Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NYSTAR DEV. CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF, O

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on September 9, 2015 for "Other" issues, and to recover the filing fee from the Landlord.

One of the Tenants named on the Tenant's Application and an agent for the Landlord appeared for the hearing. Both parties provided affirmed testimony. The Landlord confirmed receipt of the Tenant's Application and his documentary evidence. The Landlord's agent confirmed that he had not provided any evidence prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

Preliminary Issues

During the hearing, the Tenant explained that the other Tenant named on his Application resided in a different rental unit but was named because he was experiencing the same issues with the Landlord. The Tenant was informed that several parties experiencing the same issue but in separate rental units cannot be named on one Application. Each party must make an individual Application after which all the applicants can request the Residential Tenancy Branch to have the Applications joined together to be heard at the same time pursuant to Rule 2.10 of the Rules of Procedure.

Therefore, pursuant to Section 64(3) (c) of the *Residential Tenancy Act* (the "Act"), I amended the Tenant's Application to remove the second named party. As a result, I also removed the second Tenant's name from the style of cause which appears on the front page of this decision. The second Tenant is at liberty to make his own Application.

The Tenant was asked about the "Other" issues on his Application which was outlined in the details section of the Application. The Tenant explained that he wanted the Landlord to make repairs to the elevator in the building because it was an essential service. The Tenant explained that if it was determined that the elevator is not an essential service to the building he was disputing the monthly rent reduction he had been offered by the Landlord.

Issue(s) to be Decided

- Is the elevator in the rental building an essential service?
- If so, is the Landlord required to make repairs to the elevator?

Background and Evidence

The parties agreed that this tenancy started 10 years ago. Although the Tenant testified that there was a written tenancy agreement, neither party provided one into evidence. The current rent amount is $1,189.15 payable by the Tenant on the first day of each month.

The Tenant testified that in October 2014 the Landlord posted a typed notice to all units in the residential building explaining that due to "*mandatory difficult and expensive government safety upgrades*" the elevator for the building will no longer be in service from October 8, 2015 onwards. The Tenant explained that at the end of August 2015, a handwritten notice was posted in the elevator from "management" which stated that the elevator would no longer be in service as of October 8, 2015. Both of these notices were provided into evidence by the Tenant.

The Tenant testified that since October 2015 the elevator has not been working. The Tenant explained that the rental building comprised of three floors with a basement level that contained laundry facilities, a bike room, garbage and recycling areas, and vehicle parking. The Tenant testified that he resided on the third floor and now has to use the stairs to access the services and facilities on the basement level as well as having to use the stairs to exit and enter the building.

The Tenant submitted that the elevator was an essential service to the building and that the lack of an elevator is problematic. When the Tenant was asked about the problems he was having, he explained that if he were to have elderly visitors to his rental unit they would have to negotiate several flights of stairs and therefore, they were effectively barred from coming to the building due to age and ability. The Tenant explained that the act of moving in or out of the building would also be rendered impossible without an

elevator service. The Tenant submitted that it was not sufficient for the Landlord to stop the elevator service simply because they cannot afford the safety upgrades.

The Tenant testified that he was served with a Notice Terminating or Restricting a Service of Facility (the "Notice") dated September 7, 2015 which provided him with a $35.00 per month reduction in his rent as a result of the removal of the elevator service. The Notice was provided into evidence. The Tenant explained that this amount was not sufficient and that if it was to be determined that the elevator is not an essential service, then the Tenant should be allowed to reduce his rent by $125.00.

The Landlord's agent testified that the elevator was shut down on October 8, 2015 not due to maintenance issues but because the provincial government were forcing them to perform safety upgrades which they could not afford. The Landlord's agent explained that the Tenant had been given a rent reduction in accordance with the Act. However, the Landlord was not agreeable to the amount that had been proposed by the Tenant.

The Landlord's agent argued that the elevator was not an essential service to the building because the Tenant had access to stairs and that he was young and could therefore navigate them easily. The Landlord's agent explained that they were in the process of working with the City to install a new elevator as the current one that was shut down is 60 years old. However, the Landlord's agent was unable to provide a date as to when the installation of a new elevator would take place and explained that this work would take place with other major renovations which would likely result in the ending of the tenancies in the building.

The Landlord closed by saying that 44 of the new renters residing in the building had signed tenancy agreements which explained that the elevator was not being provided to them as part of their tenancies. The remaining 12 renters had accepted the rent reduction provided to them.

Analysis

I have carefully examined the parties' evidence in this case and I make the following findings. The first issue that must be decided in this case is whether the elevator is an essential service to the building. In this respect, I turn to Section 27(1) of the Act. This states that a Landlord must **not** terminate or restrict a service or facility if:

- the service or facility is **essential** to the tenant's use of the rental unit as living accommodation, or
- providing the service or facility is a material term of the tenancy agreement.

Section 1 of the Act provides for the definition of a service or facility which includes an elevator. Therefore, I find an elevator is considered under the Act a service or facility. The Landlord disputed the elevator in the building was an essential service. Therefore, I turn my mind to Policy Guideline 22 to the Act which provides extensive guidance on the termination and restrictions of services and facilities. The guideline states that an essential service is one which is necessary, indispensable, or fundamental.

The guideline states that in considering whether a service or facility is “essential” to the tenant's use of the rental unit as living accommodation, the arbitrator 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. Furthermore, I take into particular consideration that the guideline provides a specific example of an essential service:

> *“For example, an elevator in a multi-storey apartment building would be considered an essential service.”*

[Reproduced as written]

The parties did not provide a tenancy agreement into evidence. Therefore, I am unable to determine if the provision of the elevator was a material term set out in the tenancy agreement. However, in this case I find the Tenant is residing in a four level storey building where access to amenities such as laundry, car parking, garbage disposal are necessary for the functioning of this tenancy. I also find that it is not reasonable to expect the Tenant or his guests to navigate this amount of stairs when entering or exiting the building, especially if the Tenant is in possession of items such as heavy furniture or grocery shopping. I also accept the Tenant’s submission that if the Tenant wanted to move out of the rental unit, not having access to the elevator would make it difficult for him to do so. I find the stairs in the building are not a reasonable substitute for the Tenant who resides on the top floor of the building.

In considering the Tenant’s Application, I conclude that: the elevator is a service or facility as set out in Section 1 of the Act; that the elevator has been stopped since October 8, 2015; and, that the elevator is essential to the use of the rental unit. Based on the foregoing, I find that the Landlord was not able to issue the Tenant with the Notice. This is because 27(1) prohibits a Landlord from terminating or restricting an essential service. Therefore, the fact that the Landlord issued the Tenant with the Notice has no bearing on this matter.

Furthermore, Section 32(1) (a) of the Act requires a Landlord to provide and maintain residential property in a state of decoration and repair that complies with the health,

safety and housing standards required by law. As a result, I find the Landlord's argument the elevator was shut off because of expensive safety upgrades mandated by the provincial government are directly contrary to this part of the Act.

Based on the foregoing, I order the Landlord to repair the building elevator pursuant to Sections 27(1) (a) and 32(1) (a) of the Act. Section 65(f) of the Act allows for past or future rent to be reduced by an amount that is equivalent to a reduction in the value of the tenancy. Therefore, I find the Tenant is entitled to reduce his rent in the amount of $125.00 requested until such time the repair to the elevator is undertaken and the elevator is made operational. I find this amount is reasonable and appropriate based on the fact that the Tenant lives on the top floor of the building and is impacted by the loss of the elevator on a daily basis.

In the month after the elevator is made operational, I order that the monthly rent for this tenancy reverts to the regular amount established ($1,189.15). For example, if the Landlord completes the repair by December 17, 2015 the Tenant is liable to pay the normal rent amount on January 1, 2016. However, if the Landlord completes the above repair and the Tenant is not satisfied and continues to withhold rent, the Landlord is required to file an Application to prove that there has been compliance with this decision.

Conclusion

The Landlord has failed to provide essential services in this tenancy. Therefore, the Landlord is ordered to make the elevator in the building operational. The Tenant may reduce rent in the amount of $125.00 until such time the elevator is made operational. In addition to this deduction, as the Tenant has been successful in this Application, the Tenant may recover the $50.00 filing fee by deducting this amount from his next installment of rent

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: November 18, 2015

Residential Tenancy Branch