Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FULTON PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes PSF, RP, MNDCT, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order that the landlord provide services or facilities required by the tenancy agreement or the law; an order that the landlord make repairs to the unit, site or property; a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The landlord also called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness, and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

During the course of the hearing the tenant withdrew the applications for an order that the landlord make repairs to the unit, site or property; and for an order that the landlord provide services or facilities required by the tenancy agreement or the law.

Also, during the course of the hearing, the landlord submitted that the tenant has named an incorrect landlord in the Tenant's Application for Dispute Resolution and that the tenancy agreement names a landlord company. The tenant submitted that he meant the dispute to be against the landlord company, with whom the tenant had a tenancy agreement, but had to put a name in the Residential Tenancy Branch automated system. Since the parties agree, I amend the application to change the name of the landlord, and the frontal page of this Decision reflects that amendment.

Issue(s) to be Decided

The issue remaining to be decided is:

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, and more specifically for devaluation of the tenancy as a result loss of use of an elevator?

Background and Evidence

The tenant testified that this fixed term tenancy began on July 1, 2013 and reverted to a month-to-month tenancy after June 30, 2014 and the tenant still resides in the rental unit. Rent in the amount of $785.00 per month is currently payable on the 1st day of each month, including parking, and there are no arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of $360.00 which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of the tenancy agreement has not been provided for this hearing by either party.

The rental unit is an apartment on the 3rd floor of a 3-story apartment building. On January 14, 2018 the elevator in the rental building broke down, and the tenant discussed it with the Resident Manager on several occasions who gave the tenant a couple of erroneous dates about when it would be repaired, and didn't. An elevator repair company was contacted on January 25, but there was no explanation of why it took so long. The landlord's letter says the landlord was waiting for parts.

On February 4, 2018 the tenant sent a letter to the landlord and received a response on February 8. Nothing had been posted about the elevator for tenants and guests until the tenant had sent the letter. The elevator was working on February 20, and then within about 24 hours it stopped and wasn't working again until March 13, 2018.

The tenant's girlfriend had a calf tear and it was quite tough and a problem for her to climb the stairs. She also got stuck in the elevator for a few minutes. It wouldn't have been so bad if it was down for 3 weeks, but the elevator was inoperable for an inordinate time of 2 months. The tenant does not believe the landlord did what was required with respect to the repair by failing to contact the elevator repair company until January 25, had no communication with residents, and no signage about the inoperable elevator until after the tenant wrote the letter on February 4, 2018.

The tenant claims $306.00, being 20% of the rent for the 2 months, and testified that he read on the Residential Tenancy Website that the elevator is essential.

The landlord testified that before January 25, 2018, the elevator issue was not a major breakdown. Due to its age, the elevator has had minor problems from time to time which is easily repaired by the landlord's manager or a call to the elevator company. The landlord has a contract with the elevator company and they check it monthly.

The first incident of it not working, the issue was not related to what became a major issue, and it was taken care of at the time. The landlord realized the second time that the repair wasn't enough; cable is a safety factor. The landlord told the elevator company that it had to be safe and asked the elevator repair company to write a letter, and a copy has been provided as evidence for this hearing. The landlord had to firstly restore a sump pump to ensure safety of the technician.

The landlord was away and as soon as he received the tenant's letter he spoke to the manager who lives in the rental complex, and then wrote a letter to the tenant and to every single tenant about the prolonged delay in fixing it.

The landlord is a good landlord, and has never done anything to jeopardize the tenants. The elevator is not included as an essential service, nor does it justify 20% of the rent paid. No other tenants have complained.

The landlord also refers to a letter he wrote as his defense which he testified explains everything.

The landlord's witness is the resident manager of the building, and the landlord has a contract with the elevator company. Each time the elevator company is called, a service technician attends. The witness called, but the technician had an emergency and didn't attend for a week. In the meantime, the sump pump wasn't working and a new one had to be ordered. The total to complete the repairs was almost $10,000.00.

The landlord's witness further testified that the elevator company put up a sign, but someone took it off. The company gave the witness some more signs, and the witness replaced the one that had been removed.

Analysis

Where a party makes a monetary claim as against another party for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;

3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

I have reviewed all of the evidentiary material of the parties, and I agree that the tenant wrote to the landlord about the elevator, thereby mitigating any damage or loss suffered.

A landlord's responsibility is to provide and maintain residential premises in a state of decoration and repair that makes it suitable for occupation by a tenant, which includes common areas. I am satisfied that the landlord has done so by making the necessary repairs to the sump pump and to the elevator. The tenant submitted that an elevator is an essential service, as read on the Residential Tenancy Branch website. The question is whether or not the tenant has established that the tenancy has been devalued as a result of the loss of the elevator. The parties agree that there is no reference to an elevator in the tenancy agreement, however it could also be a material term, meaning that it is so important that the most trivial breach of that term gives the other party the right to end the agreement. In this case, I am not satisfied that the elevator is a material term.

The tenant referred to Residential Tenancy Policy Guideline #22 – Termination or Restriction of a Service or Facility, which states, in part:

> **An "essential" service or facility** is one which is necessary, indispensable, or fundamental. In considering whether a service or facility is essential to the tenant's use of the rental unit as living accommodation or use of the manufactured home site as a site for a manufactured home, the arbitrator will hear evidence as to the importance of the service or facility and will determine whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the rental unit as living accommodation. For example, an elevator in a multi-storey apartment building would be considered an essential service.

In this case, the apartment complex is 3 stories, and the tenant resides on the 3rd floor. The tenant has not provided any evidence that he has suffered a loss or damages as a result of having to walk up to the third floor, but that his girlfriend found it tough. The tenant's girlfriend had suffered a calf tear, however the tenant's girlfriend is not a tenant. Further, many residential buildings up to 3 floors do not have elevators, and I am not satisfied that the elevator is an essential service or that the tenant has established that any damage or loss has been suffered.

The tenant's application is dismissed.

Conclusion

For the reasons set out above, the tenant's application for monetary compensation is hereby dismissed.

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: May 31, 2018

Residential Tenancy Branch