with respect to the beams. The landlord chose to replace the safety beams to ensure that they were working properly. The landlord provided a letter from the repair company which corroborated G.E.'s testimony.

O.S. agreed that she was parked in the driveway on December 13, but questioned whether she had hit the motor box. O.S. testified that when K.S. told her she had hit the box, she looked at it and saw only a minor scratch. O.S. argued that between December 13 and the time the box was repaired on January 16, other drivers could have caused further damage. O.S. further argued that the landlord had failed to protect the box from being hit by not properly installing a cement curb which would have prevented cars from contacting the box. O.S. further argued that the landlord should have permitted her to have input into who was hired to repair the box and whether to replace the safety beams. O.S. insisted that when she saw the box after December 13 it was badly damaged whereas there was nothing more than a slight scratch on December 13. O.S. called the testimony of A.V. who had inspected the box immediately after she allegedly hit it. A.V. testified that he saw that the box was cracked. When O.S. suggested that A.V., for whom English is a second language, did not understand the difference between a scratch and a crack, A.V. clarified that the plastic was broken on the side of the box and that while he may have been able to put a fingernail or piece of paper in the crack, he would not have been able to put his fist in the crack.

The landlord seeks to recover the cost of the motor box repair and the \$50.00 filing fee paid to bring this application.

### Analysis

Although the tenant. M.K. did not cause any damage to the motor box herself, she may be held responsible for any damage caused by her roommates or guests. After having reviewed the testimony and evidence, I find that the landlord has proven on the balance

of probabilities that O.S. caused the damage to the motor box. O.S.'s own witness contradicted her testimony that the box was only scratched when he testified that he saw a visible crack in the same place identified by G.E. Two other witnesses identified a crack in the box and two witnesses testified that they heard the sound of the car backing into the box. O.S. suggested that she did not know whether she hit the box, but the fact that she offered to pay the cost of replacing the plastic housing suggests that she admits liability for striking the box. While the crack in the box may have been minor and replacement of the plastic housing would not have been an expensive repair, the fact that the box housed electronic equipment led to the need for a more extensive and expensive repair. I accept the testimony of G.E. who arranged for technicians to view the box just a few days after the incident and find that the repairs which were effected in January were required as a direct result of O.S. having damaged the box. I do not accept O.S.'s argument that the box could have been further damaged between December 13 and the time of the repair. In order to succeed in such an argument, O.S. would have to provide some evidence that the box had been further damaged. Other than O.S.'s speculation, no such evidence was provided.

I do not accept O.S.'s argument that the landlord is at fault for not installing a curb. Drivers always bear a responsibility to ensure that they drive in a manner that prevents damage to persons or property and in this case, I find that O.S. failed to exercise the caution that she should have. I also do not accept O.S.'s argument that she should have been consulted in the repair process. It is reasonable that the landlord used the same company that installed the gate to repair the gate as they could be assured that they had the required expertise and also would know that the warranty would not be voided because an unauthorized repairperson had performed the repairs.

I find it reasonable that the landlord replaced the safety beams. Without an assurance that the safety beams were fully operational, the landlord would have risked exposing himself to liability in the event of a failure of the beams to operate properly. I find that the tenant is responsible for the full cost of the repair bill and must also bear the cost of the filing fee.

### Conclusion

I grant the landlord an order under section 67 for \$443.75. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated May 07, 2009.