



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAPLE MANOR, PACIFIC COVE PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was convened in response to the tenant's Application for Dispute Resolution, for compensation for loss in the amount of \$300.00 and to recover the filing fee from the landlord for the cost of this Application.

I accept the tenant's evidence that despite the landlord having been personally served with the application for dispute resolution and notice of hearing in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing. The tenant acknowledged receiving 10 pages of evidence from the landlord, and testified they sent the landlord all of their evidence comprised of 8 pages. Both parties provided copies of their evidence to this hearing. The tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

This tenancy began February 01, 2014 and ended August 31, 2015. The tenancy agreement of this matter indicates the tenant's rent included parking. Of relevance to this matter is the following.

The tenant testified that the parking area of the residential property was an above ground parking lot with a secured surround, and a metal security gate, accessed by a remote fob for entry into and out of the parking lot. The parking lot also contained a door accessed by a key and was monitored by a video camera. The tenant testified

that no other means into or out of the parking lot existed for a vehicle other than through the security gate with use of a remote fob. On or about November 15, 2014 the gate to the parking lot no longer operated as designed – was broken - and the gate remained open. The tenant testified they were not immediately aware the security gate was broken as the landlord did not inform them of a problem with the security gate. It is their knowledge the landlord knew of the broken security gate and was purportedly attending to its repair.

The tenant testified that on November 22, 2014 their vehicle was stolen from the now unsecured parking lot of the residential property. The tenant provided documentation from the Insurance Corporation of British Columbia (ICBC) stating the vehicle insurance was cancelled effective November 22, 2014 pursuant to confirmation of a stolen vehicle claim – citing the respective claim number #. The documentation further confirms the tenant was compensated on the basis of a total loss calculation for the value of the vehicle, minus their deductible of \$300.00. The tenant also provided a copy of the ICBC Salvage Release form stating the vehicle resided at a “Tow Yard” in the community.

The tenant claims that the vehicle was stolen from the secured parking area as a result of the broken security gate remaining open and allowing the car thief from exiting the parking lot area with the vehicle. The tenant testified that the landlord provided the tenant with video surveillance footage which they provided to the Police to advance their claim of a stolen vehicle. The tenant testified they did not possess the \$52.50 required to obtain the Police Report particulars, however, testified that the vehicle was indeed stolen from the residential property secured parking lot area on November 22, 2014. The tenant testified the security gate was ultimately repaired and was again functional 2 months later on January 16, 2015. The tenant seeks the landlord compensate them for their insurance deductible in the amount of \$300.00.

Analysis

The parties may access referenced publications at www.bc.ca/landlordtenant.

I have reviewed all relevant evidence, all relevant submissions of both parties and the relevant testimonial evidence of the tenant. On preponderance of this evidence and on balance of probabilities I have reached a decision.

When making a claim for damages or loss 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.

On the undisputed evidence of the tenant I accept the tenant's vehicle was stolen from the residential property parking lot. I find that if the parking lot for the residential property contains a metal gate and a respective secured surround - and vehicle passage is accessed only by a remote security device, and the parking lot is monitored by a video camera; there is sufficient cause to reasonably assume the parking lot area is a secured common area in the residential premises for which the landlord is responsible for its security system.

Residential Tenancy Policy Guideline 1. – Landlord & Tenant – Responsibility for Residential Premises, in relevant part, states as follows:

SECURITY

4. If a security system is provided in the premises when the tenant moves in, the landlord is responsible for maintaining and repairing the security system unless the security system is damaged by the tenant or a person permitted in the premises by the tenant, in which case the tenant shall be responsible for the cost of repair.

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.

In this case, I find the tenant has provided sufficient evidence the landlord is responsible for the maintenance of the secured parking lot area, inclusive of those features and devices which establish security to the common area: namely the security systems inclusive of the security gate. As such, I find the landlord had a duty to maintain the parking lot area secured and breached their responsibility to ensure it by not immediately repairing the security gate. On balance of probabilities, I find the landlord's breach allowed the tenant's vehicle to be taken from the secured area. Based on the evidence and testimony of the Tenant, I find the landlord did not act in accordance with the **Section 32** of the Act or the tenancy agreement. As a result, I grant the tenant their

insurance deductible in the amount of \$300.00. The tenant is further entitled to recover their filing fee of \$50.00 for a total entitlement of **\$350.00**.

Conclusion

I grant the tenant an Order under Section 67 of the Act for the amount of **\$350.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 24, 2015

Residential Tenancy Branch

