



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, O, FF

Introduction

This hearing dealt with the tenant's application for a Monetary Order for damages or loss under the Act, regulations or tenancy agreement and recovery of the filing fee. Both parties were represented at the hearing and were provided the opportunity to be heard and respond to the other party's submissions.

At the commencement of the hearing, the landlord's agent requested an adjournment on the basis that the property manager was not able to attend the hearing due to illness. The hearing proceeded with the assurance that the adjournment request would be reconsidered if it were determined appropriate. At the end of the teleconference call, the agent confirmed that he felt the landlord's position was adequately represented during the hearing and the request for an adjournment was withdrawn.

Issues(s) to be Decided

1. Has the tenant established an entitlement for compensation for the loss of use of the building elevator and if so, the amount?
2. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony from the parties, I make the following findings. The tenant resides on the 10th floor. The residential property is serviced by one elevator. The elevator was in need of replacement and was not in use between the dates of October 8, 2008 and January 8, 2009, a total of 93 days. The tenant pays rent of \$1,040.00, plus parking, per month. A Notice of Rent Increase was due to take effect



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on February 1, 2009; however, the landlord delayed the effective date of the 3.7% increase for 3 months in recognition of the loss of the elevator.

The tenant testified that the lack of an elevator service impacted her on a daily basis. The tenant had no alternative but to take the stairs up and down 10 floors in order to attend school every day and retrieve her mail. In addition, the tenant had to haul laundry down to the 1st floor, she had fewer guests during the time the elevator was out of service and the food delivery people would not climb up the stairs to deliver food.

The tenant is seeking compensation equivalent to \$1/floor per day the elevator was out of service and \$4/week for having to pick up mail across the street.

The agent testified that prior to its replacement the elevator was breaking down nearly every week. The building is serviced by a single elevator and it had to be replaced at a considerable expense. The agent testified that the tenants were notified that it would be unavailable for use during the replacement and that the landlord compensated the tenants by postponing the effective date of a Notice of Rent Increase by 3 months.

Analysis

Upon hearing the testimony of both parties, I am satisfied that the elevator is a service or facility, as defined by the Act, and that during the replacement of the elevator, the service was terminated or restricted. I accept the landlord's position that the landlord had no choice but to remove and replace the elevator; however, a termination or restriction for a significant period of time, though no fault of the landlord, may be found to be a breach of the Act or tenancy agreement and a tenant would be entitled to compensation. Considering that the tenant resides on the 10th floor, I consider three months without an elevator to be a significant period of time. Therefore, I find that the



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tenant is entitled to compensation for lack of an elevator service during the 93 days the tenant was unable to use the elevator.

I find the tenant's request for compensation of \$1,032 without elevator service to represent approximately 33% of her monthly rent or \$11.10 per day. Although the tenant explained that she determined the rate of compensation from other tenants who obtained compensation, each case must be decided on its own merits. Each tenant may be impacted differently by the loss of a service or facility and the award should reflect the amount of damage or loss incurred by that particular tenant.

While I am satisfied that the tenant experienced inconvenience by having to take the stairs up to her unit every day the elevator was unavailable, and that it was likely that the tenant had fewer visitors and food delivery during this time, the tenant did not indicate that she suffered from physical limitations that would significantly inhibit her from carrying on with her normal daily activities and I find the tenant's request for a 33% rent abatement to be excessive. Rather, I find an award of \$5 per day, or \$465.00 for 93 days, for this tenant to be reasonable. Since I heard that the tenant left her rental every day to attend school, I do not find it appropriate to provide a separate award for picking up her mail.

I also find that the landlord has compensated the tenant by way of delaying the rent increase by three months. I calculate the landlord's compensation to be \$115.44 ($\$1,040.00 \times 3.7\% \times 3 \text{ months}$).

In light of the above findings, I find the tenant entitled to recover additional compensation of \$349.56 from the landlord. I also award the tenant the filing fee. The tenant may reduce a subsequent month's rent by a one-time deduction of \$399.56 in satisfaction of this award and the landlord must consider the rent to be paid in full.



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Conclusion

The tenant was partially successful with this application and the tenant is awarded \$399.56. The tenant is authorized to deduct \$399.56 from a subsequent month's rent in satisfaction of this award.

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 08, 2009.

Dispute Resolution Officer