



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC FF

### **Introduction:**

Both parties attended the hearing. The landlord confirmed service of the tenant's Application by registered mail. I find that the landlord is served with the Application according to section 89 of the Act. The tenant applies pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order pursuant to Section 27 and 67 for compensation for restriction of elevator service; and
- b) An order to accommodate the tenant's disability in future scheduled elevator outages.

### **Issue(s) to be Decided:**

Has the tenant proved on a balance of probabilities that the elevator service was restricted and he is entitled to compensation? Is he entitled to future accommodation for a scheduled outage of the elevator?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to make submissions and provide evidence. It is undisputed that the tenancy commenced on December 1, 2011, rent is \$680 a month and a security deposit of \$340 was paid. The tenant is an elderly disabled man who lives on the second floor of the building. It is undisputed that the elevator was out of service from July 15, 2016 until August 5, 2016 plus one day outages on Aug. 16 and Aug. 17, 2016. The tenant is in a wheelchair and can no longer use the stairs for he has use of only one arm.

The landlord has offered permanent housing on the first floor but the tenant fears for his safety as there is a vacant lot nearby where homeless camp and they also walk along the back alley. The landlord said that he is working with owners of adjacent properties and the owner of the vacant lot to reduce the homeless problem. He also works with the Police and has high security locks on the building. He said he has many tenants in

similar situations to this tenant and there has never been a break in to a ground floor unit.

The tenant said the elevator problems are not the fault of the landlord. It is an old elevator that seems to take a lot of time to fix. However, the tenant is house bound when this occurs and it has an effect on his mental health and he is unable to provide himself with food and medication. Care workers come to assist him with bathing and some care items but do not deliver groceries. The landlord suggested that it is possible to get free delivery of medication and possibly of groceries as well. The landlord said he wants to get the elevator modernized and repaired but there is a shortage of licensed workers and public safety makes it imperative to use them. After some discussion, the tenant's agent who is his daughter said they would like a rebate of rent for the past outage and an Order that the landlord accommodate the tenant in a future outage scheduled for more than two weeks. The suggested accommodation would be to move the tenant temporarily to the first floor and install his disability aids and move his furniture. The landlord said he could try his best to meet this request. However, he said that the suggested rebate of 21 days of rent for the recent outage is unreasonable as the tenant continued to have full use of his living accommodation and amenities. He has already provided a \$100 cheque as compensation which the tenant has not cashed.

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

**Analysis:**

Section 27 of the Act provides that a landlord must not restrict a service or facility (1) if it is essential to the tenant's use of the rental unit as living accommodation and/or (2) the landlord may terminate or restrict a facility or service other than in (1) if the landlord gives 30 days written notice and reduces the rent in an amount equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction.

I find in this case the elevator service was crucial to the tenancy as the tenant is disabled and unable to use the stairs. I find him entitled to a rent rebate for this restriction. However, as the landlord pointed out, he still had full use of his unit with all its amenities. I find an appropriate rebate is 20% of his monthly rent (\$136) as the elevator was out of service for almost a month. As the landlord has already given him a cheque for \$100, he is authorized to cash that cheque and deduct a further \$36 from his next rent payment.

The tenant expresses concern about a future scheduled outage of the elevator. The landlord said he has contacted several companies to try to have the elevator modernized and fixed in the spring of 2017. He is unsure how long the elevator may be out of service but is willing to do his best to secure a temporary unit on the first floor, to install the disability aids needed to accommodate this tenant and to arrange to have his furniture moved.

**Conclusion:**

I find the tenant entitled to a rent rebate totalling \$136. He has already received a cheque for \$100. No filing fee was involved.

**I HEREBY ORDER THAT the tenant cash the \$100 cheque and deduct a further \$36 from his rent to recover the granted rent rebate.**

**I HEREBY ORDER THE LANDLORD:**

- (1) To give as much advance notice as possible to the tenant of any future scheduled outage of the elevator;**
- (2) To arrange for temporary alternate first floor accommodation for the tenant for any outage of the elevator lasting more than two weeks;**
- (3) To install the tenant's disability aids in any alternate accommodation; and**
- (4) To move the tenant's furniture to the temporary unit and back again when the elevator is in use again.**

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: December 08, 2016

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Residential Tenancy Branch