Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LIONS MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order reducing rent for repairs, services or facilities agreed upon but not provided and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were also given the opportunity to question each other and to give submissions.

The tenant has also filed an Amendment to the Application for Dispute Resolution to add a party. The landlord's agent did not oppose the application, and therefore the application to amend is granted, and the frontal sheet on this Decision reflects that amendment and Style of Cause.

Issue(s) to be Decided

Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided, and more specifically loss of use of the elevator?

Background and Evidence

The tenant testified that this fixed-term tenancy began on October 1, 2004 and expired on September 30, 2005 thereafter reverting to a month-to-month tenancy, and the tenant still resides in the rental unit. Currently rent in the amount of $1,343.15 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of $440.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment on the 7th floor of a complex containing 11 floors.

The tenant further testified that the elevator was not in use during the period of June 14, 2017 to October 22, 2017. The tenant claims $6.00 per day for 91 days for inconvenience. The tenant weighs 280 pounds and has to stop to catch his breath before reaching his rental unit via the stairs. Also, the tenant fell on the street and while in hospital was diagnosed with a kidney stone. It has been difficult and inconvenient to climb the stairs.

The tenant sent a letter to the landlord, a copy of which has been provided as evidence for this hearing, requesting repairs and a reduction in rent. The letter is dated October 3, 2017 and also refers the landlord to 3 Residential Tenancy Branch cases that the tenant testified were found on-line, all dealing with loss of elevators. The tenant believes that the claim of $6.00 per day is reasonable. The repairs mentioned in the letter were completed, but the landlord did not respond to the letter.

The landlord's agent testified that the complex contains 12 floors, not 11 as testified by the tenant.

Repairs and maintenance are necessary, and the building is old and required upgrading. The landlord has provided a letter to the Residential Tenancy Branch dated March 16, 2018 indicating that repairs and upgrades were made to the fire alarm, renovations to the entire building, including the lobby floor and wall, entry door, landscaping, painting the exterior, the roof, railings, and the boiler.

The tenants all received notices a year in advance that major repairs were required to the elevator and it would be unavailable for 10 to 12 weeks, and was actually unavailable for 13 weeks. The landlord's agent does not agree that the tenancy has been devalued because the maintenance was necessary, and the landlord has not made any applications for additional rent increases beyond the regular annual increases.

Analysis

The parties agree that the elevator was out of service for 91 days (or 13 weeks which = 91 days). The parties also agree that the tenant resides on the 7th floor of the rental complex. I would suggest that if there had been no elevator, the tenant would not have rented the rental unit on the 7th floor.

I accept that the landlord has an obligation to repair and maintain the building, and certainly a reliable elevator is necessary to prevent people from getting stuck between floors or other safety concerns. The landlord's agent testified that because the landlord has not sought an additional rent increase over and above the annual increases, the tenancy has not been devalued. I disagree; that is not the test. I find that the elevator is a

service and facility that was essential and material to the tenant entering into the agreement regardless of what rent increases there are.

I refer to Residential Tenancy Guideline #22 – Termination or Restriction of a Service or Facility, which states, in part:

> Under section 27 of the RTA and section 21 of the MHPTA a landlord must not terminate or restrict a service or facility if:
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> • the service or facility is essential to the tenant's use of the rental unit as living accommodation, or;
> • providing the service or facility is a material term of the tenancy agreement.
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> A landlord may restrict or terminate a service or facility other than one referred to above, if the landlord:
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> • gives the tenant 30 days written notice in the approved form, and
> • reduces the rent to compensate the tenant for loss of the service or facility
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> **B. ESSENTIAL OR PROVIDED AS A MATERIAL TERM**
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> **An "essential" service or facility** is one which is necessary, indispensable, or fundamental. In considering whether a service or facility is essential to the tenant's use of the rental unit as living accommodation or use of the manufactured home site as a site for a manufactured home, the arbitrator will hear evidence as to the importance of the service or facility and will determine whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the rental unit as living accommodation. For example, an elevator in a multi-storey apartment building would be considered an essential service. (underlining added).
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> **A material term** is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. Even if a service or facility is not essential to the tenant's use of the rental unit as living accommodation, provision of that service or facility may be a material term of the tenancy agreement. When considering if a term is a material term and goes to the root of the agreement, an arbitrator will consider the facts and circumstances surrounding the creation of the tenancy agreement. It is entirely possible that the same term may be material in one agreement and not material in another.
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> **C. RENT REDUCTION**
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> Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant.

Considering that the amount claimed is equal to approximately $182.00 per month, and the rental unit is 7 stories above ground, I find that the tenancy has been devalued and the amount of $6.00 per day is reasonable.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the $100.00 filing fee.

I hereby order that the tenant be permitted to reduce rent for a future month by $646.00.

Conclusion

For the reasons set out above, the tenant's application is hereby allowed, and I order that the tenant be permitted to reduce rent for a future month by $646.00.

This order is final and binding and may be enforced.

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: March 29, 2018

Residential Tenancy Branch