



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, OLC, ERP, RP, PSF

Introduction

The hearing held on June 25, 2009 proceeded and it became apparent that an adjournment was required to allow the applicant more time to obtain additional evidence pertaining to their application. A summons was issued for the applicants witness to appear at the hearing on August 07, 2009. The hearing reconvened on August 17, 2009.

This hearing dealt with an Application for Dispute Resolution by the tenant. The tenant served the landlord with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witnesses, and make submissions to me. A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions. On the basis of these documents and the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

This is a request for a Monetary Order for \$ 637.50 for compensation for damage or loss under the Act and a request for the Landlord to comply with the Act, regulation or tenancy agreement, for the landlord to carry out emergency repairs and repairs to the unit and an order for the landlord to provided services or facilities required by law.

Background and Evidence

This tenancy started on October 01, 2008 and ended on or about June 01, 2009. The tenant paid rent of \$425.00 per month and paid a security deposit of \$212.50 on September 30, 2008. This is a single room occupancy building. The tenants' rental unit is on the 8th floor of the building. The tenant has use of common areas such as the bathroom.

The tenant has applied for dispute resolution and is seeking compensation for the loss of the elevator for three months and also requests the landlord deals with the mice and cockroaches infestation in his room.

The tenant representative testifies that the tenant suffers from a disability which makes it very difficult for him to use the stairs and the elevator has not been working consistently since January 2009. The tenant takes medication for his disability and has had to increase his medication for pain relief due to having to use the stairs. The lack of elevator service has disrupted his life and made him feel like a prisoner in his own home. In March there was no service in the elevator and in April and May the service was extremely sporadic. The tenant testifies that during this time the landlord was also carrying out repairs and maintenance to the stairs. Sanding and varnishing was taking place which made it difficult to negotiate the stairways and the tenant experienced a high level of dust and fumes due to a lack of ventilation in the stairways. The tenant testifies that he was offered alternative accommodation in another hotel unit around the third week in June, 2009. He asked to see the room before agreeing to the move and states that the building manager never followed through with this request. The tenant has now moved from the rental unit.

The tenant testifies that he has had an ongoing problem with mice and cockroaches infesting his room. He received one treatment for this in May, 2009 despite repeated requests to the building manager to resolve the problem no further treatment has taken place.

The landlords agent testifies that the elevator company who were contracted to carry out the maintenance of the elevator cancelled the contract with the hotel in January 2009 after a women with a weapon attacked two persons in the hotel while the elevator employees and cleaning contractors were working on the elevator clean up prior to the maintenance work being carried out. As a result of the attack the elevator workers union issued a "do not work order" at the hotel due to security issues. After this time the elevator was still operational for eight hours a day as only one hotel employee was trained to operate the elevator to warrant it safe for passenger traffic. The elevator broke down in March, 2009 and worked sporadically throughout April, 2009. The landlord had difficulty securing the services of another company to carry out the maintenance and repairs of the elevator and appealed to the City of Vancouver for assistance. Subsequently at the end of April, 2009 an alternative company agreed to enter into a contract with the hotel to carry out the maintenance and repairs required to the elevator. They have determined that the elevator system needs to be replaced at a high financial cost to the landlord. On May 01, 2009 the work began to carry out a retrofit of the elevator system and the landlords state that they have posted a notice to the tenants to keep them informed of the progress. They state that they also posted a notice in the hotel about offering assistance to tenants who need help carrying packages to their rooms.

The time line for the delivery of the equipment to carry out the retrofit will take approximately 14 to 16 weeks and installation is estimated at another eight weeks. The

landlord submits that the tenancy agreement concerning the elevator is frustrated due to the events surrounding the previous company's cancellation of the contract and the 'do not work order' from the union. The landlord state they have acted diligently in carrying out repairs and maintenance of the elevator in the past. They state they continue to make provision for tenants to use the elevator when it is operating and have offered both alternative accommodation and help with the stairs.

The tenants witness is a representative from the previous elevator company. He confirms the events pertaining to the cancellation of the contract with the hotel and could not confirm if the union had issued a 'do not work order'. The elevator company representative testifies that the landlord has complied with every proposal made by the company over the last eleven years with regard to repairs and upgrades and these were carried out along with their contractual obligations. He testifies that from October 2007 to December 2008, four health and safety warning letters were sent to the landlord due to the conditions in the elevators and the proposals for cleaning the human excrement and syringes with blood found in the elevator pit. He testifies that these were conditions caused by the tenant's actions. Any work assessments were proposed to the landlord and the work was completed in due course. The company was not contacted by the British Columbia Safety Association concerning any safety issues with the elevator. The Elevator company representative testifies that his company were diligent in carrying out repairs and maintenance of the elevator and the landlord had not been negligent by not agreeing to any repairs that were required.

The tenants representative states that they contacted the union for elevator workers and were told that a "no work order" had not been issued for this hotel. The landlords' evidence suggests that a "no work Order" had been issued and the city of Vancouver

had to intervene on the landlords behalf to secure the services of another contractor to service the elevator.

The landlord disputes the tenants' claim that they did not deal with the mice and cockroach problem in the unit. The maintenance manager for the building gave evidence that the landlord has a pest control service which comes in twice each month. He supplies them with the numbers of the units that need to be sprayed. They spray two floors on each visit. The maintenance manager testifies that he has not received any complaints from the tenant about infestations in his unit. The invoice dated June 01, 2009 shows that the unit was treated on this date. However, this is the date that the tenant moved from the rental unit.

Analysis

The landlords' argue that the contract concerning the tenants' use of the elevator is frustrated. The Residential Tenancy Policy Guidelines 34 states that:

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

With this in mind I find that the landlords have been diligent in respect of the elevator repairs and maintenance. They have followed the proposals for the repair and maintenance of the elevator and the circumstances which left them without a maintenance company were beyond their control. I find that they took reasonable steps to secure the services of another contractor and worked with the City of Vancouver to resolve the issues. Therefore, I have determined that the unforeseen circumstances

concerning the withdrawal of the elevator contract with the original company left the landlord in a position where he was unable to provide full service of the elevator to the tenant and I agree that this has frustrated this portion of the tenancy agreement with the tenant as to his use of the elevator. However, the landlord has not provided sufficient evidence that they did all that was required of them to help the tenant access his living accommodation. The tenant was not offered additional accommodation and received no help carrying groceries and laundry to his room. The sporadic operation of the elevator meant that the tenant could not access it when he needed to and negotiating the stairs was difficult with the additional work being carried out on the stairs.

The landlord also argues that the elevator is not essential to the tenants' use of the rental property. However, I find that the elevator was essential to the tenant use of the property pursuant to s. 27 of the *Act* as he was living on the 8th floor of the building and due to the work been carried out on the stairways during this time. I find that the tenant is entitled to receive some compensation from the landlord for the loss of quiet enjoyment caused by the breakdown of the elevator for one month and the sporadic use of this for two months. Therefore, I find the tenant is entitled to a reduction in his rent for March of \$212.50 and an reduction for his April and May rent of \$141.66 pursuant to s. 27(2)(b) of the *Act*.

I find that the landlord has been negligent in the treatment of pests in the tenants unit. The landlord has only supplied one invoice from the pest control company showing the treatment that took place to the tenants unit in June 2009. The maintenance manager testifies that he has not received any complaints from the tenant about infestations in his unit. The tenant claims he has notified the maintenance manager several times about the pests in his unit. As the evidence here is contradictory I find that I prefer the evidence of the tenant. However, as the tenant has since moved from the unit no



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further orders will be issued concerning the repairs to the unit or to Order the landlord to comply with the *Act*.

Conclusion

I HEREBY FIND in favor of the tenants monetary claim for compensation for damage or loss under the Act, Regulation or tenancy agreement. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$495.82**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

All other sections of the tenants' application are dismissed without leave to reapply.

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: August 18, 2009.

Dispute Resolution Officer