



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, OLC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for compensation for unpaid rent, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The application indicated a claim in the sum of \$619.01. The tenant clarified that the monetary claim is in the sum of \$325.86 to replace a tire; \$7.66 for photographs and \$1.97 for photocopying.

An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act, but “costs” incurred with respect to filing a claim for damages, such as photographs and photocopying are not considered. Costs are limited to the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, the request for photographs and photocopying was denied.

Issue(s) to be Decided

Is the tenant entitled to compensation for damage or loss for a motorcycle tire?

Must the landlord be Ordered to comply with the Act?

Background and Evidence

The tenancy commenced in January 2014; rent is \$850.00 due on the 1st day of each month. The parties agreed that a 2 month Notice ending tenancy has been issued and that the tenancy will end in October, as the building is being demolished.

There was no dispute that a break and enter to vehicles in the building underground parking occurred on June 5 and June 22, 2014. The tenant stated that the landlord's failure to properly clean up glass from the parking area resulted in damage to a tire of her motorcycle. The vehicle next to the tenant's parking stall had the windows broken; resulting in glass being spread to the tenant's parking stall.

The tenant said that at the end of June she had a conversation with the property manager, asking that her end of the parking area be cleaned. The tenant parks at the back of the parking area. The tenant said she wanted to park elsewhere in the parking area but was told she could be charged \$25.00. Email evidence supplied by the tenant indicated that on July 9th the tenant was told to park in the free parking spot. The tenant said that by this time her motorcycle had been damaged due to the amount of glass in her parking spot.

A June 4, 2014 email from the landlord supplied as evidence indicated that the tenant was only entitled to one parking spot and that an additional parking space would cost \$25.00.

The tenant said that on July 13 she found large chunks of glass in her tires and that she immediately told the management company. The tenant stated that the residential manager refused to clean the parking area.

The tenant supplied a photograph of a notice posted by the landlord informing tenants they would be hosing the parking area on July 13, 2014; plus areas where glass was left on the parking surface.

There was disputed testimony in relation to when and how the parking area was cleaned.

The tenant supplied a July 16, 2014 statement from a witness stating that he saw the tenant's motorcycle parked in a space with a lot of glass on the floor that was never cleaned up.

The tenant supplied a July 17, 2014 estimate issued by a motorcycle repair company in relation to an assessment completed on July 6, for a replacement tire in the sum of \$325.86. The estimate included a statement that there was a fair bit of glass lodged in the rear tire; that it was not leaking and it could become unsafe should more fragments be lodged in the tire.

The landlord said that there is a lot of construction in the area around the building and that the tenant could have encountered glass elsewhere. The landlord also stated that

they did sweep the parking area after the break and enter on June 5 and June 20 and that on July 13 they power washed the whole parking area. The landlord said there may have been very small pieces of glass on the floor, but most was cleaned up. The landlord stated that the evidence shows the tenant was complaining about sand on the parking area floor, not glass.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 7 of the Act provides:

Liability for not complying with this Act or a tenancy agreement

- 7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
- (2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

I have considered the testimony and written submissions and have determined that the tenant has failed to show that she took steps to mitigate the loss she has claimed. If the tenant, upon inspecting the floor of the parking area determined that the amount of glass was excessive and could cause damage to her motorcycle, I find it is unusual that she would continue to ride through glass. I find that a more reasonable response would have been to park elsewhere, until the parking area was free of glass. This would have allowed the tenant to take steps to avoid a possible claim. The tenant would then have been in a position to apply requesting compensation for parking costs; based on evidence that the landlord failed to provide a parking area free from glass.

If I accept the tenant's submission that glass remained on the parking surface; the tenant ignored that fact and chose to repeatedly ride the motorcycle through the glass. It is not surprising that her tire may have been damaged. Why only one tire was damaged after repeatedly riding through glass is unclear.

Therefore, in the absence of evidence that the tenant took steps to mitigate the loss she has claimed, by not riding through glass when she knew it was there, I find she has

failed to do what was reasonable to minimize the claim by parking elsewhere until the matter was resolved.

Conclusion

The application is dismissed.

This decision is final and binding and 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 08, 2014

Residential Tenancy Branch