Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Concise Strata Management
Strata Plan VIS 1035
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes LRE, OLC, MNDC, FF

Introduction

This hearing was reconvened following the original hearing held May 13, 2019 as set out in the Interim Decision dated May 15, 2019 (the "Interim Decision") and is in response to the remaining claims contained the Tenant's application for dispute resolution pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. It is noted that the original hearing the Tenant was not clear or organized in its submissions and as a result the Parties were directed at the onset of the hearing to fully provide their oral evidence and to refer to any supporting documentation provided for this dispute and that they wished to rely upon for their dispute.

Preliminary Matters

In the Interim Decision the hearing was adjourned to permit the Tenant to make an amendment to its application to add additional respondents. The Tenant did not complete the amendment to add the respondents addresses. The Landlord SM confirms that the additional respondents were served as required by the Interim Decision with the amendments, original application, all evidence. The Parties agreed to complete the amendment at this reconvened hearing, the names of the additional respondents are now added to the style of cause and the newly added respondent addresses have been added to the Tenant's application.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on January 20, 2018 and ended on May 15, 2019. Rent of $700.00 was payable on the first day of each month. The security deposit has been dealt with.

The Tenant states that a flood occurred from the unit above into the Tenant's unit in the first week of February 2018 with another 15 floods occurring to and including May 2018. The Tenant states that the floods were reported on each occasion to the Landlord and that the Landlord did nothing until the unit was inspected in December 2018. The Tenant states that after this date the Landlord still did nothing. The Tenant states that pre-existing mold in the unit worsened from the flooding. The Tenant states that a 3rd party was paid by the Tenant to continually clean the unit of water leaks, mold, mess and laundry of cleaning towels during this time. The Tenant claims $1,070.00 for this cleaning and provides copies of cheques for the period February 22, 2018 to and including January 2019. The Tenant states that as a result of the flooding the Tenant lost a significant amount of paperwork and that to replace this paperwork the Tenant estimates it will take 30 hours. The Tenant claims an hourly cost of $25.00 per hour for a total amount of $800.00.

The Landlord JL states that it was not acting for the Landlord at the time of the February 2018 flood and became aware of the flooding in April 2018. The Landlord agrees that the Landlord was informed of the floods to the unit. The Landlord states that the unit was never inspected. The Landlord argues that the cheques provided by the Tenant are made out for senior/home support and other than the cheque dated February 22, 2018. The Landlord states that the cheque dated November 10, 2018 for $40.00 does not indicate that it is payment for flooding from the upper unit. The Landlord denies that there were 16 floods but does not know how many floods there were. The Landlord states that there has been no tenant in that unit since May 2018. The Landlord states that the Tenant never reported any mold and that when the Landlord was in the unit in August 2018 the Tenant did not point out any mold. The Landlord states that a previous decision dated June 15, 2018 dealt with the flooding issues and resulted in the Tenant obtaining compensation equivalent to one month's rent and an order for repairs to be completed by August 2018. The Landlord states that repairs were scheduled for early September 2018 but that the Tenant did not accommodate those repairs. The Landlord states

that the Tenant was not given any notice of entry in order to complete the ordered repairs. The Tenant states that the contractor spoke about the repairs to the Tenant and the Tenant agreed with the contractor that it was not necessary to complete the repairs before the Tenant moved out of the unit. The Tenant argues that it should not be limited by the compensation provided at the previous hearing as the flooding continued and was not addressed by the Landlord. The Tenant states that Landlord JL was informed that the Tenant could not clean the mold. It is noted that the previous decision dated June 15, 2019 sets out facts that the Tenant claimed compensation in addition to repairs in relation to four floods to the unit as of the hearing date June 15, 2019 from the onset of the tenancy. The Decision sets out the Parties mutual agreement to settle the compensation for the flooding incidents in the amount of $750.00.

The Landlord does not agree that the Tenant is entitled to any compensation for the mold and that the Landlord was only made aware of the presence of mold in the bathroom and bedroom by December 1, 2018. The Landlord states that the unit was inspected on November 30, 2018 and that repairs were attempted in September 2018. The Landlord states that it was also notified of mold in September 2018 and that while the Landlord tried to make repairs the Tenant did not provide access. The Landlord confirms that the Landlord did not attempt to gain access for repairs by serving a notice of entry. The Tenant states that mold was present at the onset of the tenancy and that this was reported to the Landlord. The Tenant states that the flooding from the upper unit caused the mold to be constantly resurfacing. The Tenant states that the water from above damaged the bathroom fan to the extent it no longer worked. The Tenant states that the Landlord removed the bathroom fan in February 2018 and that it was never replaced.

The Tenant states that the Landlord was negligent in providing quiet enjoyment by not addressing the disturbances the Tenant experienced from the unit above. The Tenant states that between January 24, 2018 to May 30, 2018 the Tenant was subjected to noise from yelling, fighting and children screaming. The Tenant states that the sounds of the children were particularly disturbing to the Tenant. The Tenant states that the persons in the upper unit also started targeting the Tenant by throwing garbage in the Tenant's yard, poisoning her dog, yelling at the Tenant's guests and screaming at the Tenant in the parking lot. The Tenant states that the previous landlord was informed as was the Strata Manager for the owners in January 2018. The Tenant states that the Landlord did not act until April 2018 and that these upper unit residents were gone by June 2018. The Tenant states that she reported the upper unit

disturbances to both the police and government agencies. The Tenant states that as a result of the water leaks, vandalism and disturbances her health suffered. The Tenant provides medical letters and claims $1,000.00. The Landlord does not dispute compensation of **$1,000.00** for breach of quiet enjoyment caused by the harassment from other tenants.

The Tenant states that her vehicle was vandalized in the parking lot by residents of the building in November 2018 and that this was reported to the Landlord and the police. The Tenant states that the Landlord knew of security problems with vehicles parking in the parking lot due to damages that occurred to other vehicles months earlier than the damage to the Tenant's car and should have known that the security of the Tenant's car was at risk. The Tenant states that her witnessing of multiple disturbances in the parking lot were also reported to the Landlord. The Tenant argues that the Landlord was negligent in providing security as the Landlord should have known that the security of the Tenant's vehicle was at risk. The Tenant states that her vehicle was damaged and claims $200.00 for the sabotage of her gas tank, $4,722.23 for a destroyed engine and $12,000.00 for water having been placed in her gas tank and $2,000.00 for the loss or theft of items from her vehicle. The Tenant states that the incident was reported to the police and that a claim for the damages from this incident was made to her auto insurer but that the claim was denied. The Tenant submits a copy of a forwarded email dated January 8, 2019 from the Tenant's car insurer indicating that there was noting to support vandalism to the car and that the mechanical failure from fuel contamination is not covered by the Tenant's insurance. The Tenant also submits a copy of an email dated June 13, 2019 a claims adjuster and this email notes that the Tenant's car was driven to a gas station by a 3rd party with the permission of the Tenant and that 15 minutes later the vehicle stopped. The Landlord states that the Tenant's report of incidents in the parking lot was reported to the Strata and that the Landlord has no say about the security system. Landlord SM states that she sits on the Strata council and that the owner did not raise any concerns with the Strata. Landlord SM states that it

was not aware of several incidents of vehicle damage. Landlord JL states that the Tenant did report at least one occasion of vandalism.

The Tenant claims $450.00 and $109.79 for the loss of storage. The Parties agreed to settle this claim with the Landlord paying compensation of **$250.00**.

Analysis

Section 77(3) of the Act provides that a decision or an order is final and binding on the parties. As the previous decision dated June 15, 2018 sets out a mutual agreement to fully settle the Tenant's claims for compensation in relation to the flooding for the period to the date of that hearing and arising from the same causation, I find that the matter of compensation to that date arising from the floods, including any damages for the presence of mold, is limited to the amount already agreed as a result of the final and binding decision on the Parties.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. As the Tenant did not provide any evidence at the hearing of any supporting documentation showing the mold was reported to the Landlord after June 2018 and given the Landlord's evidence that no mold was reported up to and during the Landlord's presence in the unit in August 2018, I find on a balance of probabilities that the Tenant has not substantiated that it acted to mitigate its losses from the mold by reporting the mold to the Landlord before or during August 2018. Based on the Landlord's evidence that they became aware of the mold in September 2018 and the undisputed evidence that the Tenant agreed to delay repairs to the unit as ordered in the previous decision dated June 15, 2019, I find that the Tenant has not substantiated that it took reasonable steps to mitigate any losses from the mold. For these reasons I find that the Tenant is not entitled to the compensation claimed for the presence of mold after June 2018 and I dismiss the claims for cleaning and loss of paperwork. Further as

the Tenant's evidence is that the repairs were delayed by agreement of the Tenant I find that the Tenant is not entitled to compensation related to the delay in repairs.

There is no dispute that the Tenant was provided parking within the terms of the tenancy agreement. There is no evidence provided in relation to the security of the parking space other than it not having security cameras. Given the Tenant's evidence from the insurance company that the Tenant's vehicle was taken to a gas station by a 3rd party with the Tenant's permission and the evidence from the insurance company that the vehicle stopped after obtaining gas, I find on a balance of probabilities that the Tenant has not substantiated that its car was vandalized while parked in the parking lot. Further, while the Landlord has given evidence that it knew of one prior incident of vandalisms no details of this vandalism was provided by either Party to indicate that security was an issue giving rise to this incident. Even if the Tenant's car was tampered with while in the parking lot, the Tenant has not provided any direct evidence, witness statements or other supporting evidence detailing prior and similar incidents of vandalism to other vehicles in the parking lot or that prior incidents of vehicle vandalism in the parking lot were known to the Landlord. Finally, there is no evidence that the disturbances in the parking area were related to the vandalism to either the Tenant's vehicle or any other vehicles. For these reasons I find that the Tenant has not substantiated that the Landlord was negligent in providing parking to the Tenant and I dismiss the claim for damages to the car.

As the Landlord has not disputed the Tenant's claim to $1,000.00 for the disturbances by other tenants and this is the total amount claimed by the Tenant for disturbance to her quiet enjoyment and health also caused by water leaks and the vandalism, I find that the Landlord's agreement to this compensation amount covers the Tenant's total claims for disturbances.

As the Parties have settled the Tenant's claim in relation to storage for $250.00 I find that the Tenant is entitled to compensation of **$1,250.00**. As the Tenant's claims in the application have met with partial success I find that the Tenant is entitled to recovery of the **$100.00** filing fee for a total entitlement of **$1,350.00**. As Tenant's application against the Strata corporation has been dismissed in the Interim Decision this Party is not named in the monetary order.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **$1,350.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 24, 2019

Residential Tenancy Branch