Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROCKWELL MGMT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC RR O

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on June 13, 2016. The Tenant filed seeking a $2,420.00 monetary order; an order allowing the Tenant reduced rent for repairs, services or facilities agreed upon but not provided; and for other reasons to cancel her fixed term tenancy agreement.

The hearing was conducted via teleconference and was attended by the Landlords and the Tenant. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Landlords confirmed receipt of the Tenant's application for Dispute Resolution, Notice of Hearing documents, and evidence. No issues or concerns were raised regarding service or receipt of those documents. As such, I accepted the Tenant's relevant submissions as evidence for this proceeding.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Tenant proven entitlement to monetary compensation?
2. Has the Tenant proven entitlement to reduced rent?
3. Is the Tenant entitled to end her fixed term tenancy agreement?

Background and Evidence

On April 28, 2016 the Tenant and co-tenant entered into a written fixed term tenancy agreement. As per the tenancy agreement the tenancy began on May 1, 2016 and was

not scheduled to end until April 30, 2017. The Tenants were given possession of the rental unit on April 28, 2016. Rent of $800.00 was payable on the first of each month and on April 28, 2016 the Tenants paid $400.00 as the security deposit.

The Tenant submitted evidence that the elevator in the rental building did not work for 7 weeks so she could not move her possessions into the rental unit. She asserted she resided in the unit from April 28, 2016 until June 29, 2016 without any of her possessions as she could not carry anything up the three flights of stairs because she was disabled. She submitted she was disabled and had to use a walker. She argued she had to carry the walker up and down three flights of stairs every time she had to go somewhere.

The Tenant testified that on May 16, 2016 she mailed a letter to the corporate Landlord's office informing them that she could not live without an elevator because she was disabled. The Tenant stated she sent the letter regular mail and followed it up with an email on June14, 2016.

The Tenant asserted she vacated the rental property on June 29, 2016 at which time she gave the Landlord her keys to the unit. She stated she requested the return of her postdated cheques and the Landlords refused to return them.

The Tenant now seeks monetary compensation as follows: $165.00 for stop payment on her cheques; $55.60 to redirect her mail; $900.00 for motel costs because she was disabled; $1,000.00 to find a new place to live; and $300.00 for pain and suffering emotionally for having to live without an elevator and without her possessions.

The Landlords testified the Tenants knew the elevator was not working at the time they signed the tenancy agreement on April 28, 2016. They confirmed the elevator broke on April 18, 2016 and was not operational until June 6, 2016, seven weeks later. They asserted the elevator needed a major upgrade and recertification which is why it took so long to repair.

The Landlord stated the Tenants viewed the building on April 1, 2016 at which time the elevator was operational. She argued the Tenants did not pay their security deposit and did not sign the tenancy agreement until April 28, 2016 at which time the elevator was undergoing repairs. The Landlords did not offer the Tenants a rent reduction for having to live in the building without the use of the elevator.

The Landlords argued they were never aware that the Tenant had a disability. They said they never saw the Tenant using walking aids or a walker. The Landlords denied

receiving the Tenant's May 16, 2016 hand written letter in the mail in May. Rather, they asserted they received that letter on June 20, 2016.

The resident manager stated the Tenant approached her in June 2016 asking to end her fixed term tenancy. She said she later received a text message and the email from the Tenant asking to cancel the tenancy and at that time the elevator had already been repaired. The Landlords testified the June 1, 2016 was not paid in full so they served the Tenants a 10 Day Notice and shortly afterwards the Tenant gave them the keys and said she had moved out.

The Landlords argued they had no choice but to have the elevator repaired. They asserted that repair required having a major upgrade completed to the elevator which took time, seven weeks in this case.

In closing, the Tenant stated her assisted walking devices were in her storage locker, along with all of her possessions. She submitted she has been under the care of her doctor for a spinal cord injury that occurred several years ago.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

> 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 67 of the Residential Tenancy *Act* states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The evidence supports the repairs to the elevator have been completed. Therefore there is no need to issue Orders to have emergency repairs or repairs completed.

Section 27 stipulates that a landlord must not terminate or restrict a service or facility if that service of 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.

If the landlord terminates or restricts a service or facility, other than one that is essential or a material term of a tenancy the landlord must provide 30 day's notice and reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy.

Although the Tenant had applied for a rent reduction based on Section 27, I find they have provided no evidence indicating that the landlord has breached this section of the *Act*. I make this finding in part, as there was no evidence that would suggest it was the Landlord who decided to restrict the Tenant's access to the elevator. Rather, the undisputed evidence was the elevator simply broke; the Landlord took action to have the elevator repaired within a reasonable amount of time; and the required repairs involved major upgrades which took seven weeks to complete.

I accept that during the repairs there were times that services or facilities, the elevator in this case, would be restricted. However, those restrictions were temporary in nature and not intended by the Landlord to be a permanent withdrawal or restriction of those services.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the Landlord to make the rental unit suitable for occupation which warrants that the Landlord keep the premises in good repair. For example, failure of the Landlord to

make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building elevator would deteriorate occupant comfort and the long term condition of the building.

Residential Tenancy Policy Guideline 6 stipulates that “it is necessary to balance the tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.”

I find it undeniable that the Tenant suffered a loss of quiet enjoyment of her rental unit for a period of 40 days between April 28, 2016 and June 6, 2016 when the elevator was being repaired. Therefore, the Tenant suffered a subsequent loss in the value of the tenancy for that period. As a result, I find the Tenant is entitled to compensation for that loss.

Policy Guideline 6 states: “in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed”.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

I make note that the Tenant did not submit documentary evidence, such as a medical note, to support her submissions that she is disabled and requires the use of walking aids such as a walker. Furthermore, the Tenant was aware the elevator did not work at the time she paid her security deposit and entered into the tenancy agreement on April 28, 2016. Therefore, in the presence of the Landlord’s disputed verbal testimony that she never saw the Tenant ever use a walking aid, I find the Tenant provided insufficient evidence to prove she was not able to use the stairs to gain access to her rental unit.

Based on the aforementioned, I’ve determined the devaluation of the Tenant’s tenancy to be worth $8.00 per month (1% of the monthly rent = $0.26 per day), pursuant to sections 62 and 67 of the *Act.* Accordingly, I grant the Tenant monetary compensation for loss of quiet enjoyment in the amount of **$10.40** (40 days x $0.26 per day), pursuant to section 67 of the *Act.*

The Landlords are hereby ordered to pay the Tenant the sum of **$10.40** forthwith.

In the event the Landlords do not comply with the above Order, the Tenant has been issued a Monetary Order for **$10.40.** This Order must be served upon the Landlords and may be enforced through Small Claims Court.

Section 45 (2) of the Act stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

In this case the Tenant vacated the rental unit on June 29, 2016, after being served a 10 Day Notice to end tenancy, and prior to the end of the fixed term tenancy. I conclude there was insufficient evidence to prove the Tenant provided the Landlord proper notice to end this tenancy. Therefore, I find the Tenant has submitted insufficient evidence to prove she was entitled to an Order granting her the authority to end her tenancy or a monetary order costs incurred in her move or relocation. Accordingly, the balance of the Tenant's application is dismissed, without leave to reapply.

Conclusion

The Tenant was partially successful with her application and was awarded a monetary order in the amount of **$10.40.**

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 21, 2016

Residential Tenancy Branch