



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GATEWAY PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: ERP RP

### **Introduction**

Both parties attended the hearing and gave sworn testimony. The landlord was represented by the building manager and he is termed 'the landlord' in this Decision. The tenant served the landlord with the Application for Dispute Resolution personally and the landlord confirmed receipt. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) That the landlord do emergency repairs pursuant to section 32;
- b) That the landlord repair and maintain the property pursuant to section 33;
- c) That the landlord provide facilities required by law pursuant to section 27 and obey the provisions of the Act and the tenancy agreement;
- d) For a rebate of rent for repairs not done and facilities not provided; and
- e) To recover the filing fee pursuant to section 72.

### **Preliminary Issue:**

The tenant had been issued a 10 Day Notice to End Tenancy dated December 2, 2016 to be effective December 15, 2016. The parties confirmed this was no longer an issue as the tenant had paid the rent within the 5 days permitted to cancel the Notice.

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

Has the tenant proved on the balance of probabilities that the landlord has not maintained the property contrary to sections 32 and 33 of the Act? Are they entitled to orders that the landlord do necessary repairs and to a rent rebate or other compensation?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in November 2013, it is now a month to month tenancy and rent is \$940 a month. The parties agreed that the elevator in the building has not been working since

February 2016 and the landlord granted the tenants a \$50 rebate of rent for every month since then in recognition of the problems this might cause them.

The tenant said the rebate is not sufficient as they live on the top floor. They have to go up and down 4 flights of stairs. To do laundry and bring up groceries requires many trips up and down the stairs. He believes the landlord has been negligent in not having repairs done. He said the elevator was giving problems intermittently since December 2014 and the landlord should have addressed the issue earlier. He said the elevator has not been working at all since January 2016 (18 months) and asks for a rebate of rent totalling \$125 a month.

The landlord said many three or four level older buildings in the City have no elevator. This is a three level building with another level for the underground garage. He provided evidence of their diligence in addressing the issue. A number of reports from elevator companies confirm that repairs were attempted but unusual circumstances were found requiring more parts and drilling below the elevator shaft. The companies are continually working on it as parts become available.

The tenant also said they have had many problems with their heating since their tenancy commenced. He said the landlord has sent repair persons and is always responsive but problems continue intermittently. Five or six different plumbers are involved. It now works but is noisy. He estimates that they have heating problems for 50 or 60 days a year.

The landlord said the tenants' unit is on the highest level so the pipes have a longer run. He takes out the air each season and when the tenants have called again, he brings in the plumbers who take air out, change valves and do all they can. The last plumber reported he heard no noise from the tenants' heating system. The landlord provided 4 worksheets from plumbers detailing how they addressed heating problems in the tenants' unit. The landlord said he does not understand the current heating issue as they have had no written requests noting heating issues this winter. As a manager, he notes it is his duty to take care of tenant requests. Last year, he recalls the tenants complained about the heating and he had plumbers attend immediately as the invoices show.

The tenant asks for a further rebate of rent for \$50 a month for 18 months for heating issues. In total, the tenant is requesting rebates of \$3150.

Included with the evidence are statements of the parties, Notices of Rent Increases, the rent ledger, a 10 Day Notice to End Tenancy, the tenancy agreement, plumbing invoices, Notices to tenants regarding elevator problems and updates to the notices, several reports from elevator companies detailing problems and plumbing invoices. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

**Analysis:**

Section 32 of the Act requires the landlord to maintain the property in a state of decoration and repair that complies with legal health, safety and housing standards and makes it suitable for occupation by a tenant, having regard to the age, character and location of the rental unit. Section 27 of the Act states a landlord must not terminate or restrict a service or facility if it is essential to the use of the rental unit as living accommodation, or it is a material term of the tenancy agreement. Section 27(2) provides a landlord may terminate or restrict a service other than the essential services if the landlord gives 30 days written notice and reduces the rent in an amount that is equivalent to the reduction in value of the tenancy agreement resulting from the termination or restriction.

I find the use of the elevator is not an essential service. I agree with the landlord that many three storey buildings in the city have no elevator and the 3 or 4 storey walk-up is not uncommon in older buildings. However, I find these tenants entered into the tenancy when the building had an elevator in 2013 and it is reasonable that they would expect the service to continue, even if it is not incorporated into their tenancy agreement. I find the service was implied as it was there when the agreement was entered into.

I find the landlord complied with section 27(2) of the Act and gave notice to the tenants that the elevator service was restricted and granted a \$50 rebate of rent from the time it was restricted (February 2016). The tenant contends this is not sufficient to compensate them for the loss of value of their tenancy. I find the evidence is that they are on the top floor and must go up and down 4 floors, often many times to do laundry and bring groceries up from the underground garage. I find this is a significant hardship and has devalued the tenancy for them significantly. I find a rent rebate of \$100 a month retroactive to February 2016 is more representative of the devaluation they have experienced as this is a top floor unit with more difficult access up 4 flights of stairs. As they already are receiving a \$50 rent rebate, I find them entitled to compensation the extra \$50 a month from February 2016 to the date of this hearing for a total of \$600 (12x\$50) and to a deduction of \$100 from their rent (instead of the \$50 granted by the landlord) commencing in February 2017 until the elevator is working again.

In respect to the heating issue, I find the weight of the evidence is that the landlord has not violated the Act or tenancy agreement. I find they have diligently attended to repair requests. The tenant acknowledged in the hearing that they were responsive. I find insufficient evidence that the landlord has neglected to repair. I find insufficient evidence that the problem is continuing as the plumbers' invoices indicate it has been fixed and there are no new repair requests from the tenant in evidence. I dismiss this portion of their claim.

I find insufficient evidence that further repairs or emergency repairs are needed or neglected by the landlord. I dismiss this portion of the tenants' claim.

**Conclusion:**

I find the tenant entitled to compensation of \$600 for the extra rebate of rent granted today and to recover \$100 for their filing fee. I find them entitled to a total rebate of rent of \$100 a month commencing in February 2017 until the elevator is functioning again.

**I HEREBY ORDER that the tenant may deduct \$700 in a lump sum from their rent for February 2017 (\$600 rebate + \$100 filing fee) or otherwise recover the \$700 as arranged with their landlord.**

**I HEREBY ORDER that the tenant may deduct \$100 rent rebate from their rent each month commencing February 2017 until the elevator is functioning 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: January 12, 2017

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Residential Tenancy Branch