



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction

By way of Review Decision dated June 20, 2012, the Decision dated May 22, 2012 was suspended and the present hearing was scheduled. This hearing concerns the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the original year-long fixed term of tenancy began on June 1, 2009. Following the expiration of the fixed term, tenancy continued on a month-to-month basis. Monthly rent was \$800.00 and a security deposit of \$400.00 was collected. Tenancy ended on December 31, 2011 and the tenant's full security deposit was subsequently repaid.

The subject unit is located on the third storey of a three storey building. As a result of a disability the tenant's mobility is gained largely by way of a power chair. Accordingly, two-way access between her unit and the outside was accomplished via the one and only elevator in the building.

Beginning on or about October 7, 2011 the elevator was out of order. At this time the tenant was away from town, however, she was scheduled to return to her unit on Sunday, October 9, 2011. On Saturday, October 8, 2011 a family member acting on the tenant's behalf contacted an agent of the landlord's, informing him of the broken elevator. The family member was informed that efforts would be made to have the matter attended to. However, it is understood that it was not until Tuesday, October 11, 2011 by around mid-day when the elevator was finally repaired. The tenant claims that

late checkout time from the hotel is 2:00 p.m., but that it was not until mid to late afternoon on Tuesday, October 11, 2011 when she was able to get confirmation that the elevator had been repaired. As to all efforts made to confirm the status of the elevator on Tuesday, October 11, 2011, there is conflicting evidence around the timing of calls made and messages left between the parties during that day. In the result, the tenant stayed at a hotel for three nights, checking out on Wednesday, October 12, 2011, and incurred a bill in the total amount of \$504.95, which is comprised as follows:

3 NIGHTS' ACCOMMODATION: \$416.61 total

October 9, 2012:

Room charge - \$123.99 + \$14.88 (tax) = \$138.87

October 10, 2012:

Room charge - \$123.99 + \$14.88 (tax) = \$138.87

October 11, 2012:

Room charge - \$123.99 + \$14.88 (tax) = \$138.87

5 MEALS: \$88.34 total

\$20.00 + \$16.97 + \$14.77 + \$17.29 + \$19.31

The invoice issued by the hotel does not confirm dates when meals were served.

By letter dated October 21, 2011, a family member acting on behalf of the tenant informed the landlord of the above circumstances, and sought to obtain full reimbursement of the related expenses. In the absence of resolution, a follow-up letter was sent by the same family member to the landlord by date of December 27, 2011. While some discussion occurred between the parties in relation to settling the matter, ultimately the matter remained unresolved.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 63 of the Act addresses the **Opportunity to settle dispute**. While there was some discussion between the parties during the hearing around possible settlement of the dispute, no mutually satisfactory agreement was able to be reached.

Section 1 provides, in part, that

“**service or facility**” includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit:

(h) elevator;

Section 27 addresses **Terminating or restricting services or facilities**, in part:

27(1) 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...

Further, Residential Tenancy Policy Guideline # 22 speaks to “Termination or Restriction of a Service or Facility,” in part:

An “essential” service or facility is one which is necessary, indispensable, or fundamental. In considering whether a service or facility is “essential” to the tenant’s use of the rental unit as living accommodation or use of the manufactured home site as a site for a manufactured home, the dispute resolution officer will hear evidence as to the importance of the service or facility and will determine whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the rental unit as living accommodation. For example, an elevator in a multi-storey apartment building would be considered an essential service.

Where there is a termination or restriction of a service or facility for quite some time, through no fault of the landlord or tenant, a dispute resolution officer may find there has been a breach of contract and award a reduction in rent.

Section 28 addresses **Protection of tenant’s right to quiet enjoyment**, in part:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(b) freedom from unreasonable disturbance;

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 30 addresses **Tenant's right of access protected**, in part:

30(1) A landlord must not unreasonably restrict access to residential property by

(a) the tenant of a rental unit that is part of the residential property, or...

Section 32 addresses **Landlord and tenant obligations to repair and maintain**, in part:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 33 addresses **Emergency repairs**, in part:

33(1) In this section, "**emergency repairs**" means repairs that are

(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

(v) the electrical systems, or...

Based on the documentary evidence and testimony, and in consideration of the statutory and guideline provisions set out above, I find that while the elevator repair was not an "emergency repair," the elevator was nonetheless a service which was "essential" to the tenant's use of the unit. The details giving rise to the delay in repair are not fully before me. In any event, I find that the tenant has established entitlement to compensation arising from the unavailability of this essential service. Specifically, I find that the tenant's entitlement is limited to \$470.80, which is calculated as follows:

ACCOMMODATION: \$347.18 (approximately 83.34% of the amount claimed).

\$138.87: accommodation + tax for October 9, 2011

\$138.87: accommodation + tax for October 10, 2011

\$69.44: ½ of accommodation + tax for October 11, 2011

MEALS: \$73.62 (approximately 83.34% of the amount claimed).

FILING FEE: \$50.00

Following from all of the above, I grant the tenant a **monetary order** in the total amount of **\$470.80**. The reduction in the full amount sought by the tenant in her application, is a reflection of my finding that the tenant has provided insufficient evidence for me to conclude that every reasonable effort was made on October 11, 2011 to confirm the status of the elevator repair, prior to the late checkout time at the hotel of 2:00 p.m.

Section 82 of the Act addresses **Review of director's decision or order**, in part:

82(3) Following the review, the director may confirm, vary or set aside the original decision or order.

Following from all of the above, the Decision dated May 22, 2012 is hereby set aside.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$470.80**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

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: July 12, 2012.

Residential Tenancy Branch