



# 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

This hearing was due to be held on June 26, 2009. The applicant requested an adjournment to allow more time to obtain additional evidence from a witness pertaining to their application. 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 \$ 600.00 for compensation for damage or loss under the Act. The tenant has since moved out of the rental unit and withdraws the remainder of their application.

### Background and Evidence

This tenancy started on September 06, 2008 and ended on June 01, 2009. The tenant paid rent of \$425.00 per month and paid a security deposit of \$212.50 on September

26, 2008. This is a single room occupancy building. The tenants' rental unit is on the 8<sup>th</sup> 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.

The tenant testifies that the elevator has not been working consistently since January 2009. The tenant testifies that he approached the hotel desk manager to ask about a discount in his rent for the loss of this facility and was laughed at by the desk manager. The lack of elevator service has disrupted his life and made it difficult to carry on with his normal life due to having to go up and down eight flights of stairs carrying groceries and laundry. The tenant testifies that he had started to look for alternative accommodation as he found the conditions in this rental property to be 'disgusting' to live in. The tenant testifies that in March there was no service in the elevator and in April and May the service was limited and was never available at the times he needed to use it. Even when it did work he did not feel safe using it due to the continuing problems with the elevator. The tenant testifies that during this time the landlord was also carrying out repairs and maintenance to the stairs which made it difficult to negotiate the stairways and there was a lack of ventilation when the work was carried out causing a large amount of dust in the air. The tenant testifies that he was never offered alternative accommodation in by the landlord or the hotel staff. The tenant has now moved from the rental unit.

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

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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 had called a witness to give evidence at a previous hearing heard earlier today. The evidence gained during that hearing is also relevant for this hearing and has been allowed to be used without calling the witness again. The representative from the previous elevator company confirms the events pertaining to the cancellation of the

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contract with the hotel. He could not confirm if the union had issued a 'do not work order'. The elevator company representatives' evidence states 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. His evidence states 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. His evidence states 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's evidence states 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.

## 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

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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 8<sup>th</sup> 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*.



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## 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.

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.

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Dispute Resolution Officer