



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RR, FF

Introduction

On March 29, 2017, the Tenant applied for dispute resolution seeking money owed or compensation for damage or loss under the *Residential Tenancy Act* (“the Act”), regulation, or tenancy agreement, and for authorization to deduct the cost of repairs, services or facilities from the rent.

The Tenant and Landlord attended the hearing. The Landlord was assisted by legal counsel. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Is the Tenant entitled to compensation for damage or loss under the Act, regulation or tenancy agreement?
- Is the Tenant entitled to deduct the cost of repairs, services or facilities from the rent?

Background and Evidence

The parties testified that the tenancy for the unit that the tenant currently resides in began in June or July of 1995. The Tenant is required to pay rent of \$812.33 on or before the first day of each month.

The Tenant is seeking compensation for loss of use of the building elevator and for loss of the use of his balcony.

The Tenant testified that he lost use of the elevator for the five month period from April 25, 2016, until September 28, 2016. The Tenant testified that there is only one elevator in the building. The Tenant testified that he lives on the third floor and that his wife has arthritis in her hips and using the stairs was challenging. The Tenant testified that he has not received any compensation from the Landlord for the loss of use of the elevator.

The Tenant testified that he lost use of his balcony for four months from May 2015, until August 2015. He testified that he could not use the balcony or open the doors during this period.

The Tenant is seeking compensation in the amount of \$125.00 per week.

In response, the Landlord's counsel, Ms. K.H. submitted that the elevator modernization and repairs were necessary due to the Landlords obligation to maintain the rental property under section 32 of the Act. She submitted that the modernization is towards the long term benefit of the Tenant, and that the request for compensation is excessive. She submitted that there must be a balance of the Tenants' rights with the Landlords responsibility to maintain the property.

The Landlord submitted that the occupants of the property were given advance notice of the construction and were invited to contact the Landlord with concerns.

Ms. K. H. submitted that the construction only occurred in accordance with the bylaws between 8:30 am to 3:30 pm Monday to Friday, and Saturdays from 10:30 am.

The Landlord submitted that the rent reduction requested by the Tenant must reflect the value of the loss and that the Tenant bears the burden to prove his claim.

The Landlord requested that any monetary amount granted should be offset against the monthly rent rather than issuance of a monetary order.

Analysis

The Residential Tenancy Branch Policy Guideline #16 Compensation For Damage or Loss addresses the criteria for awarding compensation. The Guideline provides:

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- *Loss of access to any part of the residential property provided under a tenancy agreement;*

- *Loss of a service or facility provided under a tenancy agreement;*
- *Loss of quiet enjoyment;*
- *Loss of rental income that was to be received under a tenancy agreement and costs associated; and*
- *Damage to a person, including both physical and mental.*

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

Section 32(1) of the Act states that a Landlord must provide and maintain residential property in a state of decoration and repair that:

- (a) *complies with the health, safety and housing standards required by law, and*
- (b) *having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.*

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I make the following findings:

The Tenants testimony regarding the loss of use of the elevator and balcony was brief. The Landlord submitted that the Tenant did not provide any testimony on a loss of quiet enjoyment.

I find that there is insufficient evidence from the Tenant that he suffered a loss of quiet enjoyment.

With respect to a loss of a service or loss of access to a part of a property, I accept the Tenant's testimony that he had no use of his balcony for a four month period of time. I find that the Tenant has suffered a loss of value of the rental unit due to not having use of the balcony.

I accept the Tenant's testimony that he lost use of the elevator for a five month period and that this amounts to a loss of a facility.

With consideration to the submissions and evidence from the Landlord and Tenant, I find the Tenant's claim for a rent reduction of \$125.00 per week for the loss of use of the balcony and the loss of use of the elevator is not reasonable.

The Tenant established that he suffered a loss of use, but his testimony on the value of his loss was very brief. I find that the loss of use of the balcony is different from the loss of use of the elevator. The Tenant has assigned a monetary value of \$125 per week to each loss. This claim amounts to \$500.00 per month, which I note is more than 60% of the monthly rent. The Tenant lost use of the balcony for 16 weeks and the Tenant lost the use of the elevator for 20 weeks for a total of 36 weeks. The balcony is only a small percentage of the square footage of the rental

unit and the Tenant had full use of the rest of the rental unit. I accept the Tenant's submission that loss of use of the elevator was challenging for him and his wife.

I find an award of 10% of the rent for loss of use of the balcony to be more reasonable based on a claim of this type. In addition, I find that an award of 7% of the rent for loss of use of the elevator to be reasonable.

I award the Tenant compensation as follows:

Loss of Balcony	May, 2015, to August 2015	4 months	10%	\$324.93
Loss of Elevator	April 2016, to September 2016	5 months	7%	\$284.31

Pursuant to section 67 of the Act, I grant the Tenant a monetary award of \$609.24.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Tenant was successful with his application for compensation. I authorize the Tenant to deduct the amount of \$100.00 from a future rent payment.

I order that the Tenant may deduct the total amount of \$709.24 from a future rent payment.

Conclusion

The Tenant is awarded \$609.24, for loss of use of the rental unit. The Tenant is also granted \$100.00 for the cost of the filing fee. I authorize the Tenant to deduct \$709.24 from a future rent payment.

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: September 12, 2017

Residential Tenancy Branch