



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenants' application for a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act (the "Act"), regulations or tenancy agreement.

The parties and the landlord's agent and witness appeared and the hearing process was explained to the parties. Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and respond each to the other and make submissions to me.

Issue(s) to be Decided

Have the tenants established an entitlement to a monetary order under section 67 of the Act?

Background and Evidence

This month to month tenancy started April 1, 2010, monthly rent is currently \$869.55 and the tenant paid a security deposit of \$425.00.

The tenants' monetary claim is \$434.75, for loss of use of the elevator in the residential property for 8-10 weeks, plus recovery of the filing fee for \$50.00.

In support of his application, the tenant submitted that the landlord terminated elevator services for this amount of time due to completing an upgrade to the system. The tenant submitted that he was entitled to a 20% reduction in rent due to the loss of a service and that the landlord has not offered compensation.

The tenant agreed the upgrade was necessary, but that did not impact the loss of his service.

Upon query, the tenant stated that he had no physical disability preventing him from using the stairs and that he did not call upon any staff members of the landlord to assist him in egress and ingress into the building or his rental unit.

Upon query, the tenant stated he used the elevator for, among other things, bringing groceries and laundry to his rental unit. The tenant estimated he went to the grocery store 5-6 times per week, which the tenant did not contend has been impacted since the loss of the elevator.

In response, the landlord submitted that the upgrade to the system is governmentally required and that the landlord had no choice in the matter.

The landlord also contended that the tenants of the residential property were all fully informed of the decision through tenant meetings and that all tenants were offered assistance due to the loss of the elevator on a 24 hour, 7 days a week basis.

Analysis

Based on the foregoing testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Residential Tenancy Policy Guideline 22, "Termination or Restriction of a Service or Facility," states that a landlord may not terminate or restrict an essential service. The Guideline states, "an elevator in a multi-storey apartment building would be considered an essential service."

In this case, while I find no fault on the part of the landlord, the elevator was the only elevator in the building, and it was completely shut down for a period of approximately August 10, through October 27, 2011, which caused a diminished value of the tenancy.

As to the question of compensation, the tenant failed to demonstrate that the loss of the elevator had any impact on the use or value of his rental unit. In reaching this conclusion, I find the tenant still attended the grocery store the same amount of times and that he never asked for or required the assistance of any staff members representing the landlord.

The tenant failed to submit that the loss of the elevator caused him to be confined in his rental unit or that the walk up and down the stairs presented him difficulties.

Residential Tenancy Branch Policy Guideline 16 suggests that a dispute resolution officer may award “nominal damages,” which are a minimal award. These damages may be awarded where the burden of proof of a significant loss has not been met, but they are an affirmation that there has been an infraction of a legal right.

In recognition that the tenant was deprived of a service I find the tenant is entitled to an award of nominal damages of \$10.00 per week for 10 weeks, in the amount of \$100.00.

As the tenant was partially successful, I find he is entitled to a partial recovery of his filing fee, in the amount of \$25.00.

Conclusion

The tenant has established a **monetary claim** in the amount of **\$125.00**, comprised of nominal damages in the amount of \$100.00 and recovery of a partial filing fee of \$25.00.

The tenant may deduct \$125.00 from his next monthly rent payment in satisfaction of the monetary claim.

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: November 21, 2011.

Residential Tenancy Branch