



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF

Introduction

This hearing was convened by way of conference call in repose to the landlord's application for a Monetary Order for damage to the unit, site or property and to recover the filing fee from the tenants for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

Background and Evidence

Both parties agree that this tenancy started on April 01, 2009. This was a fixed term tenancy which ended on May 30, 2011. Rent for this unit was \$1,000.00 per month due on the 25th day of each month.

The landlord testifies that on June 10, 2010 the tenant collided with the post to the carport. This caused damage to the post, the rebar, the footings and made one corner

of the carport unstable. The landlord states she spoke to the tenant about this damage hoping to resolve it with her but other issues occurred with the tenancy so this issue was not dealt with at the time.

The landlord states she did not see the tenant drive into the post but the other tenant living in the basement unit of the house saw this incident and reported it to the landlord and the police.

The landlord calls this other tenant as her witness. The witness testifies that on June 10, 2010 at 7.50 a.m. she heard a bang and looked out of her window and saw the upstairs tenant TP driving into the carport. The witness states TP kept honking her horn and hit the post three times with great force before parking her car and going into her unit with her young daughter. The witness testifies that the tenant did not stop to assess the damage. The witness states approximately 30 minutes later TP came back out of her unit with her daughter and drove off in her car. The witness testifies that she had concerns about the tenant being intoxicated and driving with her young child so the witness states she called the RCMP and the landlord. The witness states the RCMP told her they would investigate and approximately one hour later a member of the RCMP came to the witnesses unit and informed the witness that the tenant TP had been arrested because she was inebriated and driving while drunk. The witness states the RCMP took some pictures of the damage to the carport and of the tenant's wing mirror which the tenant had knocked off her car. The witness testifies that the tenant's car was a teal Cavalier. The witness submits that she went out to pick up the broken glass and noted that the post had been significantly moved from the base; the siding was buckled forcing the window to protrude beyond the flashing of the balcony perimeter above.

The tenant cross examines this witness and asks the witness why she did not help her if she thought she was inebriated and asks the witness if the carport posts have been hit many times before. The witness states that she was not aware of the posts being hit before this incident. The tenant asks the witness how she knows it was the tenant's car

that did this damage. The witness replies because she witnessed the tenants car driving into the post three times and was worried the tenant would also hit her car which was parked behind the tenants.

The landlord asks the witness if she observed the damaged post and had it been structurally damaged. The witness replies that it had been moved so the post was facing north.

The landlord testifies that she did not have much contact with the police over this incident until later in the same afternoon when the landlord testifies she received a phone call from a member of the RCMP around 4.00 p.m. The RCMP were requesting information on the whereabouts of the tenants husband so he could come and pick up their daughter from Social Services because the tenant TP had been taken to the police station and would be there for some time.

The landlord testifies that she had to engage a construction company to remove the post; prop up the carport; restructure the siding and window; redo the cement and bond the new cement to the old cement; and replace the post with a new one. The landlord states the labour costs for this job were \$400.00, the materials were \$278.32 and the rental of the jack to hold up the carport was \$168.00. The total amount invoiced for this work including HST is \$846.43. The landlord testifies that they did not do this work until October, 2011 as the landlord states she waited until the work was starting on the deck and had both jobs done at the same time to reduce costs.

The landlord has provided a copy of the police reports and information from the police officer who attended. This officer has stated in a letter to the landlord that the police received a complaint from WB (the witness) who did witness a teal Chevrolet Cavalier back out of the carport at the [address] after hearing large "bang" WB observed damage to the right side of the vehicle and to the carport. Police subsequently stopped this vehicle and did observe it to have sustained damage to the right side of the vehicle, with

wood chips sticking out of the car. The police officer also states he attended the original crime scene and took photographs of the damaged carport.

The police report identifies that on June 10, 2010 there was an incident of "impaired OP Motor Veh (Alcoh)" [as documented]. The second police report identifies that an incident with an automobile occurred at the rental address on June 10, 2010. These reports do not identify the tenant and the landlord states the tenants name has been removed due to the privacy Act and freedom of information.

The tenant disputes the landlord's claims. The tenant states she was going to the bank with her daughter and reached over to give her daughters her cup when she hit the horn of her car by accident. The tenant disputes hitting the post to the carport and states the post already had many "dings" in it.

The tenant denies that she was arrested by the police or taken into the police station on June 10, 2010. The tenant states she had a previous hearing with the landlord where the tenants were awarded a Monetary Order against the landlord which she has failed to pay and this is the landlord's retaliation against the tenants. The tenant submits that the landlord is attempting to get the tenants to pay for the landlords renovations to her carport and deck.

The tenant testifies that the police reports do not name the tenant and the tenant states she has no idea who the police officer is. The tenant states if her car had been damaged she would have made a claim on her insurance and there is no vehicle license plate relating to this incident mentioned in any of the police reports provided by the landlord.

The tenant testifies that even if she had caused this damage the landlords monetary claim is exaggerated as the new post can be purchased for \$8.68 from a hardware store. The tenant has provided two statements one from a person who states she drove the car on June 12, 2010 and did not notice any wood chips sticking out of the vehicle.

The other statement is from the male tenant who states he drove the car in question on June 14 and witnessed no wood chips sticking out of the car and the carport did not look any different.

The tenant states she has not been given the opportunity to be fully heard during the hearing.

Both parties have provided photographic evidence.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- 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 S. 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 to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. 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.

In light of the evidence provided in this matter I find the landlord has met the burden of proof that the carport was damaged. It would be reasonable therefore, to find it is highly likely that this damage was caused by the tenant whilst driving her car as described by the landlord's witness. This conclusion is based on the police reports which although they do not name the tenant they do identify the tenants car and the damage to the car; and the landlord's witness's testimony also supports the landlords claim. The landlord has also provided the invoice showing the actual amount required to repair the post and carport and how the landlord mitigated her loss by doing this work in conjunction with other repair work to reduce the costs. The landlord states she paid \$846.43 however I find there is an error on the calculations of the invoice and the amount charged should have been \$846.32.

The tenant argues that she has no knowledge of this police officer however I would find it highly unlikely that a police officer would falsely a report or give a false description of a vehicle which had sustained damage.

Therefore, I refer the tenants to s. 32(3) of the *Act* which states:

A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Consequently, I uphold the landlords claim to recover the sum of **\$846.32** and a Monetary Order has been issued pursuant to s. 67 of the *Act*.

As the landlord has been successful in this matter I find the landlord is also entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*.

The tenant has stated that she was not given the opportunity to be fully heard during the hearing. The tenant was given at least five opportunities to give verbal testimony, to

cross examine the landlord and the landlords witness and the tenant's testimony has been recorded in this decision.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$896.32**. The order must be served on the respondents and is enforceable through the Provincial Court 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: December 29, 2011.

Residential Tenancy Branch