



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, PSF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and to provide services and facilities required by law.

The hearing was conducted via teleconference and was attended by the tenant, his witness and the landlord.

At the outset of this hearing and in the presence of all parties, the parties agreed to hear this tenant's Application as well as his witness's Application, that had been scheduled to be heard by me at my next hearing time, together and in this hearing time. While heard at the same time, I will provide each party with a separate decision as the remedies sought by each applicant are slightly different.

At the start of the hearing the landlord's agent identified that she had witness lined up from the elevator project contractor to speak to details of the project. During the hearing it was determined that there would be no need for the landlord's witness and he was not called to testify.

The parties referred to a YouTube posting during the hearing and the landlord submitted a CD of the YouTube recording. I advised both parties that I was unable to use the CD submitted as I had no secure method of replaying it and I would therefore not consider anything in the CD.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order to have the landlord comply with the *Act*, regulation or tenancy agreement; and for an order to have the landlord provide services or facilities required by law, pursuant to Sections 27, 32, and 33 of the *Act*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on January 22, 2011 for a 6 month fixed term tenancy that began on February 1, 2011 for monthly rent of \$1,150.00 due on the 1st of each month; a security deposit of \$575.00 was paid.

In October of 2010 the landlord engaged a contractor to provide upgrades to the elevator system in the 27 story residential property. The landlord has provided copies of all relevant communications to tenants in regard to the project including periodic updates.

The tenant testified that he was not made aware of the project when he entered into the tenancy agreement and that had he known about the project he would not likely have entered into the tenancy. The landlord's agent testified that each elevator would have been clearly marked with details of the upgrade and although she was not there she thought the agent showing the rental unit would have pointed out the project to any prospective new tenant.

During the course of the project each of the three elevators would be taken out of service for the upgrade, one at a time leaving two other elevators to manage the traffic for the building. On three occasions, one after the date of the tenant's Application, there were no elevators available for a period of time: April 4, 2011; July 26, 2011; and August 10, 2011.

The tenant asserts that as a result of the closure of one elevator for extended periods of time, the wait time for an elevator has increased and for those occasions that there has been no elevator available the landlord has failed to inform the tenants of what is wrong and when it will be expected to be repaired. The tenant provided no testimony as to the impact of the extended wait time.

The landlord was able to provide some detail on the July 26, 2011 outage, specifically that the contractor was contacted at 5:16 p.m.; arrived at 8:29 p.m. and that all repairs were completed by 9:23 p.m. The landlord was unable to provide detail on the April 4, 2011 outage and as the August 10, 2011 outage occurred after the tenant submitted his application details were not provided.

The tenant also asserts that once they reported the outage to the landlord's onsite agent the agent was rude and dismissive and would not tell him what was going on in regards to when the elevator would be available. This interaction is the subject of the YouTube posting noted above.

The landlord's agent testified she had seen the YouTube posting and that it was clear that the onsite agent was trying to explain to the tenants that he was waiting for a return call from the contractor to be advised of their estimated time of arrival to investigate the elevator problems.

Analysis

Section 32 of the *Act* requires the landlord to provide and maintain residential property in a state of repair that complies with the health, safety and housing standards required by law, and having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant.

In relation to the tenant's application for an order to have the landlord provide a service or facility that is required by law, I find the tenant has failed to identify any law that requires the landlord provide a specific service, such as the elevator service.

While I accept that on at least two occasions the elevator service was completely shut down and unavailable to tenants, and that this may have likely been impacted by the fact that one elevator was purposely shut down for the project, I find the tenant has failed to provide any evidence that the landlord has failed to comply with the *Act*, regulation or tenancy agreement through an overt action or negligence.

Section 33 of the *Act* defines emergency repairs as:

- a) Urgent,
- b) Necessary for the health or safety of anyone or for the preservation or use of residential property, *and*
- c) Made for the purpose of repairing
 - i. Major leaks in pipes or the roof,
 - ii. Damaged or blocked water or sewer pipes or plumbing fixtures,
 - iii. The primary heating system,
 - iv. Damaged or defective locks that give access to a rental unit, or
 - v. The electrical systems.

Despite elevator repairs not being identified under the *Act* as a being made for the purposes outlined in Section 33, I find the landlord's response time in dealing with the elevator repairs to be an appropriate and effective response for any type of emergency repair.

I further find that the actions of the landlord to complete an elevator upgrade prior to the entire system failing or degenerating to the point where elevators are constantly out of service to be proactive and in the long term, in the best interest of both parties.

In relation to the tenant's assertion that the landlord mistreated the tenants and failed to provide information to the tenants regarding the status of the out of service elevators, I find there is nothing in the *Act* or regulations governing the interpersonal treatment of tenants by the landlord.

I do acknowledge that it would be a good practice for the landlord to provide current information to tenants as soon as it is available regarding emergency repairs to the elevator system in the building and that this information should be disseminated to all tenants as quickly as possible, but there is no requirement under the *Act* or regulation to do so.

Conclusion

For the reasons noted above, I dismiss the tenant's Application, in its entirety.

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: September 07, 2011.

Residential Tenancy Branch