



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, OLC, RR

Introduction

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 \$ 2,700.00 for compensation for damage or loss under the Act, to allow the tenant to reduce the rent for services or facilities agreed upon but not provided, and to order the landlord to comply with the act. The tenant has moved out of the rental unit Therefore I will only make a decision on the first two sections of their claim.

Background and Evidence

This tenancy started in July, 2008 and ended on June 01, 2009. The tenant paid rent of \$410.00 per month and paid a security deposit of \$205.00 on July 18, 2008. This is a

single room occupancy building. The tenants' rental unit is on the 6th floor of the building.

The tenant has applied for dispute resolution and is seeking compensation for damage or loss under the *Act* due to the elevator breakdown from October, 2008 to June, 2009. The tenant also seeks a monetary award for the loss of peace and quiet enjoyment for the months he lived with a lack of repairs to his unit and the common areas such as the bathrooms. The tenant testifies that his unit did not have working electrical sockets, there was a black mould issue and the taps did not run properly. The tenant suffers from a sever disability and has to use a walker to get around. When the elevator was out of action and running on limited service the tenant had to use the stairs which was extremely difficult for him due to his condition.

The tenant testifies that the elevator has not been working consistently since October 2008. The tenant testifies that he used to be able to get out and about but felt he was living in an abandoned building when the elevator was not working properly. Friends had to bring him meals and he only managed to get out once a day to go to the Salvation Army for a meal. Due to his condition and due to the fact that for part of the period when the elevator was inoperable the stairs were also being upgraded and the dust and fumes caused additional hardship for the tenant to negotiate with his walker. The tenant testifies that from October, 2008 to March, 2009 there was limited service and in March, 2009 there was no service in the elevator. In April and May, 2009 the service was again limited. The tenant testifies that in February, 2009 he was entering the elevator when the door closed on his leg and it would not open. Other tenants had to pull him free of the doors and this caused him considerable pain with brushing to the knee area. The tenant has supplied a note from his doctor concerning this incident. The tenant states that he was not offered alternative accommodation or help negotiating the stairs. 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 issued a “do not work order” at the hotel due to security issues. Before this time he testifies that the lift was operational in 2008. In January and February the elevator was 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

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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' representative called a witness at a 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 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 elevator company had fitted a safety device to prevent the doors closing on an object in the way. The company was not contacted by the British Columbia Safety Association concerning any safety issues with the elevator. The Elevator company representatives' 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.

The tenant testifies that his unit had an issue with black mould throughout his tenancy the walls and ceiling were affected and the walls were soft and spongy with damp and mould. The tenant testifies that he informed the landlords' agent of these issues but no repairs were carried out. In May 2009 there was a 'black water' leak from ceiling pipes above the tenants room this caused leakage onto the tenants laundry bags containing clothing, bedding and towels. The tenant states that these items were unusable after this as they smelt of sewage. The items the tenant is claiming for are 6-8 pairs of pants, 10 shirts, 15 pairs of socks, 15 items of underwear, 6 full sized towels, 1 blanket and one second hand down-filled quilt. The total amount claimed for these items is \$840.23.

The tenant also testifies that he had no working electrical sockets in his room and had to put a plug socket into the light socket in order to gain power for his appliances. He claims that the bathrooms in the hotel which were for common use were in a state of gross disrepair and presented health hazards for people using them. Despite repeated requests for the landlord to carry out repairs none were done until the City of Vancouver issued an Order for the landlord to comply with the maintenance by-laws.

The landlord's agent testifies that the tenant did not inform them of the repairs that were required until around the end of May 2009. He did not give the landlord opportunity to carry out the repairs as the tenant ended his tenancy the next day and left the building.

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

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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 accessing 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. However, I also find that the elevator was working until March, 2009 even if service was limited. The previous elevator contractors state in their evidence that they had fitted a safety device to prevent the doors closing when an object was in the way. As the tenant's leg was damaged by the elevator doors closing on it in February I find that there must have been a malfunction of the doors safety device and agree that the tenant should be awarded some form of compensation in the form of a past rent reduction for his pain and distress.

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 tenants' use of the

property pursuant to s. 27 of the *Act* as he was living on the 6th 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 compensation from the landlord for the loss of the elevator service caused by the breakdown of the elevator for one month, the sporadic use of this for two months and distress for his injury caused by the malfunction of the doors. Therefore, I find the tenant is entitled to a reduction in his rent for February of \$200.00 and a reduction in past rent for March of \$212.50 and an reduction of rent for April and May of \$141.66 pursuant to s. 27(2)(b) of the *Act*.

The remainder of the tenants claim concerns damages for living in his unit without repairs being carried out and for the damage to his belongings caused by the 'black water' coming through his ceiling. I have applied a test for damage and loss claims in which the claimant must:

- Proof that the damage or loss exists
- Proof that this damage of loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.



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I find that the tenants claim for compensation does not meet all of the components of the above test. The tenant has not submitted sufficient evidence to support his claim of \$840.23; therefore, I dismiss this section of the tenants claim without leave to reapply.

Conclusion

I HEREBY FIND in partial 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 **\$695.82**. 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 19, 2009.

Dispute Resolution Officer