



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVONSHIRE PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, RP

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on January 03, 2020 (the "Application"). The Tenant applied for an order that the Landlord make repairs to the unit or property and for reimbursement for the filing fee.

The Tenant appeared at the hearing. The Agent for the Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The parties provided the correct rental unit address and Landlord name both of which are reflected on the first page of this decision.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Agent testified that the Landlord never received the hearing package or Tenant's evidence. The Agent testified that the Landlord found out about the hearing through an email from the RTB. The Tenant testified that he never served the hearing package and evidence on the Landlord. The Agent was fine with proceeding and dealing with the issues and was fine with the Tenant's evidence being admissible. Given this, I proceeded with the hearing and have considered the Tenant's evidence.

The Tenant confirmed receipt of the Landlord's evidence.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony of the parties and the documentary evidence submitted. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord make repairs to the unit or property?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The parties agreed there is a written tenancy agreement between the Landlord and Tenant in relation to the rental unit. The parties agreed the tenancy started October 15, 2019 and is for a fixed term of one year.

The Tenant sought an order that the Landlord fix one of the elevators in the building. The Tenant's position is that, when called to the 19th floor, the elevator passes the 19th floor, goes to the 20th floor and then comes down to the 19th floor. The Tenant testified that he has asked that the elevator be serviced so it stops at the 19th floor. The Tenant testified that he uses the elevator every day and it goes to the 20th floor before stopping at the 19th floor every day.

The Tenant testified that he was present with the elevator technician and a representative for the Landlord at one of the maintenance calls to show them the issue. The Tenant said that it just so happened that the other elevator opened. The Tenant testified that the Landlord's representative left and did not witness the second elevator going to the 20th floor.

The Tenant testified that he had video showing this issue. He said he did not provide this to the Landlord but did show the elevator technician.

The Tenant submitted emails between him and agents for the Landlord about the elevator dated December 03, 2019, December 18, 2019 and December 19, 2019.

The Agent denied that there is an issue with the elevator. The Agent testified that representatives for the Landlord have attended to look into this issue and did not see an issue with the elevator. The Agent testified that the elevator technician has been there and has not noticed an issue. The Agent testified that the elevator technician cannot fix the issue because they cannot see an issue with the elevator.

The Agent testified that the elevator technician has attended for 15 to 30 minutes and not observed an issue with the elevator. The Agent testified that the technician went to the roof and tested some things and there was no issue with the elevator. The Agent testified that the Landlord has not received any other complaints about the elevator issue.

The Landlord submitted a service log showing the elevator technicians attended the building December 20, 2019 and January 03, 2020 in relation to the issue raised by the Tenant. The service log states that the technicians did not witness the problem but then states:

Never witnessed the problem Checked top floor door lock, it's ok Elevator 2 stops on 19 by car call, it doesn't by hall call. Serviced floor switches and contacts Didn't improve. (emphasis added)

The Agent testified that the Landlord has maintenance done on the elevator monthly.

Analysis

Pursuant to rule 6.6 of the Rules of Procedure, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof in a dispute resolution hearing is on a balance of probabilities, meaning it is more likely than not the facts occurred as claimed.

An elevator is a “service or facility” as defined in section 1 of the *Residential Tenancy Act* (the “Act”).

Section 27(1) of the *Act* states:

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.

An elevator in a multi-storey building is an essential service (see Policy Guideline 22). It is the Landlord’s responsibility to maintain the elevator.

During the hearing, neither party referred specifically to the underlined section of the service log outlined above. Upon re-reviewing the underlined section, I am satisfied on a balance of probabilities that there is an issue with the elevator not stopping at the 19th floor when it is called from the hall, which accords with the Tenant's position.

In the Application, the Tenant states that it takes five minutes for the elevator to open for him given the issue raised. I do not find this to be a serious issue as I do not find a five-minute delay to be unreasonable. However, I am satisfied there is an issue with the elevator and therefore am satisfied the Landlord should fix the issue. Further, I did not understand the Agent to take the position that the Landlord should not have to fix the issue if there is one.

Pursuant to section 62(3) of the *Act*, **I order the Landlord** to have their elevator technicians look into the issue of the elevator on the left not stopping at, or bypassing, the 19th floor when it is called from the hall at the next scheduled maintenance. If the elevator technicians find that there is an issue with the elevator not stopping at, or bypassing, the 19th floor when the elevator is called from the hall, the Landlord is to have this issue fixed within one month of the next scheduled maintenance.

Given the Tenant was successful in the Application, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. The Tenant can deduct \$100.00 from one future rent payment pursuant to section 72(2) of the *Act*.

Conclusion

I order the Landlord to have their elevator technicians look into the issue of the elevator on the left not stopping at, or bypassing, the 19th floor when it is called from the hall at the next scheduled maintenance. If the elevator technicians find that there is an issue with the elevator not stopping at, or bypassing, the 19th floor when the elevator is called from the hall, the Landlord is to have this issue fixed within one month of the next scheduled maintenance.

The Tenant can deduct \$100.00 from one 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 *Act*.

Dated: February 05, 2020

Residential Tenancy Branch