



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DOMUS MANAGEMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for damages to the unit or property and for compensation for loss under the Act.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary for damage to the unit or property?

Is the landlord entitled to monetary order for compensation for damage or loss under the Act?

Background and Evidence

The tenancy began on January 1, 2011. Rent in the amount of \$1,150.00 and \$20.00 parking fee was payable on the first of each month. A security deposit of \$575.00 was paid by the tenant.

The landlord claims as follows:

a.	Re-key all common area locks to building and supply new key to all tenants	\$ 3,518.45
b.	Cost to repair mailboxes	\$ 450.00
c.	Filing fee	\$ 50.00
	Total claimed	\$ 4,018.45

The landlord's agent testified that on January 30 or early morning of January 31, 2013 a break and enter occurred in the underground parking. The landlord's agent stated two cars were vandalized one being the tenants.

The landlord's agent testified they were informed by the tenant that they had temporary stored they keys in the glove box of the car and that they were stolen when her car was vandalized and broken into. The landlord's agent stated for security reasons the building locks had to be change to prevent the thief from entering the building using the keys. The landlord seeks to recover the cost of keys in the amount of \$3,518.45. Filed in evidence is a receipt for replacing keys.

The landlord's agent testified before they had a chance to have the locks changed they believe the tenant's keys were used to access the locked mail room and broke into mailboxes as there was no signs of forced entry into the mail room. The landlord's agent stated that this is merely speculation on their part as there is no way they can prove the tenants' keys were used. The landlord seeks to recover the cost of repairing the mailbox in the amount of \$450.00. Filed in evidence is a copy of the receipt for mailbox repair.

The landlord's agent testified that the tenant was neglectful by storing her keys in her vehicle. The landlord's agent stated that the tenant has breached clause 30 of her tenancy agreement as an unauthorized person had possession of the keys and as a result of that neglect the tenant is obligated to pay for all repairs as stated in clause 27 of the tenancy agreement.

The tenant testified that they are a victim of crime and should not be held responsible for re-keying the entire building. The tenant stated that the underground parking is a secured area that you have to access through a gate, which is operational by a fob. The tenant stated on this day she left the keys in the glove box which she locked and she locked the vehicle. The tenant stated this is not a normal practice. However, on this day she was with the co-tenant who had their keys so she did not need hers as they were going for a walk down the street and she had no pockets to place them.

The tenant testified the police inspected her vehicle and they believed that the door was broken into by a person using a screw driver and then breaking into her glove box. The thieves stole her insurance papers as well as her keys. The tenant stated she felt the keys were secure and states it would be unfair to be responsible for the actions of someone stealing her belongings.

The tenant testified that they did contact her insurance company to see if they would pay the cost. However, after the matter was investigation they also determined that she was not neglectful and they denied the liability. Filed in evidence is a copy of the letter from the insurance company.

The landlord argued that the parking area is not a secure area as it is merely gated and a person could enter under the gate.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, the tenant was a victim of criminal activity when someone entered the underground parking area which is secured by a gate that is activated by a fob. The tenant's vehicle was vandalized and access was gained by using what was believed by the police to be a screw driver. During this act the tenant's glove box to her vehicle was also broken a theft of her keys and insurance documents occurred. The tenant immediately notified the landlord of the theft.

While the landlord's agent believes that the tenant was negligent by leaving her keys in the vehicle and should be held responsible for all damage related to the theft and for the damages that later occurred to the mailbox as the tenancy agreement provides that the tenant is not to provide unauthorized possession of any key.

I find that position to be unreasonable. The tenant was a victim of crime and did not give her keys to any person voluntarily, such as a guest, which would be a breach of the tenancy agreement. The keys were taken as a result of criminal activity which occurred in the underground parking area, which is secured by a gate and owned by the landlord.

I find that the tenant had the right to believe that the parking area was secure and even took extra precautions by locking the keys in the glove box and then locking the vehicle.

While the landlord has suffered a loss due to the criminal activity which occurred on their property, I find the landlord has not proven the tenant has violated the Act or the tenancy agreement. Therefore, I dismiss the landlord's claim in full.

Conclusion

The landlord's application is 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: August 16, 2013

Residential Tenancy Branch

