



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, MNDC, O

Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution wherein the Tenant requested an Order that the Landlord make repairs to the rental unit, monetary compensation in the form of rent reduction as a consequence of an inoperable elevator and other unspecified relief.

The hearing was conducted by teleconference on June 20, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

At the outset of the hearing C.T., who was named as the Landlord on the Tenant's Application, confirmed that she is the resident manager for the property manager, R.P.M. Ltd. She further confirmed that the Landlord's name on the tenancy agreement was left blank, but at all material times during this tenancy R.P.M. Ltd. has been the Landlord and property owner. The Tenant confirmed that he pays rent to R.P.M. Ltd. Pursuant to section 64(3)(c) of the *Residential Tenancy Act*, I amend the Tenant's Application for Dispute Resolution to properly name the Landlord as R.P.M. Ltd.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Landlord be ordered to make repairs to the elevator servicing the rental building?
2. Is the Tenant entitled to monetary compensation in the form of a rent reduction?

Background and Evidence

This tenancy began December 15, 2014. The Tenant testified that he pays \$953.00 in rent as of a rent increase effective May 1, 2017.

In the within application the Tenant sought an Order that the Landlord make repairs to the elevator in the rental building, which he testified stopped working on April 2, 2017. The Tenant stated that the rental building is four floors tall. He confirmed that the rental unit is on the first floor of the rental building, but because there is underground parking and a commercial space on the ground floor he has to climb two flights of stairs from his vehicle to the rental unit. The Tenant stated that he does not know how old the building is, but believes it was likely built in the 1980's.

The Tenant testified that he is 53 years old and suffers from epilepsy, arthritis in his knees, as well throat cancer. He stated that his mother also lives with him, is 84 years old, and also has arthritis in her knees. Consequently, he submits the lack of elevator has had a significant impact on him and his mother. The Tenant stated that he regularly has to carry groceries up two flights of stairs, which he finds very difficult; he further stated that his mother gets tired going up and down the stairs.

The Tenant claimed that the elevator was out of service from April 2, 2017 and was fixed on May 2, 2017. He confirmed that it "went down again" on May 10, 2017 and was fixed that day.

The Tenant stated that although repaired twice now, the elevator still does not work properly. He said you can ride up and down, but the door does not close properly and the elevator does not stop level to each floor such that it is unsafe.

The Tenant claimed compensation in the amount of \$472.00 for loss of use of the elevator; he confirmed this sum is equivalent to half a months' rent based on the \$944.00 amount of rent he paid for April 2017.

In response to the Tenant's submissions, C.T. testified as follows. She stated that the elevator was broken as of April 12, 2017 (not April 2, 2017 as claimed by the Tenant) and had been repaired as of May 5, 2017 (not May 2, 2017). In her evidence package she provides a timeline of the elevator shut down as well as copies of emails between the Landlord and the elevator service company, O., confirming the dates of repair.

C.T. stated that the door “does shut” as the elevator will not function without the doors closed. She stated that she is aware that the elevator is “still not level” and said that until the elevator runs four or five times it will be a quarter of an inch out. She stated that she has spoken to another elevator service company who confirm they can fix this problem, but she must get out of her contract with the current service company first. She stated that she has to give the current company 90 days’ notice to get out of the contract.

C.T. further confirmed that she was not instructed to agree to any rent reduction as the Landlord was worried that this would result in all tenants of the rental building making requests for rent reductions. She stated that one tenant, on the third floor is in a wheelchair and uses a scooter and was not able to leave their rental unit at all when the elevator was inoperable.

Analysis

Section 32 of the *Residential Tenancy Act* mandates the Tenant’s and Landlord’s obligations in respect of repairs to the rental unit and 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.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The *Residential Tenancy Act Regulation – Schedule: Repairs* provides further instruction to the Landlord as follows:

8 (1) Landlord's obligations:

- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.
- (b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

Residential Tenancy Policy Guidelines - #1 – Landlord & Tenant – Responsibility for Residential Premises provides in part as follows:

SERVICES AND FACILITIES

1. A landlord must continue to provide a service or facility that is essential to the tenant's use of the rental unit as living accommodation.

I find the elevator to be an essential service. While the parties disagree as to the length of time the elevator was inoperable, there is no dispute the elevator was inoperable for at least three weeks. I find the lack of this service to be very problematic for this tenancy. The Tenant and his mother have disabilities which make navigating stairs very difficult and the inoperable elevator negatively impacted the Tenant's ability to use the rental unit as living accommodation.

I find the amount requested by the Tenant to be reasonable, and I therefore award the Tenant the **\$472.00** requested in his Application for Dispute Resolution.

I also find that the elevator requires further repair. I accept the Tenant's evidence that the elevator does not level at times such that a tripping hazard is created. I also accept his evidence that the doors do not close properly. I therefore grant his request for a repair order pursuant to section 32 of the *Residential Tenancy Act*.

Conclusion

In consideration of the foregoing, I Order as follows:

1. The Tenant is entitled to monetary compensation in the amount of **\$472.00**. The Tenant is granted authority, pursuant to section 65(1) of the *Residential Tenancy Act*, to reduce his next month's rent payment by this sum.
2. Within 14 days of the date of this hearing, July 4, 2017, the Landlord shall ensure the elevator leveling problem and door closing problem is fixed.

I confirm that I informed the Landlord's representative during the hearing that I was ordering the Landlord to repair the elevator within *14 days of the date of the hearing*. She acknowledged this deadline during the hearing.

Should the Landlord fail to repair the elevator as ordered, the Tenant may apply for further monetary compensation pursuant to sections 67 and section 65(1) of the *Residential Tenancy Act*.

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: June 23, 2017

Residential Tenancy Branch