



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: RR, FF

Introduction

This hearing dealt with the tenant's application for a rent reduction and recovery of the filing fee. Both parties appeared at the hearing and had an opportunity to be heard and respond to the other party's submissions.

Issue(s) to be Decided

1. Whether the tenant is entitled to an additional rent reduction for the period of time the elevator was out of service at the residential property.
2. Award of the filing fee.

Background and Evidence

Based on undisputed testimony during the hearing, I make the following findings. The rental property is a large apartment building serviced by one elevator. The tenant resides on the 4th floor. The elevator required extensive maintenance work and was completely out of service for 45 days between August 11, 2008 and September 25, 2008. The week prior to this period, the elevator was out of service between the hours of 9 am and 5 pm.

The landlord notified the tenants of the anticipated elevator maintenance work in writing in February 2008 and offered the tenants the opportunity to contact him with their specific concerns. The landlord acknowledged that the elevator is an essential service but there was no choice but to replace the elevator. Rather than end the tenancies, the

landlord chose to work with the tenants by offering the tenants aid, such as carrying groceries, laundry, etc. up and down the stairs upon request. The landlord gave scaled compensation to the tenants for the period of time the elevator was out of service. The amount of compensation was dependant on the floor on which the rental unit was located. Compensation ranged from five percent for the second, third and fourth floors to 20 percent for the 10th and 11th floors. The tenant received and cashed a compensation cheque received from the landlord in the amount of \$73.00 – based on five percent compensation.

The tenant testified that she is 60 years old and has arthritis in her knees. The lack of an elevator for a total of 52 days forced her to use the stairs to go to work, get groceries and prescriptions, collect her newspaper and do her laundry, causing her pain and stiffness in her knees. In addition, she did not invite older friends over to her unit as walking up four flights of stairs would be too difficult for them.

The landlord testified that the tenant never contacted him with her specific concerns and did not request the aid that he was offering tenants. The tenant acknowledged that she did not request the aid of the building manager as she did not want to burden the manager as he is in his mid-50's. The landlord countered the tenant's position by stating that the landlord was prepared to bring in additional services to assist the building manager had the requests of the tenants been too much for the manager to handle.

During the hearing, the landlord offered to increase the compensation to the tenant to 20 percent for the days the elevator was out of service. The tenant rejected the landlord's offer and requested that she be provided compensation of 45 percent of her rent. The tenant pays \$855.00 per month in rent.

Analysis

I am satisfied that the landlord worked to minimize the inconvenience and hardship to the tenants with respect to the required elevator replacement. Nonetheless, the termination of the elevator service requires compensation be provided to tenants. I also appreciate that the landlord had offered to increase the compensation to this tenant to 20 percent upon hearing how the lack of the elevator impacted the tenant. Therefore, I find that there is no dispute that the five percent compensation already provided to the tenant is inadequate compensation. Compensation should reflect the degree of inconvenience and hardship experienced by the tenant which will be influenced by the function of the tenant's physical health and the floor they reside upon. In the case of this tenant I am satisfied that the tenant would likely have suffered increased pain and stiffness due to her arthritic knee condition and that climbing stairs would have aggravated the condition.

Where a party makes a claim for compensation, I must consider whether the party did whatever was reasonable to minimize their damage or loss. I find that the tenant did not make use of the landlord's offer for assistance for such things as carrying up groceries, newspapers and laundry. The tenant knew she could have asked the manager for assistance and chose not to. While I appreciate the tenant's consideration of the health of the manager, the tenant was not privy to the arrangement between the landlord and manager.

In light of the above factors, I award the tenant 30 percent compensation for the period of time the elevator was completely out of service and 15 percent during the days the elevator was out of service between 9am and 5pm. I also grant the tenant recovery of

the filing fee for this application. Taking into account the \$73.00 already provided to the tenant, I award the tenant the following amount:

45 days @ 30%	\$ 372.33
7 days @ 15%	<u>28.95</u>
Compensation for elevator	\$ 401.28
Less: payment received	(73.00)
Plus: filing fee	<u>50.00</u>
Monetary Award	<u>\$ 378.28</u>

In satisfaction of the above award the tenant is authorized to reduce a subsequent month's rent by \$378.28. Alternatively, the landlord may pay the tenant \$378.28 within 30 days of the date of this decision.

Conclusion

The tenant has established an entitlement to a rent reduction of \$401.28. In recognition of the payment already received from the landlord and award of the filing fee, the tenant is authorized to reduce her rent by a one-time deduction of \$378.28.

January 2, 2009

Date of Decision

Dispute Resolution Officer