



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, RR, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application requesting compensation for damage or loss under the Act, rent reduction for loss of a service agreed upon but not provided and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Are the tenants entitled to compensation in the sum of \$500.00 for loss of use of the elevator?

Are the tenants entitled to rent abatement?

Are the tenants entitled to filing fee costs?

Background and Evidence

The parties agreed that the tenancy commenced on June 15, 2011. Rent is \$870.00 per month, due on the first day of each month. The tenants live on the 2nd floor of the building.

The male tenant has a disability that requires him to use a wheel chair; although he does possess limited independent mobility and is able to climb stairs. The female tenant suffered a brain injury 10 years ago which affected her mobility. The tenants rented the unit as it was advertised as wheel-chair accessible.

The parties agreed that effective August 15, 2011; the elevator in the building underwent repairs for a period of 10 weeks. The tenants have claimed compensation in the sum of \$500.00 as a result of the loss of the service and resulting inconvenience caused to them during this period of time. The tenants stated they did speak with the site manager and expressed their concerns, but could not recall when this conversation occurred.

The landlord testified that the Provincial government had ordered that all single-cylinder hydraulic elevators be retrofitted to meet current standards. This repair work was undertaken before the required due date, so that the landlord could be sure that parts and repair personnel were easily available.

On August 3, 2011, all residents received an information sheet informing them of the upcoming repairs. On August 8, 2011, the residents, including the applicants, attended an information session held by the landlord and the repair company to discuss the repairs, the time-frame for the work and the services that would be offered to those who required assistance. On August 10, 2011, a follow-up notice was sent to all tenants, again reminding them of the work to be completed and the assistance that the landlord would make available for those in need.

The landlord arranged a service through Medi-Van, to assist those who required help with egress to and from their units. The landlord had a resident identified on-site who was available to assist occupants with the stairs and the site manager was available on 1 hour notice, to help tenants with the stairs. The tenants were provided with a cell phone number for the person who lived on site and had been identified as an assistant; the tenants never called him to request any help.

The site manager testified that the tenants never asked him for any assistance even though he had talked with the male tenant and told him he would be available to help, with 1 hour notice.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

There is agreement that the tenants lost the use of a service which they considered essential to their tenancy. The landlord has acknowledged that the elevator was not functional during the period of repair. The landlord did not provide 30 days written notice of a reduction in the service, as the repair was to be temporary. Instead, the

landlord offered tenants service options, meant to minimize the impact and loss of elevator service.

I find that the services put in place recognized the needs of the tenants and, while they were not equivalent to the use of an elevator, they were meant to ease the inconvenience of the loss of the elevators.

I have then considered the tenant's claim for compensation. There was no submission made by the tenants that indicated they tried to use the services provided by the landlord; or any evidence that they were ever denied use of those services. I find that the absence of any evidence of specific instances where the tenants were more than temporarily inconvenienced by the elevator repair, leads me to conclude that the claim for compensation is not based on a loss actually suffered by the tenants.

There was no evidence that the tenants did anything to minimize the claim they are making; such as approaching the landlord to discuss their needs, to request heightened assistance, or calls made to the service provided identified by the landlord at the information session and in writing, prior to commencement of the repair work; thus, through their failure to pursue assistance, I find that the tenants contributed to the loss they now claim.

Therefore, I find that despite the loss of elevator service, in the absence of evidence that the tenants made any effort use the services provided, they contributed to the loss they claim occurred and that the application is dismissed.

Conclusion

The tenant's claim is dismissed.

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: December 01, 2011.

Residential Tenancy Branch