



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RLB Holdings Ltd.  
Libby Manor  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

MNDC; OLC; ERP; RP; PSF; RR; FF

### **Introduction**

This is the Tenant's application for compensation for damage or loss under the Act, Regulation or tenancy agreement; an Order that the Landlord comply with the Act, Regulation or tenancy agreement; an Order that the Landlord make emergency repairs and regular repairs to the rental unit; an Order that the Landlord provide services or facilities required by law; a rent reduction; and to recover the cost of the filing fee from the Landlords.

The parties and the Tenant's agents gave affirmed testimony at the Hearing.

The Landlords acknowledged receipt of the Notice of Hearing documents by registered mail, received May 31, 2015.

### **Preliminary Matters**

At the outset of the Hearing, it was determined that there are no emergency or regular repairs to the rental unit or rental property required at this time. It was also determined that the Tenant's application for services or facilities is also not required. Therefore, these portions of the Tenant's application were withdrawn.

### **Issues to be Decided**

- Is the Tenant entitled to compensation for damages?
- Should the Landlord be ordered to comply with the Act, regulation or tenancy agreement?

### **Background and Evidence**

This tenancy began September 1, 2007. The Tenant paid a security deposit in the amount of \$400.00 at the beginning of the tenancy. The Tenant provided a copy of only one page from a tenancy agreement, which indicates that rent was \$800.00 per month, and which includes parking for one vehicle. The Tenant submitted that she has overpaid \$10.00 a month for 55 months, because the Landlord has been charging her \$10.00 a month for parking her scooter.

The Landlord stated that the page from the tenancy agreement provided by the Tenant was not part of the tenancy agreement between the Landlord and the Tenant. The Tenant testified that she kept copies of her tenancy agreements, and assumed that this was her agreement with this Landlord because she could not find another in her records. I ordered the Landlord to provide me and the Tenant with a copy of the tenancy agreement between the parties within 5 days of the Hearing.

On June 11, 2015, the Landlord provided a complete copy of the tenancy agreement between the parties to the Residential Tenancy Branch, which indicates that rent at the beginning of the tenancy was:

"Basic Rental	\$760.00
Parking	<u>\$20.00</u>
Total Rental	\$780.00"

The Landlord issued a Notice of Rent Increase on February 20, 2015, a copy of which was provided in evidence. The Notice of Rent Increase indicates that rent was increased \$15.00 per month effective June 1, 2015, for a total "new rent" of \$850.00.

### **The Tenant and her agents gave the following testimony:**

On December 8, 2014, the occupants of the rental property got notice from an elevator company that the hydraulic cylinder had to be replaced, pursuant to a BC Safety Authority Order. A copy of the notice from the elevator company was provided in evidence.

The Tenant is 96 years old and lives on the second floor of the rental property. In March, 2015, the Tenant fell and broke her hip. The Tenant testified that repairs to the only elevator in the building began on March 30, 2015. At the time that the elevator was shut down, the Tenant used a walker or two canes for mobility. The Tenant testified that she did not have access to the laundry, garbage facilities, recycling or storage during the elevator repair period because they were all located in the basement, which meant a further flight of stairs to negotiate.

The Tenant's agents testified that the Tenant's health deteriorated on April 17, 2015. They stated that they (the Tenant's family) had to assist Tenant's walker past an obstruction in the hallway and out the door. The Tenant provided a photograph of the obstruction in evidence.

The Tenant's agents stated that they both work during the day and therefore they spoke to the Landlord's agent DH seeking compensation to hire someone for 2 hours a day to take the Tenant out for errands and walks, but that "management did not offer anything". The Tenant's agents also asked if any ground floor apartments were available for the Tenant, but was told that there were no vacancies on the ground floor.

The Tenant's agents testified that on April 21, 2015, DH advised them that the Landlord felt that they were not entitled to compensation and to put their request in writing. They stated that they gave the Landlord their request in writing on April 27, 2015, seeking \$850.00 in compensation. A copy of the letter was provided in evidence.

The Tenant had specialist and doctor's appointments on April 22, 23, and 24, 2015. The Tenant's agents stated that the "up, down, up, down" caused the Tenant pain. They stated that the Tenant has a compression fracture in her back. They stated that they are not claiming that the elevator shut-down directly caused the fracture, but that it didn't help.

The Tenant's agents stated that "by the end of the week", the Tenant could not get out of bed and was in extreme pain. They called an ambulance and the paramedics had to take the Tenant down exterior stairs, strapped to a chair, because they could not get her out of the building through the front door due to the obstruction in the hallway. The Tenant was hospitalized on May 1, 2015. On May 12, 2015, the Tenant was transferred to a rehabilitation hospital, where she remained until June 9, 2015.

The Landlord replied to the Tenant's April 27, 2015, letter on May 5, 2015, a copy of which was provided in evidence. On May 8, 2015, the elevator repairs were completed.

The Tenant's agents stated that the Landlord was aware of the safety order for 4 years before the notice was posted by the elevator company. The Tenants provided a copy of the Safety Order issued by the BC Safety Authority in evidence, dated December 14, 2010.

The Tenant provided a copy of a previous Residential Tenancy Branch Decision in support of her application.

The Tenant seeks a monetary award, calculated as follows:

Return of May, 2015, rent	\$835.00
Compensation for reduction in the value of the tenancy and aggravated damages (33 days x \$50.00 per day)	<u>\$1,650.00</u>
TOTAL claim	<b>\$2,485.00</b>

The Landlord's agents gave the following testimony:

The Landlord's agents testified that the elevator was shut down from April 7, 2015, until May 8, 2015. They testified that work was delayed for one week due to the Easter holiday.

The Landlord's agents stated that the rental property is a "well-cared-for building" and that DH often organizes event for the occupants. They testified that the elevator was "working fine", but required updating in accordance with the Safety Order issued by the BC Safety Authority. They testified that, other than a "sticky button" on the second floor, the elevator was in working condition until the required update was performed.

The Landlord's agents stated that the Tenant was given four months' notice of the repairs and questioned why the Tenant made appointments during the repair period.

The Landlord's agents testified that they and other occupants helped the Tenant many times during the time that the elevator was out of order and that the Tenant only had to ask for assistance, with sufficient notice, and that there would be no problem with getting someone to help her with her garbage, recycling, laundry and storage needs.

The Landlord's agents submitted that the Tenant is exaggerating with respect to her agents' testimony about the paramedics' ability to remove the Tenant from the building on May 1, 2015. They agreed that the obstruction, a cart belonging to DH, "should have been moved.

The Landlord's agents submitted that the Tenant had "use and occupancy" of the rental unit for the month of May, 2015, while she was in hospital and therefore the Tenant should not be awarded recovery of May's rent.

The Landlord's agents submitted that the Tenant did not incur any out-of-pocket expenses during the time the elevator was out of commission.

The Landlord's agents submitted that the previous Decision's facts differed with the Tenant's situation, as follows:

Previous Decision

Elevator out of order for 8 weeks  
Rental property was a high rise  
No use of rental unit for 2 months

Tenant's situation

Elevator out of order for 4 weeks  
Rental unit one floor from ground  
Use of rental unit at all times

The Tenant gave the following reply:

The Tenant's medical appointments were made for cortisone shots, chiropractic treatment, and an appointment with her regular doctor; all as a result of her pain from having to use the stairs instead of the elevator.

**Analysis**

Is the Tenant entitled to compensation for damages?

Residential Tenancy Policy Guideline 16 provides, in part:

"In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

☐ The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.

☐ The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered into the contract that the breach complained of would cause the distress claimed.

☐ They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought."

I find insufficient evidence that the Landlord was negligent with respect to complying with the BC Safety Authority's Safety Order dated December 14, 2010. The Safety Order provides that the "building owner or property manager must then advise the BC

Safety Authority of their compliance.... before October 8, 2015". The evidence shows that the repairs were completed in May, 2015.

I find that there is insufficient evidence that the Tenant notified the Landlord that the obstruction in the hallway was causing her difficulty maneuvering her walker.

A Landlord has a duty under Section 32 of the Act to provide and maintain a residential property in a state of repair that complies with the health, safety and housing standards required by law. I find that repairs, such as repairs to elevators, are a necessary if inconvenient obligation of a landlord under Section 32 of the Act.

Section 64(2) of the Act provides:

The director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

For the reasons provided above, I find that the Tenant is not entitled to aggravated damages and this portion of her claim is dismissed.

I find that the Tenant had use and occupancy of the rental unit for the month of May, 2015, and that therefore her application for return of May's rent is dismissed.

Policy Guideline 16 also provides, in part:

"Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances..... If the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected."

In the case before me, I find that the Tenant is entitled to damages for loss of use of part of the premises and for the resulting reduction in the value of the tenancy. Because of the Tenant's particular mobility issues, I find that the Tenant did not have easy access to common areas, or to the outside of the rental property. I find that this resulted in a 50% reduction in the value of the tenancy and award her **\$417.50** for the period that access was restricted.

The Tenant has been partially successful in her application and I find that she is entitled to recover the cost of the filing fee of **\$50.00** from the Landlords.

The Tenant has established a total monetary award of **\$467.50**. I hereby provide her with a Monetary Order in the amount of \$467.50 which may be enforced through the Provincial Court or, pursuant to the provisions of Section 72 of the Act, the Tenant may choose to deduct \$467.50 from future rent due to the Landlord.

Should the Landlord be ordered to comply with the Act, regulation or tenancy agreement?

I find that the Tenant did not provide sufficient details with respect to this portion of her claim (for example, what section of the Act or regulation she sought the Landlord to comply with). Therefore this portion of the Tenant's claim is dismissed.

**Conclusion**

I find that the Tenant has established a monetary award in the amount of **\$467.50** pursuant to the provisions of Section 67 of the Act, which includes recovery of the filing fee. A Monetary Order in the amount of \$467.50 is enclosed for service upon the Landlord and enforcement in the Provincial Court of British Columbia (Small Claims Court). In the alternative and further to the provisions of Section 72 of the Act, the total monetary award in the amount of \$467.50 may be deducted from future rent due to the Landlord.

The Tenant's applications for aggravated damages and for an Order that the Landlord comply with the Act, regulation or tenancy agreement are dismissed.

The remainder of the Tenant's application was withdrawn.

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 06, 2015

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Residential Tenancy Branch

