



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PINNACLE INTERNATIONAL REALTY GROUP 11 INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes PSF, RP, RR, FF

Preliminary matter

At the start of the conference call the Arbitrator asked the Landlord why the Landlord's evidence package was submitted late. The Landlord said it was a mistake on his part as he thought the Hearing was scheduled for June 11, 2018 not June 4, 2018. The Landlord apologised for the late submission. The Tenant said she received the Landlord's evidence package on May 31, 2018 and she has not had time to review it. The Arbitrator told the Landlord the Landlord's evidence could be presented as testimony but the evidence package will not be used at the hearing because it was submitted late after the submission date guidelines and the Tenant said she did not have time to review the package.

Introduction

This matter dealt with an application by the Tenant for the Landlord to provide services and facilities agreed to in the tenancy agreement but not provided, for repairs to the unit, site or property, to allow the Tenant to reduce the rent while the repairs or services are being completed or supplied and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on April 11, 2018. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are services and facilities being provided as agreed upon?
2. Is the Tenant entitled to a rent reduction?
3. Have repairs been completed to the unit, site or property?

Background and Evidence

This tenancy started on July 1, 2015 as a fixed term tenancy with an expiry date of June 30, 2016. Rent is \$985.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$475.00 at the start of the tenancy. The Landlord said a condition inspection report was completed on July 1, 2015.

The Tenant said she lives on the third floor of the rental complex and the elevator has not been working or has only been partially working since March 24, 2018. The Tenant said she has a baby so the elevator is an important service to her tenancy. The Tenant said she believes the elevator is an essential service to the tenancy and now that is not being provided the Tenant said she is requesting compensation of \$100.00 per week for the time the elevator was not working or only partially working. The Tenant continued to say the elevator broke down on March 24, 2018 and she wrote the Landlord on March 26, 2018 to repair the elevator. The manager acknowledged the Tenant's letter on March 27, 2018 and the property manager responded to the Tenant on April 3, 2018. The Tenant continued to say the elevator was not working from March 24, 2018 to April 24, 2018 and from May 1 to May 7, 2018 and has been out of service from May 24, 2018 to the present. Further the Tenant said that during the time period of May 7 to May 23, 2018 the elevator did not work correctly stopping at the wrong floor and the door would not open and close correctly. The Tenant said this was very concerning for her. The Tenant said from the time of her application the elevator was not working for 49 days and only partially working for 17 days. The Tenant said she is requesting compensation of \$100.00 per week for 4 weeks when the elevator was not working, a rent reduction until the elevator is repaired and an order to repair the elevator. The Tenant also requested to recover the filing fee of \$100.00 for this application.

The Landlord said he understands the Tenant's concerns and he is apologetic for the inconvenience the elevator issues have caused the Tenant. The Landlord said he has had the elevator company come to the rental complex and they have tried to repair the elevator but additional problems have come up and the company has had to order parts. The Landlord said the elevator has not been down for 2 months, but neither the Property Manager nor the site Manager had records to show what days the elevator was working or not working. The Property Manager said he has tried to get the elevator repaired and it is not his fault that the service company has not fixed the elevator yet. The Landlord continued to say he has done what any prudent Landlord/Property Manager would do in this situation. The Landlord said the Tenant is the only tenant who has complained about the elevator not working and he does not think he should be

penalized for the time the elevator has been down. The Landlord said the elevator is not working at the present time but it should be repaired in 3 to 4 weeks.

The Tenant said this is the first time she has been told when the elevator will be fixed and she requested compensation until the elevator is repaired.

The parties were offered an opportunity to settle the dispute. The Landlord offered the Tenant \$200.00 as full settlement. The Tenant declined the Landlord's offer and requested a decision from the Arbitrator.

The Landlord said in closing the elevator was not down for 2 months and he is trying his best to get the elevator repaired.

The Tenant said in closing the Landlord has not provided a service in the tenancy agreement and the Tenant is requesting compensation for loss of that service and for a rent reduction until the elevator is repaired.

Analysis

Section 32 of the Act says:

A Landlord must provide and maintain residential property in a state of decoration and repair that makes it suitable for occupation by a tenant.

Therefore a Landlord is obligated to repair items include in the tenancy agreement and items that are implied by the tenancy. In this situation the elevator is implied as part of the tenancy agreement included in the common areas.

Section 27 of the Act says:

- (1) A landlord must not terminate or restrict a service or facility if
 - (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
 - (b) providing the service or facility is a material term of the tenancy agreement.
- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
 - (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) 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.

Although the Landlord has taken action to repair the elevator issues the action the Landlord has taken has not been **effective**. I find the elevator is a material part of this tenancy and it is understood to be an essential service of the tenancy agreement. In a situation where an elevator is not working for a few days or maybe a week, tenants have to allow the Landlord reasonable time to complete the repairs. In this situation I accept the Tenant's testimony that the elevator has not been operating for 49 days and has only been partially operating for 17 days since the Tenant made the repair request and application. The Landlord disputed this but did not have any corroborative evidence to support his position that the elevator was not down for 2 months. I accept the elevator has not been operating or not operating correctly since March 24, 2018.

Consequently, I find that the Tenant has established grounds to be compensated for loss of an essential service, the elevator, for a time period that is more than a reasonable amount of time for the elevator to be repaired. In determining a monetary compensation amount an Arbitrator must consider the how inconvenience the parties were and what the rent or financial agreement between the parties is. In this situation I award the Tenant \$200.00 per month in the amount of \$400.00 for part of March/April and May, 2018 during the time the elevator was not working or only partially working. As well I award the Tenant a rent reduction of \$200.00 per month or \$50.00 per week until the elevator is fully operating again.

Further as the Tenant has been successful in this matter I order the Tenant to recover the filing fee of \$100.00 from the Landlord by reducing the July 2018 rent by an additional \$100.00.

Consequently I order a one time rent reduction of \$500.00 for July 2018. The Tenant is ordered to reduce the rent for July, 2018 from \$985.00 to \$485.00. Further as the Landlord said the elevator is not operating yet, I order the Tenant to reduce the rent by \$200.00 per month or \$50.00 per week until the elevator is repaired. This rent reduction will commence on August 1, 2018 for any time the elevator is not working from today, June 4, 2018 until the elevator is repaired. .

Further I accept the Landlord's testimony that he is taking action to get the elevator repaired so I find no need to issue a repair order to the Tenant to serve on the Landlord. The Tenant is at leave to reapply for a repair order if the elevator repairs are not completed in a reasonable period of time. The Landlord said he believes the elevator will be repaired in 3 to 4 weeks which I deem is a reasonable amount of time.

Conclusion

I Order a onetime rent reduction of the Tenant's July 2018 rent for \$985.00 to \$485.00.

I order an additional reduction of rent of \$200.00 per month or 50.00 per week for each week the elevator is not repaired starting June 4, 2018.

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: June 04, 2018

Residential Tenancy Branch