



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 an application by the tenant for a reduction in rent for repairs, services or facilities agreed upon but not provided. An agent for the tenant and an agent for the landlord both participated in the teleconference hearing.

Preliminary Matters

This application was a follow-up to a previous application by the tenant for compensation regarding lack of elevator service in her building. I heard that application on January 8, 2009, and the tenant provided evidence that she lived on the tenth floor of her building and the one elevator in the building was not operating due to renovations. The tenant had applied for compensation up to January 15, 2009 based on the information she received about the completed elevator renovations. The landlord gave testimony that the elevator would be operational as of the date of the hearing, January 8, 2009. In my decision of January 12, 2009, I granted the tenant compensation for stopped elevator service from October 13, 2008 to January 8, 2009 and dismissed the remainder of the tenant's application for compensation from January 9, 2009 to January 15, 2009 with leave to reapply, should the elevator service not resume on January 8, 2009.

In this subsequent application, the tenant submitted evidence to allege falsification of evidence by the landlord's agent in the first hearing. I explained to the parties in this hearing that if the tenant had reason to believe that my first decision had been obtained by fraud then she ought to have made an application for review of the original decision, and I would not consider the alleged falsification in this hearing.

The basis for the tenant's application for a reduction in rent on this application was that elevator service did not resume until January 9, 2009, and there was interrupted service on January 14, 22, 23 and 26, 2009. The tenant also applied for additional compensation for four days of elevator outage on October 9 to 13, 2008, and lack of elevator access to the parking garage and laundry room from October 9, 2008 to January 9, 2009.

I explained to the parties that the tenant ought to have applied for compensation for October 9 to 13, 2008 and lack of elevator access to the parking garage and laundry room in her first application, and that she could not split her claim by subsequently applying for further compensation related to the initial application, only for that which I granted leave to reapply: specifically, for compensation if the elevator service did not resume on January 8, 2009.

I therefore dismissed the portions of the tenant's application related to lack of elevator service for October 9 to 13, 2008 and lack of elevator access to the parking garage and laundry room, and only heard evidence regarding lack of elevator service for January 9, 14, 22, 23 and 26, 2009.

Issue(s) to be Decided

Is the tenant entitled to compensation for lack of elevator service on January 9, 14, 22, 23 and 26, 2009?

Background and Evidence

The relevant evidence of the tenant was as follows. On January 8, 2009 the landlord sent a notice to all tenants that the elevator would be operational by "this evening," and that there may be some "minor difficulties in the first week of operations." Elevator service did not resume on January 8, 2009; rather, it resumed late in the day on January 9, 2009. On January 13, 2009 the landlord sent a notice to all tenants that the elevator would be shut down on January 14 between 9 am to 11 am and 1pm to 2 pm.

On January 21, 2009 the landlord sent a similar notice stating that the elevator would be shut down on January 22, 23 and 26 between 9 am and 2 pm. On February 9, 2009 the tenant requested \$30 in compensation for the above-noted dates without elevator service. On February 13, 2009 the landlord responded to the tenant and provided a copy of an email from the elevator company which stated that the safety inspector “was onsite on June 7th for the inspection and our adjuster turned the car on in the afternoon on June 8th... we had a few deficiencies... that needed to be completed... the [elevator] was out of service in intervals of 15 minutes at a time and then returned back into service for the tenants.” In the hearing the tenant’s agent questioned the authenticity of this document, as it cited dates in June, not January, it did not include the year, and there was a small blacked out spot on the top of the document. The tenant has applied for compensation of \$10 for January 9, 2009 and \$5 per partial day for January 14, 23, 23 and 26, 2009.

The response of the landlord was as follows. The elevator was back in service on January 8, 2009. The email from the elevator company merely contained typos that referenced June, not January, and the blacked out portion of the document likely contained confidential account information. The landlord should not be entitled to any compensation for the partial shut-downs, as it is not appropriate and would be never-ending.

Analysis

I find that the tenant is not entitled to any further compensation. I am not satisfied with the evidence of the tenant that the elevator was not running until January 9, 2009. I further find that the tenant is not entitled to compensation for the partial days, as the tenant was not entirely deprived of elevator service for an extended period of time and was warned in advance of the necessary adjustments. The purpose of the rent reduction provision under the *Residential Tenancy Act* is to fairly compensate tenants when a landlord has deprived the tenant of an important service, not to hinder the landlord from conducting necessary repairs and maintenance. I find that the tenant’s application for further compensation borders on being frivolous and vexatious, and I

dismiss the application.

Conclusion

The tenant's application is dismissed. The tenant is not entitled to recovery of the filing fee for the cost of the application.

Dated May 7, 2009.