



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ERP, MNDC, FF

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought an Order that the Landlord make emergency repairs, a Monetary Order for compensation for loss under the Act, Regulation or tenancy agreement, and to recover the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed 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 to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Tenant entitled to an Order that the Landlord make emergency repairs?
2. Is the Tenant entitled to monetary compensation from the Landlord?

### Background and Evidence

The Tenant testified that her vehicle was broken into on August 25, 2014 as well as on January 5, 2015 while she was parked in the secure parking area at her rental building.

The Tenant further testified that the parking area is surrounded by a chain link fence which was easily cut by vandals using wire-cutters. She stated that the vandals appear to access the parking area through the same part of the chain-linked fence and that the Landlord needs to make additional repairs and/or upgrade the fence to make it more secure and thereby act as a deterrent.

She testified that the Landlord's inadequate repairs to the fence have compromised the security of the parking area, which directly led to the damage to her vehicle. She requests an Order pursuant to section 33 of the Act requiring the Landlord to upgrade or replace the fence. She also asks for a Monetary Order pursuant to section 67, to compensate her for the \$600 she has paid as an insurance deductible as a result of the break-ins.

The Tenant testified that the tenancy began approximately seven years ago. She further testified that she did not pay for parking in addition to her monthly rent. Only one page of the tenancy agreement was provided in evidence and this page made no mention of parking. Despite this, the Tenant submitted that secure parking was a term of her tenancy agreement and in support she provided an advertisement for another rental unit within the building which clearly indicates secure parking. She stated that the advertisement was up when she first looked at the rental unit prior to moving in.

While the residential tenancy agreement was not submitted in evidence, the Landlord's agent testified as to its contents and stated that the part of the agreement which would normally indicate if parking was provided was not checked. Further he testified that he began working for the Landlord in 2009 and personally wrote the advertisement which was submitted in evidence. He stated it was not in place when the Tenant moved in as claimed by the Tenant, although he conceded that he could not speak to the advertising which may have been in place when the Tenant moved in.

The Landlord's agent further testified that on the three occasions when the fence was cut by vandals that the Landlord attended to repairs either that day or the day following. He stated that the fence has been upgraded and that cross bars have been installed which have improved the security since the Tenant moved in. Further, he testified that a FOB system was installed two years ago, a video surveillance system five years ago and that the hedging around the fences was also recently cleared to improve the view of the fences.

Finally, the Landlord's agent submitted that while he empathized with the Tenant, and confirmed that she was a fantastic tenant, he did not believe that her loss was the Landlord's responsibility.

### Analysis

In her application, the Tenant sought an Order that the Landlord make emergency repairs for health or safety reasons. Section 33 of the Act provides the authority for such Orders and reads as follows:

### **Emergency repairs**

**33** (1) In this section, "**emergency repairs**" means repairs that are

(a) urgent,

- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system,
  - (iv) damaged or defective locks that give access to a rental unit,
  - (v) the electrical systems, or
  - (vi) in prescribed circumstances, a rental unit or residential property.

I find that the Tenant's request for repairs to the secured parking fence does not fit within the definition set out above. Accordingly, I decline the Tenant's request for an Order compelling the Landlord to make the repairs she seeks.

This is not to say that the Landlord does not have a responsibility to provide security in the common parking area. Notably, *Residential Tenancy Policy Guideline 1: Responsibility for Residential Premises*: provides as follows:

7. In a multi-unit residential premises, in addition to providing and maintaining adequate locks or locking devices on all doors and windows of each individual unit within the premises, the landlord is responsible for providing adequate locks or locking devices on all entrances to common areas in the premises and on all storage areas.

I find that the parking area is a vehicle storage area to which the Landlord is responsible. However, I find that the Landlord, in erecting and maintaining the fence, has satisfied his obligation to ensure adequate security of the common parking area. While it is unfortunate the Tenant has been the victim of two separate vehicle break-ins, the Landlord cannot be held responsible for the criminal acts of others. I find that the Landlord addressed the breaches in security in a timely fashion by repairing the damaged fence and installing cross bars and has taken further steps to ensure the security of this area thereby satisfying his responsibilities pursuant to the Policy Guidelines.

Further I accept the evidence of the Landlord that a FOB system was installed two years ago, a video surveillance system five years ago and that the hedging around the fences was recently cleared to improve the view of the fences. All of these steps were taken after the tenancy began and satisfy me that the Landlord is making their best efforts to fulfil their responsibility to provide security in the common parking area.

Further, and while not strenuously argued by the Tenant, I am unable to find that secure parking is a material term of the contract. The Tenant failed to provide the residential tenancy

agreement and did not dispute the Landlord's agent's testimony that the tenancy agreement made no mention of secure parking. The Tenant submitted evidence in the form of an advertisement which appears to have been posted after her tenancy began (as the Landlord's agent testified that he personally drafted the advertisement at some point in 2009, two years after the tenancy began.) In any case, without the benefit of the tenancy agreement, which would command significantly more weight than the advertisement, I am unable to conclude that secure parking was a material term of the contract.

While I have authority under section 62 to make orders compelling a landlord to comply with the Act, regulations or tenancy agreement, I decline to do so in this case as I find the Landlord is taking adequate steps to provide secure parking.

I also decline the Tenant's request for monetary compensation pursuant to section 67 as I find that the Tenant's loss results from the criminal actions of third parties, and not any failure on the Landlord's part to comply with the Act, regulations or tenancy agreement.

For the foregoing reasons, I dismiss the Tenant's application pursuant to section 62(a) and as she has been unsuccessful, I decline her request to recover the filing fee.

### Conclusion

The Tenant'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: February 23, 2015

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Residential Tenancy Branch

