



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

MNDC, RP, PSF, and FF

### Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to make repairs to the rental unit; an Order requiring the Landlord to provide services or facilities; and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

At the hearing the Tenant withdrew the application for an Order requiring the Landlord to make repairs to the rental unit and for an Order requiring the Landlord to provide services or facilities, as the elevator has been repaired.

The Tenant stated that on February 24, 2016 the Application for Dispute Resolution and the Notice of Hearing were delivered to the Landlord's business office. The Agent for the Landlord acknowledged receipt of these documents.

The Tenant stated that on March 11, 2016 documents the Tenant submitted to the Residential Tenancy Branch on March 11, 2016 were delivered to the Landlord's business office. The Agent for the Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Agent for the Landlord stated that on March 17, 2016 documents the Landlord submitted to the Residential Tenancy Branch on March 16, 2016 were mailed to the Tenant. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant stated that on March 27, 2016 an Amendment to an Applicant for Dispute Resolution was delivered to the Landlord's business office. The Agent for the Landlord acknowledged receipt of this document.

The parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Tenant entitled to a monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, *Regulation*, or tenancy agreement?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began in 2014;
- this rental unit is on the 4<sup>th</sup> floor;
- the rent for this unit at the end of the tenancy was \$1,178.75 per month;
- the residential complex has an elevator;
- the elevator was not functioning between September 08, 2015 and March 17, 2016 due to a planned upgrade and unexpected delays;
- on August 17, 2015 the Landlord advised tenants of the planned elevator upgrade and advised them to contact the Landlord if special assistance is required during this period;
- the Tenant did not ask for special assistance for normal daily activities between September 08, 2015 and March 17, 2016;
- in late January or early February of 2016 the Tenant made arrangements to move from this unit into a suite on the 4<sup>th</sup> floor on February 29, 2016;
- when the Tenant made arrangements to move to the 4<sup>th</sup> floor the parties both believed the elevator would be repaired by February 29, 2016;
- the Landlord offered to provide the Tenant with two men to assist with the move from the 5<sup>th</sup> to the 4<sup>th</sup> floor;
- the Landlord asked the Tenant to sign a waiver releasing the Landlord from responsibility if the Tenant's property was damaged during the move;
- the Tenant refused to sign the waiver;
- the Landlord provided the Tenant with two men to assist with the move even though the Tenant refused to sign the waiver; and
- rent in the lower unit is \$895.00 per month.

The Tenant stated that the movers arrived 75 minutes late and that he and his wife had moved a large amount of property before the movers arrived. He stated that the movers helped for approximately 20 minutes, during which time they helped move some heavy items. He stated that he did not feel comfortable using the movers to move the smaller items, as he was concerned that he would not be compensated if his property was damaged.

The Agent for the Landlord stated that she does not know how long the movers stayed, but they were paid \$300.00 for their services.

The Tenant stated that the absence of an elevator for an extended period made it difficult to carry groceries to the rental unit; made it difficult to use the laundry facilities on the 1<sup>st</sup> floor; and made it difficult to dispose of garbage, as it had to be carried to the 1<sup>st</sup> floor. He stated that his wife experienced a sore back which she attributes to the need to use the stairs and that his asthma was triggered when he had a cold and had to use the stairs.

The Tenant is seeking \$2,685.00 in compensation for being without an elevator.

The Agent for the Landlord stated that the Landlord believes the Tenant is entitled to compensation of \$955.00, which is based on the Landlord's position that the Tenant should be compensated at \$5.00 per day for being without the elevator. She based this on a previous dispute resolution hearing, which was not submitted in evidence, in which an Arbitrator awarded daily compensation of \$5.00 to a tenant for being without an elevator.

### Analysis

Section 27(2)(b) of the *Act* stipulates that a landlord may terminate or restrict a non-essential service or facility if the landlord reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

On the basis of the undisputed evidence I find that an elevator was a service provided with tenancy and that the Tenant was without the use of that elevator for approximately 191 days between September 08, 2015 and March 17, 2016. I find that this is a temporary termination of a service and, pursuant to section 27(2)(b) of the *Act* the Tenant is entitled to a rent reduction for those 191 days.

Determining the reduced value of a tenancy as a result of the elevator not working is highly subjective and is dependent on a variety of variables, including the rent payable for the rental unit, physical ability of the tenant, the lifestyle of the tenant, the location of services within the residential complex, such as garbage and laundry, the floor on which the rental unit is situated; and the duration of the disruption.

In these circumstances I find that the temporary absence of an elevator reduced the value of this tenancy by 15%. I find that the absence of the elevator had a significant impact on this tenancy because:

- the rental unit was on the 5<sup>th</sup> floor;
- the laundry services were on the 1<sup>st</sup> floor;
- the garbage services were on the 1<sup>st</sup> floor (as opposed to a garbage chute on the 5<sup>th</sup> floor;
- the Tenant has asthma; and

- the Tenant's wife experienced back pain which she contributes to the need to climb the stairs.

Depending on the month, the daily rent for this rental unit was between \$38.02 and \$40.65. I therefore find that the average daily rate is \$39.34. 15% of the daily rent is \$5.90. As I have concluded that the Tenant is entitled to a rent reduction of 15% for the 174 days he was without an elevator while he was living on the 5<sup>th</sup> floor, I find that the Tenant is entitled to compensation of \$1,026.60.

The daily rent for this rental unit on the 4<sup>th</sup> floor is \$28.87. 15% of this daily rent is \$4.33. As I have concluded that the Tenant is entitled to a rent reduction of 15% for the 17 days he was without an elevator while he was living on the 4<sup>th</sup> floor, I find that the Tenant is entitled to compensation of \$73.61.

I find that the Tenant's claim of \$2,685.00 is excessive, as that equates to a rent reduction of over 30% of the monthly rent. Given that the Tenant had full use of the suite during these 191 days, I find that amount is not reasonable.

In determining that the Tenant is not entitled to a rent reduction of more than 15%, I was heavily influenced by the fact that prior to the start of the elevator upgrade the Landlord offered "special assistance" to anyone in need of it, and the Tenant did not avail himself of that assistance.

In determining the amount of the rent reduction I placed little weight on the fact the Tenant moved from the 5<sup>th</sup> to the 4<sup>th</sup> floor while the elevator was not working. I find that the Landlord acted reasonably and responsibly when the Landlord provided the Tenant with two men to assist with the move. Even if the men did not arrive until 75 minutes after they were expected, I find that they did arrive and were available to assist the Tenant. Although the Tenant opted to make limited use of this assistance, I find that they were available to him and, if used to their fully capacity, would have made the move easier than if the elevator had been operating.

In determining the amount of the rent reduction I placed no weight on the Landlord's submission that at a previous dispute resolution hearing a tenant was awarded \$5.00 a day for being without an elevator. In the absence of a copy of that previous decision I am unable to determine whether the circumstances in this tenancy are similar to the circumstances described at the previous dispute resolution proceeding.

I find that the Tenant's Application for Dispute Resolution has merit and I find that the Tenant is entitled to compensation, in the amount of \$100.00, for the cost of filing this Application for Dispute Resolution.

Conclusion

The Tenant has established a monetary claim, in the amount of \$1,200.21, which includes \$1,100.21 in compensation for being without an elevator and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Tenant a monetary Order for the amount of \$1,200.21.

In the event the Landlord does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court or it may be recovered pursuant to section 72(2) of the *Act*.

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: April 15, 2016

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Residential Tenancy Branch