



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$125
- b. An order that the landlord provide services or facilities required by law
- c. An order to allow the tenant to reduce rent for repairs, services, or facilities agreed upon by not provided.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord as the landlord acknowledged service of the same.

At the hearing the advocate for the tenant informed me that the elevator was repaired and functioning and a repair order is not necessary.

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to a monetary order for the reduced value of the tenancy and if so how much?

Background and Evidence

The tenancy began approximately 1 ½ years ago. The rent was \$375 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$187.50 at the start of the tenancy.

The tenant seeks compensation in the sum of \$125 for the loss of use of the elevator for 25 days @\$5 a day based on the following:

- The tenant lived on the 6th floor of the rental property. When the elevator was in operation he would use it on a regular basis averaging approximately 17 round trips.
- He is a carver and often would have to go back to his room to get new supplies or equipment for the sale of his carvings.

- The elevator was not in operation for a period of 25 days on an intermittent basis. The problems began in April, May and June 2015. The elevator was down for an extended period (2 weeks) in November 2015). It has also been down in February and April (2 days) 2016.
- When the elevator is down he is forced to walk up and down the stairs. It takes him 10 to 15 minutes to walk up the stairs as he must stop on the way. This limits his access to the outside and he would reduce going out to approximately 7 times a day.
- There was a previous hearing which was held on May 27, 2016 where the arbitrator awarded the tenants a monetary award of \$125 based on a reduction of use of \$5 a day. The landlord failed to attend the hearing and the decision was made in the absence of the landlord.

The representative of the landlord disputes the tenant's claims based on the following:

- The landlord has a standing contract with an elevator repair company who attends when the elevator is down.
- The landlord produced copies of the Completed Ticket Summary Listing and Completed Ticket Detail Listing for the time period in question. The documents are difficult to read because of the small print and poor quality of reproduction.
In summary this evidence provides as follows:
 - There are 42 different work tickets showing 77.25 billable hours of work.
 - The documents indicate the elevator was down for parts of 32 days.
- The Ticket Summaries show that in many cases the reason for the problem with the elevators was vandalism of other residents in the property.
- The representative of the landlord stated that he is not in any way suggesting that the applicant is guilty of vandalism.
- The documents show that the elevators were down for parts of these days only and was not down for full days..
- The Completed Ticket Detailed Listing shows the landlord responded quickly to problems and the technician arrived within a short period of time after the problem was reported.
- The representative of the landlord submits the tenant has failed to show the landlord was negligent. .
- The tenant has not mitigated his loss.

The representative of the tenant submitted as follows:

- The worksheets relied on by the landlord show the time the technician worked on the elevator. However, it does not show how long the elevator was not working. Some entries indicate the elevator was down all night but the repair company got the telephone call in the morning.
- The landlord is bound by the previous decision awarding \$5 a day for 25 days on the basis of issue estoppel.

- The presence of a functioning elevator is a service that is included with the rent and the landlord is obliged to provide such a service even where the cause of the interruption was vandalism by other residents.

Law

"**service or facility**" includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit:

...

(h) elevator;

Terminating or restricting services or facilities

27 (1) A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
- (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Section 32 of the Residential Tenancy Act provides as follows:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Policy Guideline 22 includes the following:

"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.

Where there is a termination or restriction of a service or facility due to the negligence of the landlord, and the tenant suffers damages as a result of the negligence, an

arbitrator may find there has been both a breach of contract and a failure to take reasonable care which resulted in the damages suffered by the tenant and make an award for damages and/or breach of contract.”

Policy Guideline #17 includes the following:

C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the *Residential Tenancy Act* for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- “Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.
- “Aggravated damages” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

D. AMOUNT OF COMPENSATION

In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet

Analysis

I determined the presence of a functioning elevator is an essential service provided in the tenancy agreement.

There are significant problems with the evidence presented by both parties. The Tenant failed to keep a contemporaneous account of the dates, times and length of time the elevator was down. The landlord relies on the Completed Elevator ticket detailed listings and the Elevator Ticket summaries. However, it is difficult to interpret. It is unclear what work relates to problems with the maintenance of the elevator and what work was caused by vandalism from other residents.

However based on the evidence presented and submission made I determined the following:

- The concept of issue estoppel does not apply as the parties are different from the previous decision. I determined it would not be appropriate to follow the decision of the previous arbitrator as the landlord was not present and she did not have the benefit of the landlord's submission.
- The elevator was not in service for at least parts of 32 days. While it may be the elevator was down for a period prior to the elevator repair company being advised I do not accept the submission that the elevator was down for the entire day 25 days claimed by the Tenant.
- I find that the landlord has responded reasonably promptly to request the services of the repair company when advised.
- I determined the failure of a functioning elevator had a significant impact on the tenant. He lived on the 6th floor. It was an effort for him to climb the steps and he had to stop several times along the way. The failure of the elevator to function reduced his opportunity to go outside.
- There is insufficient evidence to determine that the elevator adversely affected the sale of his carvings.
- The rent at this time was \$375 per month or approximately \$12.50 per day.
- I do not accept the landlord's submission that the tenant failed to mitigate his loss. The tenant acted reasonably during this difficult situation.
- I determined the tenant is entitled to compensation based on breach of contract. The tenancy agreement provided that the landlord would provide elevator services. The

landlord failed to do so over an extended period of time and the value of the tenancy was reduced because of it. In the circumstances I determined the tenant is entitled to compensation in the sum of \$75 both on the basis of damages for the reduced value of the tenancy and nominal damages.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$75 for the reduced value of the tenancy caused by the failure to have a functioning elevator.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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 Residential Tenancy Act.

Dated: October 28, 2016

Residential Tenancy Branch