Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant for monetary compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement.

The Tenant and an agent for the company Landlord named on the Application appeared for the hearing and provided affirmed testimony. The Landlord's agent confirmed receipt of the Tenant's Application and her documentary and photographic evidence. The Landlord's agent also confirmed that she had not provided any evidence prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

Issues to be Decided

Has the Tenant met the burden of proof in this case to be awarded monetary compensation?

Background and Evidence

The parties agreed that this tenancy for a rental unit in a three floor residential building started on May 15, 2015. The residential building and the rental units within were being managed for the owner of the building by a property management company who are named as the company Landlord on the Application. The Tenant and the property management company signed a tenancy agreement. Rent was established in the amount of $1,250.00 payable on the first day of each month.

The building was sold to a new owner on September 14, 2015 after which time the company Landlord ceased to operate as the property management company and the new owner took over the Tenant's tenancy. The Tenant then provided the new owners of the residential building with notice to end the tenancy at the end of September 2015.

The Landlord's agent explained that the covered parking spaces underneath the residential building were offered to residents at an extra cost. The residents and their guests were also able to park in an open car park area which is attached to the building. for free, as well as on the streets surrounding the building. The parties confirmed that the Tenant was not provided, assigned, or paid an extra cost for a specific parking space in the covered parking area underneath the building. However, the Tenant was at liberty to park in the open car park area adjacent to the building at no additional cost.

The Tenant testified that she always parks her car on the street as it is closer to her rental unit. However, on August 29, 2015 she parked her car in one of the spaces in the open parking area adjacent to the building. During that day there was a big wind storm and a large branch of a tree above her vehicle fell onto it causing $8,000.00 worth of damage. The Tenant explained that she pursued a claim with her car insurance company who paid for the repairs to her car. However, the Tenant had to pay $300.00 for her insurance deductible and $293.71 for car hire during the time her car was being repaired.

The Tenant testified that she assumed the Landlord would have some sort of liability insurance that would cover the extra costs she incurred especially because there were no signs in the open car park area stating that users should park there at their own risk. When the Tenant attempted to find this out from the Landlord, the Landlord took over a month to respond only to inform her that they were not liable for these costs.

The Tenant submits that the Landlord is liable for these costs because they were negligent in not getting the trees trimmed. The Tenant provided three photographs showing the parking area, the surrounding trees, and the damage caused to her vehicle. The Tenant testified that the surrounding trees were natural and had not been maintained by the landscaping company. The Tenant testified that she did not notice any of the branches that were overhanging the space above her car when she parked it there and that she had not reported any issue of overhanging branches to the Landlord previously or knew of any reported issues by other residents.

The Landlord's agent confirmed that the car park area is attached to the residential building and they were responsible for the landscaping in that car park. The Landlord's agent testified that she had spoken to the landscaping company who had informed her

that there were no diseased trees in the area and that monthly maintenance was being performed in that car park by them.

The Landlord's agent submitted that this was a freak and rare wind storm that caused a number of other trees in the area and throughout the city to fall and that this act of nature could not have been reasonably anticipated. The Landlord's agent continued to explain that the area had experienced draught like conditions so when the storm came it caused tress to fall. The Landlord's agent disputed the Tenant's monetary claim stating that they were not negligent in maintaining the trees in the car park.

Analysis

A party that makes an Application for monetary relief against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in Sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Landlord. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim must fail.

In addition, Section 32 of the Act requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

There is no doubt in this case that the Tenant suffered a loss as a result of the falling tree branch on her vehicle. This tree branch that fell on the Tenant's vehicle occurred in the parking area that was under the control of the company Landlord who is the

property management company in this dispute. However, what I must first determine in this case is whether the Landlord violated the Act, regulation or the tenancy agreement.

The parking space the Tenant parked in was not allotted to the Tenant and neither did the provisions of a parking space provided to the Tenant form any part of the tenancy agreement. Therefore, the Tenant was not confined or forced to park in the space she did when the tree branch fell on her car and was at liberty to park in any space in the car park or outside of it.

Having considered the Tenant's evidence, I find the Tenant failed to show sufficient evidence that the particular tree branch that fell onto her car had experienced such a lack of maintenance that this was the actual cause of its collapse onto the Tenant's car. There was also insufficient evidence to show that the particular tree branch had been compromised for some time and that residents had expressed or reported a concern about it which the Landlord had failed to respond to. This may have pointed to negligence on behalf of the Landlord. As such I find there to be insufficient evidence to prove the Landlord breached Section 32 of the Act.

I also accept the Landlord's evidence that the extreme wind was the sole cause of the tree branch falling onto her car. I accept that such a wind storm could not be anticipated by the Landlord and that this extreme act of nature is plausible to explain the collapse. I also find that question of whether the Landlord should pay the Tenant's claim does not hinge on whether the Landlord carried any liability insurance. In such a case, a party would be subject to legal action irrespective of what insurance that party carried.

Conclusion

The Tenant has failed to meet the damages test as outlined above and prove the Landlord was negligent. Therefore, the Tenant's Application is dismissed without leave to re-apply. 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: June 21, 2016

Residential Tenancy Branch