Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNDC

Introduction

This conference call hearing was convened in response to the landlord's application for a Monetary Order for damage to the property, for money owed or compensation for damage or loss under the Act, and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. Part of their evidence confirmed reciprocal service of the notices and of the material intended to be produced in these proceedings as required by statute.

At the outset, the parties notified that the tenancy ended and that the tenants no longer resided at the rental unit.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and for what amount?

Background and Evidence

The rental unit consists of an apartment in a multi unit complex located in Vancouver. The complex is a heritage building that was recently renovated, and a new common elevator was installed in 2006.

The fixed term tenancy was based on a one year lease, starting on October 1st, 2009 at a rate of $1200.00 payable on the first of each month. The tenant paid a security deposit in the amount of $600.00.

The landlord testified that on February 6th, 2010, the tenants' guests used the building's elevator and that an Otis technician had to be called to rescue them. The landlord stated that the technician identified the problem as loose cables caused by the guests and submitted an invoice for $1681.85. The landlord provided a copy of the invoice in which the technician wrote "8 people young males appear to be intoxicated". The landlord stated that the strata council did not accept the invoice as it had been deemed to be an "at fault" case. The landlord said that throughout the tenancy, the tenants were responsible, respectful tenants however the parties could not reach a mutually agreeable settlement over the cost of this repair.

The tenants testified that their guests were well behaved and were not drunk as alleged. As the tenants were not in the elevator when the incident occurred, they could not provide supporting evidence as to their friends' behaviour. They asserted that there was no supporting evidence to blame anyone and that the problem was a malfunction. They stated that although they were not willing to pay part of the invoice, they did not feel that the landlord should pay either.

In their evidence, they attached a written memo dated February 7th, 2010 wherein one of the guests provided an account of what occurred. In that statement, the guest denied doing anything to disable the elevator. He stated in part that the elevator stopped as soon as they door closed behind them and the "L" button was pressed. When no other buttons reset the elevator in motion, they pressed the "help' button for assistance and the Otis technician appeared approximately one hour later.

The tenants stated that upon attending, the Otis technician was visibly annoyed with having to attend during the Olympics and made immediate accusatory remarks towards their friends. They clarified that his claims were exaggerated, as evidenced by identifying 8 people on the invoice when in fact there were only 6. The tenants stated that the elevator broke down two more times since the incident within the space of two months.

Analysis

In order to make a claim for damages or loss under the Act, the party making the claim bears the burden of proof. While the standard of proof in these matters is the balance of probabilities, the Supreme Court of Canada comprehensively reviewed the law governing this standard and established that the decision maker must be satisfied that the evidence is clear, cogent, and convincing. The evidence established that the elevator stopped functioning; I am not convinced however, that the malfunction has been proven to be caused by the people trapped inside, intoxicated or not. The landlord did not provide supporting evidence other than the invoice and third party observations. These observations were contradicted by one of the guests inside the elevator. In the end, both parties felt that they were not responsible and that the strata council shifted the blame rather than consider the nature of the incident objectively. While I commiserate with the landlord's predicament, on the preponderance of the evidence i am not convinced that the tenants are accountable for the elevator repair.

Conclusion

The landlord's application is dismissed and the landlord will bear the cost of the filing fee for this application.

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: January 05, 2011.

Residential Tenancy Branch