



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: ERP, RP, PSF, MNR, MNDC, RR, FF

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*. The tenant applied for an order directing the landlord to make emergency repairs to the elevator and to the heating system, provide services and reduce rent. The tenant also applied for a monetary order for compensation for loss of facilities, for the cost of repairs and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

During the hearing, the tenant informed me that the elevator and heating system were repaired and functioning. Since the elevator and heating are both no longer problematic, the portion of the tenant's application regarding ordering the landlord to repair these items is moot and accordingly dismissed.

Therefore, this hearing only dealt with the tenant's application for a monetary order for compensation for the loss of use of the elevator, for the cost of a heater, for the increased cost of hydro and for the recovery of the filing fee.

Issues to be decided

Is the tenant entitled to compensation? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on April 01, 2012. The rental unit is an apartment located in a three storey building that houses a total of 21 apartments. Parking for the occupants of the building is in the basement. The tenant's unit is located on the second floor. The monthly rent is \$929.01 payable on the first of each month.

Both parties agreed that the elevator was inoperative for approximately six months during the period of mid October 2013 to April 24, 2014. The landlord stated that he acted immediately on the tenant's complaint, but the follow up was out of his control. The responsibility for the maintenance of the elevator belongs to the strata council and they initiated action by attempting to have their insurance take care of the cost. After about a delay of one month of back and forth correspondence between the strata council and the insurance company, the claim was denied.

The cost of fixing the elevator fell on the strata council and because it was a significant expense that required additional contribution from the apartment owners, two special meetings were convened and eventually the elevator was repaired in April 2014.

The tenant stated that the loss of use of the elevator caused him a great deal of hardship and inconvenience. He stated that his wife was expecting their child during that time and for the last three months of the pregnancy, was required to use the stairs. The tenant also stated that since the birth of the child in January, his wife was unable to leave the home with the child on her own, because it was difficult for her to transport a stroller up and down stairs.

The tenant is claiming compensation in the amount of \$150.00 per month for all the months that he did not have the use of the elevator.

The tenant stated that On December 17, 2013, he informed the landlord via email that the heater in the rental unit was not working. The tenant stated that he followed up with phone calls but did not remember the dates of the phone calls. The tenant stated that the landlord did not respond to his phone messages and in order to survive the winter, he purchased an electric portable heater at a cost of \$15.54.

The landlord stated that he responded to the tenant's complaint by phone, several times but he too could not recall the dates of the phone calls. The landlord testified that the building is heated by a central heating system which pumps hot water to all the units. The landlord informed the maintenance company about the complaint and they informed the landlord that the system was fully functional and that there were no complaints from other occupants. The landlord also testified that the tenant did not return his multiple messages and therefore he assumed that the heating was working.

On April 24, the landlord visited the tenant to serve him a notice of rent increase and when the tenant informed the landlord about the heating problem, the landlord requested to see the radiator. The tenant refused to allow the landlord to take a look at it. The tenant stated that it was not a convenient time for him.

The tenant further testified that on April 29, 2014, the day before this hearing, a friend of his repaired the radiator and it now works well. The tenant stated that his friend adjusted a knob on the radiator at no cost.

The tenant is claiming the increased cost of hydro due to the use of a portable heater and has filed copies of hydro bills to show an increase in the cost of hydro. The landlord pointed out that the tenant has produced bills from summer for comparison with bills from winter. The landlord also stated that with the birth of a new child, the tenant will have incurred additional costs for laundry, which may be reflected in the recent bills.

The tenant is claiming \$150.00 per month for the loss of the use of the elevator, \$50.00 per month for increased hydro costs, \$15.54 for the purchase of a heater and \$50.00 for the recovery of the filing.

Analysis

Based on the sworn testimony of the both parties, I find that the elevator was non functional for about six months. I have to determine whether this service was an essential service and whether the landlord was negligent in responding to the problem.

Based on the documentary evidence and verbal testimony, I find that the landlord acted on the complaint, in a timely manner. I further find that the elevator was an essential service, which was not available to the tenant for a period of approximately six months.

Residential Tenancy Policy Guideline# 22 states that where there is a termination or restriction of a service or facility for quite some time, through no fault of the landlord or tenant, an arbitrator may find there has been a breach of contract and award a reduction in rent. In this case I find that a breach of contract occurred resulting in a reduction of the value of the tenancy and therefore I find that the tenant is entitled to a reduction in rent for the months that he suffered the loss of use of the elevator.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed.

In this case, the tenant endured this inconvenience for about six months. Since access to the renal unit is just one floor above ground and two floors above the basement where the tenant parks, I find that the tenant endured some inconvenience which was not excessive. However since the tenant's wife was expecting a child during this time, I find that the inconvenience was more than minimal.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Based on the location of the rental unit, I find it appropriate to award the tenant \$60.00 per month for the inconvenience he endured due to the loss of use of the elevator. Accordingly the tenant has established a claim of \$360.00.

Based on the testimony of both parties regarding the repairs to the heater, I find that after the initial email to the landlord, both parties followed up by phone messages but did not establish contact. Both parties did not have information regarding the dates of follow up phone messages. The tenant agreed that he did not allow the landlord to take a look at the radiator during his visit on April 24. Since a simple adjustment of the knob by the tenant’s friend resolved the problem, I find on a balance of probabilities that it is more likely than not that the heating was in fact functional at all times, but needed to be adjusted inside the tenant’s unit.

The tenant chose to purchase a heater and therefore must bear the cost of the appliance. The tenant has not proven that he incurred additional hydro costs due to the use of a supplemental heater, because he did not provide similar comparisons. In addition, with a new child in the home, the increased costs may be due to the increased laundry use for the child. I find that the tenant has not established a claim for the heater or for the cost of hydro and accordingly his claim for these items is dismissed.

The tenant has established a claim of \$360.00 for the loss of the use of the elevator. Since the tenant has proven a portion of his claim, I award him the recovery of the filing fee of \$50.00. Overall the tenant has established a claim of \$410.00.

Conclusion

The tenant may make a onetime deduction of **\$410.00** from a future rent.

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: April 30, 2014

Residential Tenancy Branch

