



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, OLC, FF

Introduction

This hearing dealt with applications by 3 tenants, pursuant to the *Residential Tenancy Act*. The tenants applied for a monetary order for compensation for loss under the *Act*.

The landlord was represented by their agent. The three tenants NM, OS and MR were represented by NM. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Are the tenants entitled to compensation?

Background and Evidence

The rental units are located in a multi storey building which is serviced by a single elevator. The rents for these three tenants are \$926.10 (OS), \$1,029.00 (MF) and \$1,049.58 (NM). Two of the tenants named on this application (OS and MF) reside on the third floor and NM resides on the fifth floor.

In letters dated June 05 and August 17, 2015, the landlord informed the residents of the building that the elevator upgrade was due to start on September 08, 2015. The letter also informed the tenants that should they need any assistance during the period of the upgrade, they could contact the rental office at the contact number provided.

The landlord testified that the upgrade commenced as scheduled but ran into unforeseen circumstances which resulted in a delay. The landlord kept the residents informed and updated on the progress via letters. The landlord filed copies of the letters into evidence.

NM stated that he moved into the building on September 01, 2015. He also testified that he was informed of the pending upgrade on August 20, 2015 and despite this knowledge he signed an agreement and paid a security deposit on August 28, 2015.

NM testified that he occupies the rental unit along with his fiancée. Both are in their thirties and have no disabilities or other medial issues which would not allow them to use the staircase. NM stated that he verbally asked the landlord for assistance once in October and the landlord refused. The landlord denied having heard from NM with a request for assistance. NM could not remember the date and didn't have any written communication from the landlord refusing to help him. NM has applied for compensation in the amount of \$3,300.00 for the inconvenience endured during the time the elevator was not in operation.

NM testified that OS occupies the rental unit on his own and is about 42 years old. He is a construction worker and was employed during the time the elevator was not available. NM stated that OS suffers from back aches. The application of OS does not mention any ailments and states that he is applying for compensation in the amount of \$5,580.00 for the inconvenience suffered during the time the elevator was out of service.

NM testified that MF occupies the rental unit with her husband. Both are in their thirties and have no disabilities. NM stated that MF's husband is employed and he was not sure whether MF is employed or not. MF states in her application that she is seeking compensation in the amount of \$4,000.00 for the inconvenience suffered during the period the elevator was out of service. MF also states in her application that her husband suffers from knee problems.

Both parties agreed that the elevator was not in service for a total of 191 days for the period of September 08, 2015 to March 17, 2016. The landlord filed into evidence, work orders, purchase orders, invoices inspection reports and letters to the tenants related to the progress of the work done to upgrade the elevator. The parties also agreed that the landlord offered the tenants compensation in the amount of \$5.00 per day. The offer was rejected by the three tenants.

Analysis

Based on the testimony of both parties, I accept that the elevator was non-functional for approximately 191 days between September 08, 2015 and March 17, 2016. I have to determine whether this service was provided or agreed to be provided by the landlord to the tenant and whether the landlord was negligent in maintaining the rental property.

Based on the documentary evidence and verbal testimony, I find that by choosing to upgrade the elevator the landlord acted in a timely and proactive manner and therefore I find that the landlord was not negligent with regard to maintenance of the rental property. Given the location of the rental units, I further find that the use of the elevator is a service that was provided by the landlord to the occupants of the rental units.

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.

Based on the testimony of both parties, I find that the use of an elevator was a service provided with the 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.

In addition, *Residential Tenancy Policy Guideline*# 22 states that where there is a termination or restriction of a service or facility for quite some time, through no fault of the landlord or tenant, an arbitrator may find there has been a breach of contract and award compensation. In this case I find that a breach of contract occurred resulting in a reduction of the value of the tenancy and therefore I find that the tenants are entitled to compensation for the days that they suffered the loss of use of the elevator.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed.

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 and lifestyle of the tenant and the duration of the disruption in service.

I find that the absence of the elevator had a significant impact on the tenancies because one of the units is on the fifth floor and the other two are on the third floor. I also take into account the physical abilities and ages of the tenants impacted by the lack of this service.

Except for one tenant whose employment status is unknown, the others are all employed and have no disabilities.

One of the tenants stated that he suffered backaches but since this tenant is employed in construction, it is not clear whether the source of the backaches were from employment or using the stairs. MF reported in her application that her husband suffers from knee problems but did not provide sufficient evidence to support the severity of the problem and how it would prevent him from using the stairs. All the tenants are between the ages of 30 to 42 years. No other medical conditions were reported by NM who was also representing OS and MF.

In determining the amount of compensation due to the tenant I was influenced by the fact that prior to the start of the elevator upgrade the landlord offered "special assistance" to anyone in need of it. NM did not provide adequate evidence to support that any of the tenants requested or availed themselves of that assistance and was unable to support his claim that the landlord refused to provide assistance the one time NM requested it.

I find that the tenants' claims for compensation in the amounts of \$4,000.00, \$5,580.00 and \$3,300.00 are excessive and given that the tenants had full use of the suite during the 191 days, I find that the claims for compensation are not reasonable.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

In these circumstances and based on the above findings, I further find that the temporary absence of an elevator reduced the value of this tenancy and I award nominal damages to the tenant in the amount of 15% of the rent paid for the period when the elevator was not available for use.

OS pays rent in the amount of \$926.10 per month. Based on this, I award OS 15% of the rent paid for 191 days which works out to **\$872.31**

MF pays rent in the amount of \$1,029.00 per month. Based on this, I award MF 15% of the rent paid for 191 days which works out to **\$969.23**

MF pays rent in the amount of \$1,049.58 per month. Based on this, I award MF 15% of the rent paid for 191 days which works out to **\$988.61**.

I find that the tenants' applications for dispute resolution have merit and therefor I award the tenants the recovery of the filing fee in the amount of \$100.00 each.

Overall the tenants have established a monetary claim for compensation and for the recovery of the filing fee. Accordingly, the landlord must pay the tenants compensation in the following amounts:

OS - **\$972.31**

MF - **\$1,069.23**

NM - **\$1,088.61**

The tenants may make a one-time deduction of these amounts from a future rent.

Conclusion

Each of the tenants may make a onetime deduction of their established entitlement from a future rent.

If a tenancy is ending, the landlord must pay the tenant an amount equal to the established entitlement of the concerned tenant as per the amounts above.

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: October 28, 2016

Residential Tenancy Branch