



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, ERP, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and for an order that the landlord make emergency repairs for health or safety reasons.

Both tenants attended the hearing and each gave affirmed testimony. The landlord was represented by a person who identified himself as the brother of the named landlord, and is also a landlord and has taken over that role. Therefore, I amend the application to include the landlord who attended the hearing. The landlord also gave affirmed testimony and called one witness who gave affirmed testimony. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of use of the elevator in the rental complex?
- Should the landlords be ordered to make emergency repairs for health or safety reasons?

Background and Evidence

The first tenant testified that this month-to-month tenancy began on May 1, 2002 and the tenants still reside in the rental unit. Rent in the amount of \$638.75 is payable in

advance on the 1st day of each month and there are no rental arrears. A security deposit was paid to the landlord at the outset of the tenancy, which is still held in trust by the landlord. The rental unit is an apartment within a complex that contains 43 rental units.

The tenant further testified that he is 75 years old and has blocked arteries and has had 3 operations on his legs in the last 15 years. As a result, he has trouble with stairs and his wife has arthritis and is also unable to climb stairs. The tenants live on the 2nd floor. A notice was posted in the elevator stating that the elevator would be out of service for 2 weeks commencing January 20, 2015. The tenant called the landlord and left a message asking for a return call but none was received. Each day for 2 or 3 days the tenants left more messages without any response. One of the greetings was an announcement from one of the landlords and another greeting announced the other landlord's name.

A new notice was posted in the elevator which changed the commencement of the elevator closure to February 16, 2014 for 2 weeks and a copy of that notice was also found under the door of the rental unit. That notice said to use stairwells and that the landlord was required by law to replace the elevator to avoid a catastrophic event, and that if tenants required assistance or help, to not hesitate to contact the landlord. The tenants didn't attempt to contact the landlord again because no response had been received from the calls made in January.

The tenants contacted 3 motels to price the 2 week shut down and were quoted \$1,107.26 at one motel, \$1,258.00 for another and \$1,566.18 for another. The tenants are on a fixed income and can't afford that, but if they have to stay in a motel for 2 weeks, they claim \$1,300.00 from the landlord toward that cost. The landlord's caretaker offered to help people with groceries, however a heated argument ensued which resulted in the caretaker telling the tenants to go have another drink, however neither of the tenants drink alcohol at all.

When asked if the landlord offered assistance such as another apartment on the first floor, the tenant replied that none was offered but that moving for 2 weeks would be unreasonable and the tenants are not able to do that.

The second tenant testified that she has Rheumatoid arthritis throughout her body and needs to go for a walk daily. The landlord's caretaker is a bully and the tenants cannot talk to her about the elevator issue. The caretaker apparently has an assistant but the tenants do not know who that person is; the caretaker has brought 3 different people around. The tenants called the landlord without any response and the caretaker

wouldn't tell the tenants the phone number of the landlord and the tenants had to go to City Hall to get the landlord's address to serve the landlord with the hearing package.

The tenant also testified that nothing was offered by the caretaker for assistance during the elevator closure. The tenants live on the 2nd floor and there are 2 sets of stairs; 7 steps then a landing and 7 more steps. The tenant can only take 1 stair at a time.

The landlord testified that the repair to the elevator has to be done by law by the end of 2015. The landlord asked the caretaker when would be the best time, and was advised that winter would be best because tenants don't go out as much in winter. The landlord specifically lined up the repair or replacement of the elevator for winter to assist tenants. The landlord feels bad, but he doesn't have a choice. The elevator company has had to order parts, and have advised that the repair will take about 2 weeks.

The landlord further testified that everyone in the complex is okay with the inconvenience; the landlord has offered help with groceries and offered to move the tenants to the first floor. A unit was available at that time, but the landlord is not sure if there is presently one available.

The landlord's caretaker told the landlord that the tenants were offered another rental unit but that the tenants were being unreasonable and the caretaker was struggling with dealing with them. The caretaker talked to every tenant and no one else raised any complaints. The landlord has not personally talked to the tenants.

The landlord also testified that he didn't receive any calls from the tenants, however his brother, who must have been out of country at the time, told the landlord that he had received the documentation for this hearing and called the landlord.

The landlord is willing to help tenants and would pay to have groceries delivered and an escort for the stairs. There are other employees of the landlord and a schedule could be arranged.

The landlord argues that the tenants want to stay in the rental unit and get paid, which is unreasonable.

The landlord's witness is the caretaker and testified that she posted the elevator shut down notice inside the elevator and on all 3 floors of the rental complex, but did not talk to all tenants. The tenants that the witness was concerned about were other tenants that were disabled, 1 being in a wheelchair and the other on crutches. The witness offered tenants assistance with getting groceries and taking out the garbage and said that she'd be available. For the most part tenants were good with that.

The witness spoke to the tenants but testified that she couldn't get across to them that assistance was available. The tenant was yelling and asked if the witness was going to carry her down the stairs. Another unit was available, but she couldn't get much said and was not going to be subjected to obscenities. The witness told the tenants to go have another drink.

Analysis

The *Residential Tenancy Act* states that a landlord must maintain a rental unit and any common areas in a state of decoration and repair that makes it suitable for occupation by a tenant and makes it safe according to building standards. I accept the testimony of the landlord that the repair or replacement of the elevator is a requirement by law.

The *Act* also states that if a party fails to comply with the *Act* or the tenancy agreement, the other party may apply for monetary compensation for any damage or loss that is suffered as a result. In other words, if the elevator is included with the rental, the landlord is responsible for compensating the tenants for any loss that results from that.

The tenants seek compensation in the amount of \$1,300.00 for contemplated damages during the 2 week period that the landlord expects the elevator to be out of service. In order to be successful in such a claim, the onus is on the tenants to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the landlord's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the tenants made to mitigate, or reduce the damage or loss suffered.

No one has provided me with a copy of the tenancy agreement, but I am satisfied that an elevator has been included in the rent for the 12 year tenancy. I also accept the testimony of the tenants that stairs pose great difficulty in their daily routines. I also accept that the caretaker and the tenants got into a heated discussion which resulted in no satisfactory arrangement or offer. The landlord's witness testified that she would have offered assistance, but it didn't get said or wasn't heard.

In the circumstances, I find that the tenants have not yet suffered any damages, and the landlord has not yet been in touch with the tenants to discuss what arrangements could be made to reduce the impact or deal with the tenants' concerns. I also find that the

tenants' application for anticipated damages is premature, and I dismiss the application for monetary compensation.

The tenants have also applied for an order that the landlord make emergency repairs for health or safety reasons, and I find that the landlord is already doing that. Nothing has been requested except compensation for the loss of use of the elevator, and I don't see how that will help.

Having heard the testimony of the parties and the witness, and having reviewed the evidentiary material provided for this hearing, I find that the tenants' application for an order that the landlord make emergency repairs for health or safety reasons is not supported and the tenants' application for monetary compensation is premature. I order the parties to discuss an alternate solution, and if a reasonable settlement cannot be reached between the parties, the tenants will be at liberty to re-apply for compensation once the actual length of the elevator closure is known and what efforts the parties make to settle this dispute.

Conclusion

For the reasons set out above, the tenants' application for an order that the landlord make emergency repairs for health or safety reasons is hereby dismissed.

I order the landlord and the tenants to discuss alternate arrangements for assistance during the closure of the elevator, and if a suitable arrangement is not reached, the tenants will be at liberty to re-apply for monetary compensation.

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 03, 2015

Residential Tenancy Branch

