



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, OLC, ERP, RP, PSF, FF

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

This hearing was adjourned from March 11, 2009. At the original Hearing, the issue of the Tenants’ application to cancel the Landlord’s Notice to End Tenancy for Cause was decided in the Tenants’ favour. The hearing today was reconvened to determine the outcome of the Tenants’ application for a monetary order for damages or loss under the Act, regulations or tenancy agreement, for non-pecuniary damages, 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. The parties gave affirmed testimony at the Hearing and the Hearing proceeded on its merits.

Issues(s) to be Decided

1. Are the Tenants entitled to a monetary order for the loss of use of the elevator, mail service and for loss of wages?
2. Are the Tenants entitled to recover the \$100.00 filing fee for the cost of their application from the Landlord?

Background and Evidence

Tenant's testimony

The Tenants live on the 5th floor of an apartment building, which has only one elevator. Parking for the building is located one floor below ground level and is accessible by the elevator. The elevator required servicing for a period of time between October 6, 2008 and January 26, 2009.

The Tenant SH testified that the Tenants were severely affected by the loss of use of the elevator. The Tenant testified that she had a physical disability that made climbing up and down the stairs painful. As a result of the Tenant SH's inability to climb the stairs, the Tenant stated that she had to postpone an operation and missed several days of work over the period of October 6, 2008 to January 8, 2009. Furthermore, the Tenant testified that they were not able to go out and visit over the holidays, and it was very inconvenient to do their laundry, as the laundry facilities are on the first floor of the building.

The Tenants are seeking compensation equivalent to \$1/floor per day, for 6 floors including the parking garage, for the time the elevator was out of service, for a total of \$606.00. The Tenants are seeking compensation in the amount of \$12.50 per week per tenant, because of having to pick up their mail at a postal outlet across the street instead of having it delivered to their door, for a total of \$325.00. The Tenants are seeking damages for lost wages in the amount of \$2,345.15 for the Tenant SH and \$1,714.00 for the Tenant KL. The Tenants are seeking damages in the amount of \$2,500.00 for negligence on the part of the Landlord; loss of services; 5 weeks of pain and suffering for postponed surgery; and harassment. The Tenants provided a copy of

a letter from the Tenant SH's employer attesting to the Tenant SH's absence from work from October 6 to January 8, and a note from the Tenant SH's doctor, stating that her surgery was deferred from December 9, 2008 to January 15, 2009.

Landlord's testimony

The Landlord testified that the elevator was out of commission from October 13, 2008 to January 8, 2009. Prior to the elevator being replaced, it was breaking down regularly. The Landlord stated that the elevator was not an essential service, and that the Landlord should not be made responsible for compensating the Tenant for the loss of its use. Regarding the Tenants' claim for damages for lost wages, the Landlord testified that the Tenant SH did not make the Landlord aware of her mobility issues until after the repairs were underway on the elevator. The Landlord disputed the Tenants' allegation that he misrepresented the time it would take to complete the repairs on the elevator. The Landlord disputed that the shut-down of the elevator was mismanaged by the Landlord. The Landlord stated that all tenants in the building were advised in advance of the dates and times the elevator would be out of service.

Analysis

I find that an elevator is a service or facility as defined by the Act. The Tenants are entitled to compensation for termination of a service or facility. I find that three months without the use of an elevator is a significant amount of time. Upon hearing the testimony and reviewing the evidence of both parties, I find that the elevator service was terminated for the period between October 6 to and including January 8, 2009, and that the Tenants are entitled to compensation for lack of elevator service during those 95 days.



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

I find the Tenants' request for compensation in the amount of \$1.00 per day for each of the 6 floors (5 plus the garage) to be reasonable, and award the Tenants \$570.00 for this portion of their claim.

The Tenants did not receive mail delivery during the time the elevator was out of service. I find a reasonable amount of compensation to be \$4.00 per week (2 deliveries per week at \$2.00 per delivery) for 13 weeks, and award the Tenants \$52.00 for disrupted mail service.

I find that the Tenants failed to prove their claim for lost wages, pain and suffering and harassment. The Landlord was not negligent in managing the repairs/replacement of the elevator. I dismiss the remainder of the Tenant's claims for damages.

The Tenants have been partially successful in their claim, and are entitled to recover half of the filing fee from the Landlord, in the amount of \$50.00.

Conclusion

The Tenants were partially successful with this application and are awarded \$672.00. The Tenants are authorized to deduct \$672.00 from a subsequent month's rent in satisfaction of this award.

Dated: May 13, 2009.
