# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDC, RR, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- other unspecified remedies, subsequently clarified as a request for the issuance of a number of orders to the landlord.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord's property manager (the landlord) confirmed that the landlord received a copy of the tenant's dispute resolution hearing package handed to one of the landlord's representatives on January 31, 2012. I am satisfied that the tenant served this package to the landlord and the parties exchanged written evidence with one another in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award arising out of reduced services or facilities committed to but not provided by the landlord during this tenancy? Is the tenant entitled to a reduction in monthly rent for a loss of services or facilities or a loss of his quiet enjoyment of the rental premises? Should any other orders be directed to the landlord arising out of the tenant's application?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and notices, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

This periodic tenancy for a second floor rental unit in an elevator accessed high-rise rental building commenced on November 1, 2005. Monthly rent paid by the tenant is $328.00, payable on the first of each month.

The tenant applied for a monetary award of $110.00 which was to compensate him for the landlord's alleged withdrawal of services and access to services without providing proper notice to the tenant. He also requested a monthly reduction in his rent of $10.00 per month for the reduction in the services he has been provided. He also maintained that the landlord has not been "giving proper written notice of the reduction of services or elimination of facilities" in the rental property. In one of his written exhibits, the tenant described his concerns about notice in the following terms:

> *...Over the past few years the landlord has increased his use of hallway flyers to "inform" the tenants of this building of reductions in service and reductions in access to common areas. I believe this violates the intent and meaning of Section 27 of the act which requires proper notice to the tenant. Notice should be given to each and every tenant not just a few copies of a flyer taped up to the wall in the hallway or the elevator...*

The tenant submitted a number of exhibits and photographs in support of his application. In one of these exhibits, he summarized the orders he was requesting as follows in addition to the monetary outcomes noted in his original application:

1. *An order to make the landlord comply with the notice requirement of the Residential Tenancy Act.*
2. *I would like the RTB to order a stop work on the changes contemplated by the last paragraph of the Construction Update flyer in Exhibit #2.*
3. *I would like to ask for an order restoring the second floor lounge to its previous condition. So that it may again be used by me and the other tenants...*

The tenant maintained that notices displayed about changes to such items as elevator and stairwell security, renovations to the building, and the closing of certain common areas such as the lounges on the second and seventh floors were insufficient to meet the requirements of section 27 of the *Act*. He claimed that such notices should be provided individually to each tenant in this high-rise rental building and that the withdrawal of these services was illegal as they were "disguised under the false claim of security." He asked that the Residential Tenancy Branch (the RTB) "order a stop work on this ratcheting up of these unreasonable and prison like security measures." He asserted that changes to access to stairwells and limiting access to other floors of the building by elevator between the hours of 8:00 p.m. and 8:00 a.m. that took effect on February 16, 2012 imposed an undue burden on him as he would find it more difficult to use laundry or lounge facilities on other floors during those hours. He claimed that the

restriction in his access to laundry services constituted the withdrawal of a material term of his tenancy. He testified that he suffers from claustrophobia and cannot cope with travelling in elevators. He also testified that he experiences anxiety regarding the possible transporting of bedbugs on the clothing of those who travel in elevators between floors in his building. He also provided detailed calculations on how many extra seconds and minutes he was inconvenienced by the landlord's decision to prevent entry to floors in the building through the stairwells. He said that the landlord should issue him (and presumably other tenants in the building) separate keys to the stairwell locks so that they can reinstate this means of accessing all floors of the rental building. In his final written submission, received three days before this hearing, the tenant outlined why he maintained that the landlord had contravened sections 27, 28, 30 and 31 of the *Act*.

The landlords provided written and oral evidence noting the purposes of the renovations, the temporary loss of usage of two of the lounges, including that on the second floor where the tenant resides, and the purpose of the heightened security measures. The landlord testified that these efforts to modernize the building are designed to place this rental building on a similar security footing with more recently constructed rental properties.

Analysis

Section 27 of the *Act* outlines a landlord's termination or restriction of services or facilities in a rental property. Section 27(1) of the *Act* establishes that a landlord "must not terminate or restrict a service or facility if (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or (b) providing the service or facility is a material term of the tenancy agreement." I find that none of the examples provided by the tenant, including his claim that unrestricted access to laundry services on each floor of his building, constitute the landlord's withdrawal of a material term of his tenancy agreement. With respect to laundry services, the tenant still has elevator access to laundry machines on all floors of the building from 8:00 a.m. until 8:00 p.m. and full access to laundry facilities on his own floor.

Section 27(2) of the *Act* requires a landlord to provide 30 days' written notice, in the approved form, of the termination or restriction of a service or facility that is not a material term of the tenancy. It also establishes that if this type of termination or restriction occurs rent is to be reduced by an amount equivalent to the reduction in the value of the tenancy agreement resulting from this termination or restriction.

Although I have given the tenant's oral and written evidence careful consideration, on balance, I do not find that the landlord has terminated or restricted a service or facility,

other than the temporary loss of two of the lounges for storage while repairs to the boiler room were undertaken. The "temporary" closure of the two lounges has taken longer than expected, but the landlord testified that the boiler renovations are expected to be completed by the end of March 2012, at which time the materials stored in the two lounges will be removed to their previous locations near the boiler room. While the tenant maintained that the revised procedures regarding access to elevators and stairwells reduces the value of his tenancy agreement, the landlord claimed that the revised procedures added to the security of the building and bring this building into line with the security provided to tenants in more recently constructed rental buildings. The tenant does not deny that he was aware of the landlord's changed procedures, but objected to the way that tenants were made aware of these changes. Since I do not accept the tenant's assertion that the landlord's actions constituted a termination or restriction of a service or facility, I do not accept his claim that the landlord was bound to provide 30 days written notice to each individual in his rental building.

As a way of preventing future problems regarding notice, I do remind the landlord that any termination or restriction of a service or facility in this building requires 30 days' written notice in the approved form. If there is a termination or restriction of a service, even it does not constitute a material term of a tenancy agreement, I order the landlord to provide individual written notice to each tenant in the building in a manner approved by section 88 of the *Act* for any termination of or restriction of services or facilities requiring the issuance of a 30-day written notice to tenants pursuant to section 27(2) of the *Act.* For other types of notice, such as construction updates, I order that the landlord provide individual written notice to all tenants in the building in accordance with section 88 of the *Act* with respect to any matters that are planned within 48 hours. For "update" notices for matters that are not to occur within 48 hours, I find that the existing system of the landlord's posting of these notices in visible common area locations within the building is satisfactory to meet the needs of tenants.

Section 28 of the *Act* protects a tenant's right to quiet enjoyment of the rental premises and "use of common areas for reasonable and lawful purposes, free from significant interference." I do not find that the changes instituted by the landlord have infringed upon the tenant's right to quiet enjoyment or freedom from unreasonable disturbance. While I acknowledge that the tenant does not view the changes to access to stairwells and the elevators as being to his advantage, I find that the increased security must also be considered in this claim that he has suffered a loss of use of some of the common areas of the building. The tenant admitted that he could still access other floors of the building by elevator even after 8:00 p.m., if that were his wish, by buzzing a friend on another floor from the front of the building and being granted access to that floor by his friend. The tenant also confirmed that he had not provided any evidence from a health

care provider with respect to any medical or health condition he may have would render it difficult for him to use elevators in his building. For these reasons, I also dismiss the tenant's request for an order requiring the landlord to order a stop work order on the changes instituted by the landlord to access to stairwells and the elevators set out in the landlord's Construction Update flyer.

I find no merit to the tenant's claim that the landlord has contravened section 30 of the *Act*. This section ensures that a landlord cannot unreasonably restrict access "to residential property by...the tenant of a rental unit that is part of the residential property." As mentioned at the hearing, I find that this provision does not guarantee access to all parts of a residential property to any tenant in a residential property. Clearly, tenants are only allowed access to their own rental unit as set out in their tenancy agreement. Their tenancy agreement does not enable them to access other tenants' rental units, simply because they are part of "the residential property." Similarly, landlords can reasonably restrict access to other areas of the residential property, such as a resident office within a residential property, heating and equipment rooms, elevator servicing areas, and access to the roof. All of these are parts of "the residential property" but would clearly be outside the area where tenants would be allowed access under section 30 of the *Act*.

I also dismiss the tenant's claim that the landlord has contravened section 31 of the *Act*, the provision in the *Act* which prohibits the landlord from changing locks and other access **to** residential property. In this case, I find that the landlord has not changed access **to** residential property, as the tenant's access to the residential property has unquestionably not been prohibited. While the tenant can access the front door of the residential property, he cannot at some times of the day access all floors of the building nor can he use the stairwells in the same way as he once did to travel between floors. I do not interpret section 31 as restricting a landlord's ability to provide enhanced security within a building.

I now turn to the tenant's claim for a monetary award for his loss of quiet enjoyment and for a loss of services or facilities committed to but not provided during this tenancy. I do agree with the tenant that the renovations requiring the loss of the second and seventh floor lounges have taken far longer than the landlord said that they would take when these areas were closed to tenants in the building in mid-2011 However, until the landlord's changes that came into effect on February 16, 2012, the tenant had unrestricted access to the stairwells, the elevators and lounges on all other floors of this building that remained open during these renovations. Consequently, I dismiss the tenant's application for a monetary award for loss of quiet enjoyment and loss of

facilities and services committed to but not provided by the landlord without leave to reapply.

As of February 16, 2012, the tenant's access to other lounges in the building has been restricted to an extent by the changes to the rules regarding accessing other floors, but only after 8:00 p.m. each day. If this situation regarding the second floor lounge were to continue for a protracted period of time, I would allow the tenant a very modest reduction in his rent for his loss of access to the second floor lounge combined with the changes to accessing other lounges in the remainder of this building. However, based on the landlord's testimony, the boiler room renovations are nearing completion and the lounges on both floors should be restored by the end of March 2012. If tenant access to the second floor lounge is not restored by March 31, 2012, I order the tenant to reduce his monthly rent by $10.00 per month until such time as this tenant access is restored. In that event, the tenant's monthly rent will revert to the original amount in the month following the restoration of tenant access to the second floor lounge.

I dismiss all other portions of the tenant's application without leave to reapply.

Conclusion

I dismiss the tenant's application for a monetary award without leave to reapply.

If tenant access to the second floor lounge is not restored by March 31, 2012, I order the tenant to reduce his monthly rent by $10.00 per month until such time as tenant access to that lounge is restored. In that event, the tenant's monthly rent will revert to the original amount in the month following the restoration of tenant access to the second floor lounge.

I order that the landlord is required to provide individual written notice to each tenant in the building in a manner approved by section 88 of the *Act* for any termination of or restriction of services or facilities requiring the issuance of a 30-day written notice to tenants pursuant to section 27(2) of the *Act.* For other types of notice, such as construction updates, I order that the landlord provide individual written notice to all tenants in the building in accordance with section 88 of the *Act* with respect to any matters that are planned within 48 hours.

I dismiss all other portions of the tenant's application for dispute resolution without leave to reapply.

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: February 28, 2012

Residential Tenancy Branch