



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WEST THIRD INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62.

The landlords did not attend this hearing, which lasted approximately 36 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The individual "landlord" is the property manager for this rental unit and the "landlord company" is the owner who purchased the rental building (collectively "landlords").

The tenant testified that the landlords were each served separately with the tenant's application for dispute resolution hearing package on January 12, 2017, by way of registered mail. The tenant provided a Canada Post receipt and two tracking numbers with her application. In accordance with sections 89 and 90 of the *Act*, I find that both landlords were deemed served with the tenant's application on January 17, 2017, five days after their registered mailings.

At the outset of the hearing, the tenant confirmed that she wanted an order for the landlords to comply with collecting the legal amount of rent under her written tenancy agreement.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

The tenant testified regarding the following facts. This tenancy began on April 1, 2016 for a fixed term of one year after which it becomes a month-to-month tenancy or another fixed term. The tenant continues to reside in the rental unit. A written tenancy agreement was signed by both parties. The landlord company purchased the rental building as of May 31, 2016. The tenant provided a letter, dated May 22, 2016, to this effect.

The tenant said that she first moved into this rental building in September 2014. She said that she moved to her current rental unit on April 1, 2016 and signed a new written tenancy agreement at that time. She paid a security deposit of \$637.00 for her first unit and it was transferred over to the landlord company for this current rental unit. The landlord company continues to retain the tenant's security deposit.

The tenant provided a copy of the written tenancy agreement which indicates that rent of \$1,400.00 is due on the first day of each month, plus \$30.00 for parking in addition to rent. The tenant provided a copy of a letter, dated June 18, 2016, from the landlord to the tenant, which states that the landlord company is removing the tenant's cable services at the rental unit and reducing her rent by \$50.00 each month, due to this removal. The letter also states that the new rent would be \$1,410.00 per month starting July 1, 2016 and increasing to \$1,450.00 effective October 1, 2016, as per the 2.9% notice of rent increase issued to the tenant in June 2016.

The tenant seeks a reimbursement of \$160.00 from the landlord for rent and parking overpayment. She said that she overpaid in the amount of \$20.00 per month for eight months from July 2016 to February 2017, totalling \$160.00. The tenant said that her rent was first established in her tenancy agreement for \$1,400.00 beginning on April 1,

2016. She said that her rent was supposed to be reduced from \$1,400.00 to \$1,350.00 per month after the \$50.00 reduction in cable services, effective on July 1, 2016, plus an additional \$30.00 for parking, totalling \$1,380.00 for each monthly payment to the landlord. She said that since July 2016, the landlord has been direct debiting her account for \$1,400.00 instead of \$1,380.00. The tenant provided bank statements with her application to confirm same.

The tenant also seeks a monetary order for \$236.84 for repairs that she said she had to make to her car, due to the landlords' negligence. She stated that she was assigned a parking spot by the landlords in the underground garage at the rental unit. She said that there was a leak in the ceiling of the underground garage. She explained that there was a shield over her parking spot, which directed the water from the leaky area to the front of her car. She maintained that this protective shield broke and caused water and cement to continuously drip and fall on her car from the leak above. She noted that the landlords removed this broken shield from the parking garage. She stated that due to the dripping water and cement from the leaky ceiling, a thick and greasy film was left on her car, which was difficult to remove. She claimed that she had difficulty seeing out of the front and back windshields of the car, as well as the side windows, and that extra residue damaged the roof of her car.

The tenant said that she called, emailed, sent text messages and letters to the landlord to notify him of the above issues. The tenant provided a letter, dated November 6, 2016, from the tenant to the landlord regarding the above issues and asked him for a solution. The tenant also produced text messages between her and the landlord from November 7, 9 and 10, 2016, where she informed the landlord about the issues and the landlord refused to rectify it, saying that the tenant should claim it privately through her car insurance company. The tenant said that she did not claim through her own car insurance company for the damages because the landlords are responsible for it. She explained that the landlords are solely responsible because they failed to properly maintain the parking garage, which they allow the tenants to park in for a monthly fee. The tenant stated that the landlord inspected her car on November 10, 2016, and said that there was no damage to her car. The tenant provided photographs of the leak in the ceiling, the water pooling below from the leak, the damages to her car and the greasy residue. She stated that the landlords refused to take any action or assist in paying for her car, despite an agreement by the landlord to pay for her car wash. The tenant said that she had to take action and repair her own car. She maintained that she had difficulty removing the grease from her car. She maintained that the car wash attendants advised her to buy a cleaning product for the car on November 9, 2016, which cost \$11.09, which was unsuccessful in removing the residue. She stated that she went to the car wash after on November 10, 2016, and paid \$15.75 and they were

unsuccessful in removing the grease. She noted that she finally went back to a professional car detailer and they were finally able to remove the residue from the entire car for \$210.00 and a receipt for December 17, 2016 was produced by the tenant. The tenant produced invoices and receipts for all of the above costs and said that she had to pay these items out of pocket because the landlord refused. She said that the invoice from the car detailing company was in her son's name because they share a joint account, but that she herself paid for this work to be done on her own car.

Analysis

Rent Increase and Overpayment

The tenant provided undisputed testimony at this hearing. Although the tenant was living in the same rental building since September 2014, she was in a different unit under a different tenancy agreement. Therefore, in her current rental unit, the tenant's rent was established at \$1,400.00 as per the parties' written tenancy agreement.

I find that the landlords attempted to illegally increase the tenant's rent in July 2016 and October 16, when less than 12 months had passed from when the tenant's new rent was implemented on April 1, 2016, as per the new written tenancy agreement. This is contrary to section 42 of the Act. The landlords first tried to state that rent should be \$1,410.00 per month as of July 1, 2016, after the rent reduction of \$50.00, when it should have been \$1,350.00 for rent or \$1,380.00 for rent and parking. The landlords then apparently issued a notice of rent increase to the tenant in June 2016 to raise the rent to \$1,450.00 as of October 1, 2016.

Accordingly, the landlords' attempted rent increases are illegal. I find that the rent of \$1,400.00 per month, in the new written tenancy agreement that was signed by both parties, was reduced by the landlord in the amount of \$50.00 each month, to compensate for removing cable services. Therefore, rent of \$1,350.00 per month was due as of July 1, 2016. Parking of \$30.00 in addition to rent is also due from the tenant.

As per the tenant's testimony, the landlord also did not provide any written notice to the tenant for increasing parking charges from \$30.00 to \$50.00 per month. The written tenancy agreement indicates that the parking is an additional \$30.00 per month in addition to rent. There was no documentary evidence indicating that the parking was increased by the landlord with notice to the tenant.

The tenant provided documentary proof in the form of her bank statements, to show that the landlord direct debited her account for \$1,400.00 per month including the parking, when it should have been \$1,350.00 for rent and an additional \$30.00 for parking, totalling \$1,380.00 per month. Therefore, the tenant overpaid \$20.00 per month.

I find that the tenant overpaid rent for eight months from July 2016 to February 2017 in the amount of \$20.00 per month, totalling \$160.00. Therefore, I find that the tenant is entitled to a monetary award of \$160.00 to recover this rent overpayment.

I order that the monthly rent for the tenant's rental unit remains at \$1,350.00 for the remainder of this tenancy, until it is legally changed in accordance with the *Act*.

Car Damage

I award the tenant \$236.84 for the costs that she had to pay in order to repair her car. There was a leak in the ceiling of the parking garage over the tenant's parking spot. The parking spot was assigned to the tenant by the landlord. The tenant parked there. The shield above the tenant's parking spot broke. When it broke, the landlord removed it. Because of the continuous leak and the landlord's failure to repair it in a timely manner, water and cement began dripping on to the tenant's car, causing a greasy residue and causing the car to become inoperable for some time. The tenant notified the landlord about the problem repeatedly by way of text messages, a letter, and emails. The tenant produced the letter and text messages showing the landlord's failure to deal with the issue, failing to repair the leak, asking the tenant to claim through her own car insurance company and stating that there was nothing wrong with her car. The tenant produced photographs showing the leak and damages to her car.

I find that the landlord is solely responsible for these costs, not the tenant's insurance company. The landlords allowed the tenant to park in the underground parking garage for a monthly fee of \$30.00 and must ensure that the garage is maintained properly in order for tenants to park there when they are paying a fee for such parking. The landlords failed to properly maintain the parking garage by neglecting to deal with the ceiling leak in a timely manner. I find that the landlord is responsible for reimbursing the tenant for damages to her car, due to the leak.

Conclusion

I order that the monthly rent for the tenant's rental unit remains at \$1,350.00 for the remainder of this tenancy, until it is legally changed in accordance with the *Act*.

I order the tenant to deduct \$396.84 from future rent payable to the landlords for this tenancy at this rental unit, in full satisfaction of the monetary award made at this hearing.

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 17, 2017

Residential Tenancy Branch