



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EMV HOLDINGS CORP and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT MNDCT RR

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$4,050.73 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord was represented by counsel. The tenants appeared on their own behalves.

The tenants testified, and the landlord confirmed, that the tenants served the landlord with the notice of dispute resolution form and supporting evidence package. The landlord testified, and the tenants confirmed, that the landlord served the tenants with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Issue(s) to be Decided

Are the tenants entitled to:

- 1) an order that their rent be reduced;
- 2) a monetary order in the amount of \$4,050.73 as compensation for the landlord's breach of the Act; and
- 3) the recovery of their filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

Background

The parties entered into a tenancy agreement starting February 1, 2006. Monthly rent is currently \$1,181.00 and is payable on the first of each month.

The rental unit (the "**Unit**") is located on the ninth floor in an eleven-floor rental property (the "**Building**") that was built in 1968. The single elevator servicing the Building was installed in 47 years ago. The Unit does not have in-suite laundry. Washers and dryers are located in the Building's basement.

The landlord submitted, and the tenants did not dispute, that the elevator has broken down on a number of occasions in the recent years. The landlord submitted into evidence a letter from an elevator repair company dated February 2, 2019 which stated that "the elevator was designed to last approximately 40 years" and that it was "strongly recommend[ed] that the owners modernize the elevator and associated equipment as soon as possible".

The landlord's property manager testified that, due to the age and malfunctions of the elevator, the landlord started planning to replace the elevator in mid-2018.

On July 2, 2018, the landlord posted notices in conspicuous locations throughout the Building (elevator, lobby, parkade) advising the tenants of its intention to replace the elevator. This notice stated that the replacement process would start on January 28, 2019, and would take approximately 11 weeks. The tenants testified that they viewed these notices.

The landlord posted a number of other notices regarding the replacement of the elevator, temporary service outages of the elevator in preparation for its replacement. The replacement process took 14 weeks (three weeks longer than initially estimated). During this time, the Building was without an elevator.

During the time the elevator was inoperable, the landlord provided a number services to all occupants of the Building to alleviate the inconvenience caused by the lack of an operable elevator. These services included:

- 1) chairs on each floors stairway landing;
- 2) new mailboxes in the Building lobby (mail had previously been delivered to each unit individually);
- 3) a refrigerator in the lobby to store groceries in case occupants needed to make multiple trips carrying them up the stairs;
- 4) volunteer helpers available most days to assist occupants in carrying items up and down the stairs (occupants were supplied with these helpers' cell phone numbers, and a schedule of when they were available);
- 5) the option to move from their existing unit to a unit on a lower floor or to another building operated by the landlord (if available);
- 6) the option to end the tenancy without the notice requirements required by the Act; and
- 7) a one-time \$100 payment to each suite.

Tenants' Claim

The tenants did not dispute the fact that the elevator needed to be replaced. They did not argue that the length of time that the replacement process took unreasonable. Rather, the tenants claim full reimbursement of rent for the time the elevator was inoperable as compensation for the inconvenience they suffered as the result of not having access to the elevator, and for the cost of a large backpack they purchased to carry groceries and laundry up and down the stairs. The value of the tenants' claim is \$4,050.74, as follows:

- 1) \$3,815.54 – 14 weeks' rents
- 2) \$235.20 – cost of backpack

The tenants submitted a calculation of how they arrived at the 14 weeks' rent figure, which the landlord did not oppose. The tenants submitted a receipt from MEC for the cost of the backpack. The landlord did not dispute the cost of the backpack.

On September 30, 2018, the tenants wrote the landlord's general manger, expressing their concerns about the elevator replacement, and making the following requests:

- 1) 100% rent relief for the period of elevator downtime
- 2) Mail delivered, as usual, directly to the Unit;

- 3) Helper available all day Saturdays and Sundays, and late in the evenings (until 10pm) on weekdays.
- 4) Reimbursement for expenses such meals and laundry services (when no helper available to carry groceries or laundry), laundry bags, compensation for alternate accommodations.

The landlord replied to this letter on November 30, 2019, setting out the services it would be providing to residents (as set out above).

The tenants testified that they continued to live in the Unit for the entire duration that the elevator was being replaced. They testified that they did not avail themselves of any of the services provided by the landlord, including the \$100.00 compensation. They testified that they did not use any of the volunteer helpers because they did not know if the helpers were properly vetted or had background checks conducted on them. Additionally, they testified that the volunteer helpers' schedule was not compatible with their own schedule. They were not able to provide specific examples of times when they would have needed volunteer assistance and none was available, however.

The tenants argued that the elevator is fundamental to their use of the Unit as living accommodations, as the Unit is on the ninth floor, and as such they believe they are entitled to reimbursement of all the rent they paid during the time the elevator was inoperable.

Landlord's Position

Landlord's counsel conceded that the tenants were entitled to some compensation as a result of the inconvenience caused to them by the elevator being inoperable. He argued, however, that full-indemnification of rent was not appropriate, as the tenants had the benefit of living in the Unit for the entire time the elevator was being replaced. He submitted that a 15% reduction of rent during this time was appropriate.

Landlord's counsel also argued that the tenants should not be reimbursed for the cost of the backpack, as volunteers were available to assist in the carrying of any items the tenants would have used the backpack to transport. He argued that it was not reasonable to expect the landlord to conduct background checks on the volunteers, as they would not be entering the tenants' rental units.

Analysis

The applicable section of the Act is section 27(2), which states:

Terminating or restricting services or facilities

- 27(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.

As landlord agrees the tenants are entitled to a rent reduction, and that one was not granted, I need only consider section 27(2)(b).

Policy Guideline 22 addresses the issue of rent reduction for the termination of a service or facility:

Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant. [...]

Based on the evidence of the parties, I find that there has been a substantial reduction of a service (as conceded by the landlord), and that there was no reduction in rent made to the tenants' monthly rent. Accordingly, it is appropriate for me to make an order to reduce the tenants' rent during the time the elevator was inoperable.

The Act places no requirement on the landlord to compensate a tenant for out of pocket expenses caused by the termination of a service or facility. However, it lies within my discretion to consider all the circumstances (including necessary out of pocket expenses) when determining what an appropriate level of rent reduction would be.

I find that the tenants had full use of the Unit as a living accommodation for the duration of the time the elevator was inoperable. As such, it would be unreasonable to award them a 100% rent reduction. Such an award would only likely be available to them in circumstances where the removal of a service or facility denied the tenants access to the Unit entirely. This is not the case here. The tenants' central benefit of the tenancy agreement (being able to reside in the Unit) was undisturbed.

I find that the tenants were significantly inconvenienced by not having an operable elevator for 14 weeks and having to walking up or down nine flights of stairs every time they left or returned to the Unit.

As the tenants were able to reside in the Unit, uninterrupted, for the duration of the time the elevator was replaced, and that this represented the bulk of the benefit the tenants were receiving from the tenancy agreement, I find that a 15% reduction of rent for the time the elevator was being replaced (14 weeks) is appropriate.

I find that it was not reasonable for the tenants to expect that background checks to be done on the volunteer helpers the landlord arranged for. The tenants gave no evidence as to any negative experiences they had with these volunteers, which may have given rise to their fear or unwillingness to obtain the volunteers' assistance. I find the tenants' unwillingness to use the volunteers' assistance to be unreasonable. As such, I decline to grant any compensation (either by way of additional rent reduction, or reimbursement of the cost) for the backpack.

I order that the landlord pay the tenants \$572.33, calculated as follows:

$$\begin{array}{rcl}
 \$1,181.00 & \text{monthly rent} & \\
 \times 12 & \text{months} & \\
 \hline
 \$14,172.00 & & \\
 & \div 52 & \text{weeks} \\
 \hline
 \$272.54 & \text{weekly rent} & \\
 & \times 14 & \text{weeks} \\
 \hline
 \$3,815.54 & & \\
 & \times 15\% & \text{rent reduction} \\
 \hline
 \mathbf{\$572.33} & &
 \end{array}$$

As the tenants have been partially successful in their application, I order that the landlord reimburse them their filing fee of \$100.00

In summary, I order the landlord pay the tenant as follows:

| | |
|---------------------------|-----------------|
| Rent Reduction (14 weeks) | \$572.33 |
| Filing Fee | \$100.00 |
| Total | \$672.33 |

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the landlord pay the tenants \$672.33. This order may be filed and enforced in the Provincial Court of British Columbia.

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: August 28, 2019

Residential Tenancy Branch