



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act") seeking a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee.

The parties and their witnesses appeared, the hearing process was explained and the parties were given an opportunity to ask questions about the hearing process.

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.

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.

Preliminary Issue-Subsequent to the hearing, the landlord's advocate submitted evidence, which I have not considered for purposes of this Decision. I note that it appears from the evidence that the elevator is still not functional. However, I have not considered future compensation as that issue was not before me at the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order and to recover the filing fee?

Background and Evidence

The evidence shows that the tenant has been a resident of this residential property for at least 10 years; however the tenant moved into the present rental unit approximately 3 years ago, and signed a series of tenancy agreements, with the most recent tenancy agreement being signed on April 12, 2010, for a tenancy starting on May 1, 2010, on a month to month basis.

The tenant's monthly rent is \$995.00 and the tenant paid the landlord a security deposit of \$497.50 on May 1, 2010.

The tenant's son represented his mother as legal advocate at the hearing due to the tenant's advanced years as the advocate submitted that his mother was 90 years old and in frail condition. The advocate stated that the tenant is unable to walk any distance without the aid of a cane or walker.

The tenant lives on the 5th floor of the residential property.

The undisputed evidence shows that, on November 7, 2011 the landlord issued the residents of the property a notice that the elevator would be shut down for 8 weeks starting on March 1, 2012.

The notice informed the tenants of the residential property who were solely reliant on the elevator as a means of accessing their unit to make alternate arrangements during that time period as no additional service other than the stairs would be offered.

The tenant submitted that the elevator in the building had a period of a partial shutdown beginning in mid February until March 1, at which time the tenants lost the complete use of the elevator. The advocate argued that his mother was forced to find alternate accommodations for this time period as she relied solely on the elevator for ingress and egress to the rental unit due to her age and frail condition.

The tenant's advocate argued that the elevator was an essential service and could not be terminated under the Act.

Despite having moved from the rental unit during this period, the tenant paid rent in full.

As to alternate accommodations, the tenant's advocate stated that they first looked to him then to his sister, with neither one having a suitable living area.

The next option was a hotel, which was not suitable for someone of the tenant's age and frail condition.

The tenant's advocate stated it was not possible to move his elderly mother to an apartment, as that would require a complete move of all the tenant's personal possessions.

The tenant's advocate argued that the only suitable alternative for his mother was a complete care facility, which was already furnished and provided meals, as his mother did not have use of her own kitchen facility or cookware, for her caretakers to provide her meals. The tenant's son stated that the care facility they ultimately chose was close to the rental unit, to lessen the impact on his mother so that her caretakers could still take her to her usual places, such as her beauty shop.

The advocate stated that although he did not expect the landlords to pay for the total cost of the care facility as it was a luxury accommodation, he believed reimbursement of 2/3 of the care home bill to be an appropriate amount due to the loss of use of the rental unit.

The advocate also submitted that he incurred the cost of movers as it was necessary to move his mother's bed and a few belongings to the care home.

The tenant's advocate argued that although the elevator was an essential service and could not be terminated under the Act, the tenant has not been offered any compensation other than \$2000.00. The tenant pointed out this was just \$10.00 over what the tenant paid in monthly rent for the two month period, with no compensation for disruption of her living arrangement and finding alternate accommodations.

The tenant provided undisputed testimony that as of the day of the hearing, the elevator was still not operational.

The tenant's monetary claim is \$1990.00 for reimbursement of the two rent payments for March and April, \$6980.00 as cost of the care home for two months (originally \$6400.00), \$936.00 for the movers (originally \$800.00) and for recovery of the filing fee.

The tenant's relevant evidence included the tenancy agreement, a copy of the November 2011 and February 6, 2012 notice to the tenants of the residential property concerning the elevator shut down, a monthly rental rate sheet from the care home, and correspondence from a moving company.

In response, the landlord submitted that the upgrade to the elevator system is being governmentally required and that the landlord had no choice in the matter but to repair and modernize the elevator due to the age and condition.

The landlord argued that they offered to pay for the tenant to move into a rental unit across the street, offered complete reimbursement of the monthly rent or offered to

waive the time requirement for a notice to vacate and allow the tenant to move, with an offer to reimburse up to \$2000.00 in expenses.

The landlord's relevant evidence included the tenancy agreement, service record for the elevator, a contract for the modernization of the elevator, a copy of the November 2011 and February 6, 2012 notice to the tenants of the residential property concerning the elevator shut down, and email correspondence between the landlord and the tenant's advocate.

Analysis

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

Residential Tenancy Policy Guideline 22 states, "an elevator in a multi-storey apartment building would be considered an essential service."

Section 27(1) stipulates that a landlord must not terminate a service or facility if it is essential to the tenant's use of the rental unit or the service is a material term of the tenancy agreement.

In this case, I find that the elevator was an essential service as well as a material term of the tenancy agreement and that the tenant was deprived of the service.

While I find no fault on the part of the landlord in making necessary repairs to the elevator, the elevator was the only elevator in the building, and it was completely shut down for a period beginning March 1, 2012 to at least the day of the hearing. Due to the tenant being mobile only through the use of a walker and her age and frailty, I find that the loss of the elevator had a significant impact on the tenant, which resulted in the complete loss of use of the rental unit by the tenant for the period of time that the elevator was not operational.

I next considered compensation for the tenant. As the tenant lost complete use of the rental unit for March and April 2012, I find she is entitled to reimbursement of her monthly rent paid, in the amount of \$1990.00.

As to further compensation, in the landlord's notice the tenants of the residential property were instructed to make alternate arrangements during the time of the loss of the elevator and I find that is exactly what the tenant did. I find it reasonable under the circumstances of losing the use of her home that the tenant, who was elderly and frail,

could not simply move into another apartment for a short period of time, only to move back, or that she could stay in a hotel for two months. I also accept the testimony of the tenant's son that it was not possible to have his mother stay with him or his sister.

I find it reasonable under the circumstances that the only viable alternative providing the tenant the least impact on a short term basis was a care home, given her age and frail condition.

The evidence provided was a notice from the care home listing a monthly rate of \$3200-\$3600 for the least expensive accommodation. I accept this evidence as I find it undisputed that the tenant was in the named care home. The tenant's advocate requested the amount of \$6980.00 for the care home expenses; however the tenant did not provide a receipt of that actual cost. I therefore find I am not able to grant the tenant the full amount requested. I find it reasonable to award the tenant compensation for the least expensive monthly room rate, \$3200.00, or a total of \$6400.00 for March and April. However, as the tenant's advocate stated that he did not expect the landlord to pay the full amount, I find the tenant's advocate's suggestion of reimbursement of 2/3 to be a reasonable amount.

I therefore find the tenant is entitled to compensation for the care home during the time she was displaced from her rental unit in the amount of \$4267.00 (\$6400 at 2/3).

As to the moving expenses, I dismiss the tenant's claim for moving expenses as I find the email confirmation and the letter from the moving company insufficient evidence of proving the actual cost of moving.

I find merit with the tenant's application and I therefore award her recovery of the filing fee of \$100.00.

Conclusion

I find the tenant has established an entitlement to a monetary award of \$6357.00, comprised of reimbursement of her monthly rent for March and April, in the amount of \$1990.00, cost of the care home in the amount of \$4267.00 and recovery of the filing fee of \$100.00.

As such, pursuant to Section 67 of the Act, I have provided the tenant with a monetary order for \$6357.00.

I am enclosing the monetary order for \$6357.00 with the tenant's Decision. This order is a **legally binding, final order**, and may be filed in the Provincial Court (Small Claims) should the landlords fail to comply with this monetary order.

Alternatively, the tenant may satisfy this monetary order by withholding this amount from her monthly rent payments. For clarity, the tenant may withhold her next six or any future monthly rent payments of \$995.00 per month totalling \$5970.00 and the following month, may deduct \$387.00 from her monthly rent of \$995.00, in satisfaction of the monetary award.

The tenant is at liberty to make further application for compensation or loss due to the lack of an elevator from May 1, 2012 forward.

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: May 10, 2012.

Residential Tenancy Branch