



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application filed by the landlord seeking:

1. A monetary Order for compensation for damage and loss;
2. An Order allowing the landlord to retain the security deposit; and
3. Recovery of the \$100.00 filing fee paid for this application.

Both parties appeared at the hearing and gave evidence under oath.

Issue(s) to be Decided

Has the landlord met the burden of proving his claims?

Background and Evidence

The landlord submits that his strata corporation invoices him \$5,040.00 and \$1,652.00 for replacement of an apartment overhead gate. The strata corporation alleges that on September 18, 2011 the gate was damaged by a vehicle being driven by "...an occupant of your suite".

The tenant submits that on the date in question the garage door malfunctioned and while she was driving in through the door the door came down and struck her vehicle causing damages to its roof. The door retracted and the tenant continued to drive in. The tenant says she surveyed the damage to her vehicle and to the gate. The tenant submits that it was apparent that the door had been damaged by impacting her vehicle as it was moving through the gate. The tenant submits that another person attempted to close the garage door and the door started to descend and subsequently collapsed and came off the guide rails causing the damage which is the subject of these proceedings. The tenant submits that the door did not apparently have a safety mechanism which would stop the doors descent when it encounters a vehicle.

The tenant submits that the damage to the garage door occurred as a result of a malfunctioning garage door, not through any negligence on the part of the tenant.

Analysis

While the landlord says the tenant is responsible for the damage to the building's garage door, the tenant submits that the garage door malfunctioned and this caused the damage to the garage door. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. In this case the landlord testified that the tenant was responsible for the costs of the repairs because the strata billed him for the cost of repairs. It may well be that the strata has billed the landlord for the cost of repairs to the garage door but this does not prove that the tenant was responsible for causing the damage or for paying for repairs. Overall I find that the landlord has failed in his burden of proving his claim and his application is therefore dismissed.

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: September 27, 2012.

Residential Tenancy Branch