Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF, O

Introduction

This hearing was originally scheduled to be heard on August 26, 2013 to deal with a tenant's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement. The Arbitrator assigned to hear the matter on August 26, 2013 ordered the hearing be adjourned and assigned to another Arbitrator. The hearing reconvened on October 10, 2013. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary Matter – tenant's late submission

Although the tenant had served his evidence and written submissions on August 21, 2013, which was after the time limit for doing so under the Rules of Procedure, since the matter was adjourned I was satisfied the landlord had sufficient time to review and prepare a response to the late submission. Therefore, I accepted the tenant's late submissions.

Preliminary Issue – Jurisdiction: Background and evidence

The landlord's counsel submitted that the Act and my delegated authority of the Director are not applicable to this dispute. The landlord's counsel provided a detailed written submission with respect to this position and I will not reproduce the submissions here. Below, I have summarized the basis for the claim and parties' respective positions regarding jurisdiction.

In brief, this claim relates to alleged vehicle damage caused to the tenant's two vehicles while parked in the driveway of the residential property by an independent contractor performing lawn maintenance activities at the residential property. The tenant initially sought compensation from the independent contractor, through its insurer, but the claim

was denied. The tenant obtained partial compensation for repairs for one of the vehicles through his own comprehensive insurance coverage on the vehicle; however, the tenant did not carry comprehensive insurance on the second vehicle.

The tenant is of the position that the landlord should be held responsible for the alleged damage to his vehicles as the lawn maintenance company, or its insurer, have not compensated him. The tenant acknowledged that he did not file an action in Provincial Court (Small Claims) to pursue the lawn maintenance company for damages, citing the reason was that he has better things to do than sue the lawn maintenance company.

The tenant also asserted that the landlord was negligent in failing to advise him that a lawn maintenance company would be at the property on the day of the alleged incident.

Landlord's counsel submitted that the appropriate forum for the dispute would be the Small Claims division of the Provincial Court as the lawn maintenance company could have been joined as a party to the dispute. The landlord's counsel also pointed out that to have the matter decided under different authorities could result in different outcomes for the same actions. Further, due to the tenant's delay in pursuing this matter, the time limit for filing an action in Provincial Court has now passed, thus eliminating the possibility the landlord could sue the lawn maintenance company for any award the tenant may receive by way of this decision.

The landlord denied any negligence on part of the landlords. Rather, the landlord acknowledged that the tenant had requested he be notified as to when maintenance would be done at the property and the landlord responded to the request reasonably. Since the lawn maintenance contract called for the crew to attend the property twice per month, as needed and depending on weather, there was not a set date for lawn maintenance. Therefore, the landlord requested the lawn maintenance company email the tenant at least 24 hours in advance of the day anticipated for lawn maintenance. The landlord provided a copy of the email he sent to the lawn maintenance company dated April 3, 2013.

The landlord's counsel submitted that the landlord is not vicariously liable for the actions of an independent contractor and that the landlord took reasonable steps in selecting this independent contractor to perform lawn maintenance at the property.

Preliminary Issue – Jurisdiction: Findings and analysis

Damage to a tenant's vehicle parked on the driveway of the residential property, or other personal property located on other parts of the residential property as the case

may be, does not automatically give rise to a claim against the landlord under the Act. A monetary claim filed by the tenant under the Act, and my authority to determine the dispute, must be sufficiently related to a violation of the *Residential Tenancy Act*, the Residential Tenancy Regulations, or the tenancy agreement due to the landlord's actions or negligence.

In this case, the tenant asserted the damage to his vehicles was caused by the actions of the lawn maintenance crew. I accept the landlord's submissions that the lawn maintenance company was an independent contractor and the landlords are not vicariously liable for the actions of the independent contractor. The tenant's remedy would be to pursue the lawn maintenance company in Provincial Court if the outcome of the insurance claim remained in dispute. However, the tenant chose not to pursue that remedy within the appropriate time limit.

With respect to the tenant's position was that the landlord was negligent by not notifying the tenant of the anticipated visit by the lawn maintenance crew, I find there is insufficient evidence to show the landlords were negligent or violated the Act, Regulations or tenancy agreement in this regard. I heard that the property contained more than one rental unit; thus, I find the lawn, driveways and sidewalks would be common property. The Act does not require a landlord to give a tenant advance notice when a contractor will be performing maintenance on the common property. Although the landlords were not required to give the tenant advance notice of yard maintenance I was provided evidence that the landlord did request the lawn maintenance company provide advance notice to the tenant. That request, in my view, demonstrates the landlord was respectful and courteous in dealing with the tenant's requests.

In light of the above, I find the Act does not apply to this dispute and I decline to accept jurisdiction to resolve the matter.

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: November 08, 2013

Residential Tenancy Branch