Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes RR, FFT

Introduction

On January 8, 2020, the Tenant applied for a Dispute Resolution proceeding seeking a rent reduction pursuant to Section 65 of the *Residential Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

C.L. attended the hearing with A.D. attending as the Tenant's advocate. B.S. and L.L. attended the hearing as agents for the Landlord. C.L. advised that he was a Tenant of the rental unit as well and was representing Tenant N.S. The representatives of the Landlord acknowledge that C.L. was also a Tenant of the rental unit with N.S. All in attendance provided a solemn affirmation.

A.D. advised that the Landlord was served the Notice of Hearing package by registered mail on or around January 10, 2020 and B.S. confirmed that this was received. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Tenant's Notice of Hearing package.

A.D. also advised that the Tenant's evidence package was served to the Landlord in person on February 26, 2020 and B.S. confirmed that this was received. She advised that the Landlord's evidence was served to the Tenant by registered mail on or around February 20, 2020 and A.D. confirmed that the Tenant received this evidence. As the service time frames of both parties' evidence complies with Rules 3.14 and 3.15 of the Rules of Procedure, I am satisfied that all of the evidence can be accepted and will be considered when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a rent reduction?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on June 1, 2018. Rent was currently established at $2,667.00 per month, including parking, and is due on the first day of each month. A security deposit of $1,250.00 was also paid.

The nine-floor property has two elevators for the use of all the residents and a flood on September 9, 2019 was responsible for damage to these elevators where they only operated intermittently or not at all for a considerable amount of time. A.D. advised that the amount of compensation the Tenant is seeking is difficult to quantify, but the Tenant is requesting compensation in the amount of **$2,667.00** for the loss of this essential service from the period of September 9, 2019 to January 23, 2020, pursuant to Section 27 of the *Act*. He stated that there were approximately two months with no elevators in operation, and approximately six months where there was intermittent operation of one or both elevators.

He submitted that the Tenant requested a rent reduction from the Landlord, in writing, due to loss of access to the elevators. The Landlord responded with their own letter declining compensation as this was due to an “act of god” not the Landlord’s negligence. As such, the Landlord told the Tenant to seek remedy through their own insurance provider. He referenced Policy Guideline # 22 which describes what could be considered an essential service. He also cited the case of *Gates v. Sahota*, 2018 BCCA 375 to support his position that the Tenant should be awarded compensation for this loss.

A.D. had Tenant C.L. confirm that the spreadsheet submitted as documentary evidence accurately reflected the dates that either one or both elevators were out of service and the Tenant confirmed this information. C.L. advised that it would be “hit or miss” if the elevators would show up when called, and sometimes the elevators would not show up at all. He questioned why they were still allowed to use the elevators if there was such significant damage to them. He stated that he relies on the elevators everyday as he needs to get to his car in the parkade, parked six floors down. Otherwise, he has to take the stairs. He stated that his mother came to visit for a weekend, and it was difficult for her to get up and down the stairs. The loss of the elevators was a large inconvenience for the Tenant, and this was not an ideal situation.

He stated that there were two functioning elevators at the start of the tenancy and there is an expectation that these would be functioning throughout their tenancy. He advised that they were required to take the stairs often, that they have to make multiple trips with groceries, and that they had less company over due to these disruptions. He submitted that he leaves the rental unit for work at 5:00 AM and returns home at 6:00 PM, so he cannot speak to the hours that the elevators were or were not functioning, but there “were definitely times when they were not available.”

B.S. advised that they were all surprised by the flood and she referenced news articles, submitted as documentary evidence, to illustrate that there was major rainfall in September 2019 that caused the elevator shafts to flood within 45 minutes, on September 9, 2019. She stated that the Landlord took action immediately, made overtime calls to their elevator maintenance company, and approved any required overtime work. She stated that this company attended the next day to address the issue, that significant damage was discovered, that a significant amount of parts were required to be ordered, and that temporary service could be restored eventually. She stated that one elevator was temporarily repaired on September 23, 2019 and that both elevators were completely restored on January 23, 2019. Regarding the Tenant’s claims on intermittent service of the elevators, she stated that some of these disruptions were for only an hour. She referenced the emails to the elevator repair company to demonstrate that approvals for any repair work were authorized and she drew my attention to the invoices that demonstrate all the work that was completed. This shows that there was not neglect on the part of the Landlord. She could not attest to any evidence that supports that the intermittent service was for only one hour per day; however, she did cite an October 14, 2019 service invoice which indicated that one elevator was only out of service for 20 minutes. She advised that as she parked at the building and was onsite everyday, she can speak to the accuracy of the functionality of the elevators.

L.L. advised that the building contains 58 units and the two elevators service these; however, the adjoining building is owned by the same Landlord and access was opened between the buildings so that residents could use the available elevators of the neighbouring building. To access these elevators, the Tenant would have had to take two additional flights of stairs only. She stated that Technical Safety BC establishes that the average useful life of an elevator is twenty years; however, that life expectancy is increased to 50 years if regularly maintained. She submitted that as this flood and resultant damage was due to an act of god, the Landlord should not be responsible for compensating the Tenant. She reiterated that the Landlord's cost to repair this damage has exceeded $300,000.00 and the Landlord had approved all repair costs. She agreed that the spreadsheet provided by the Tenant accurately reflects the dates where one or both elevators were not operational, but also stated that the intermittent service was sometimes for only one hour per day. She referenced two previous decisions of the Residential Tenancy Branch, submitted as documentary evidence, that support the Landlord's position that compensation is not required.

A.D. advised that the Tenant's position is not that the Landlord acted imprudently, but that the Landlord is contractually obligated to provide two elevators. As the Tenant did not have access to two elevators for a significant amount of time, they must be compensated for this loss, to be made whole.

B.S. advised that the elevators are part of the building but were not part of the tenancy agreement. As such, any loss of use of elevators is not considered a breach of contract by the Landlord. She stated that the Tenants are young, that they lived on a lower floor, and that the access to the elevators in the other building were only an additional two floors. Furthermore, the Tenants did not provide any evidence to demonstrate any financial loss, nor did they submit any evidence that the Tenant's mother was elderly or that she was significantly affected by the loss of elevators. She referenced a number of past decisions of the Residential Tenancy Branch to support the Landlord's position that the Tenants should not be awarded compensation for this issue.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 27 of the *Act* states that a service or facility essential to the Tenant's use of the rental unit must not be terminated or restricted by the Landlord.

Section 67 of the *Act* allows for an Arbitrator to determine the amount of compensation to be awarded to a party if a party has not complied with the *Act*.

Policy Guideline # 22 outlines what would be considered an essential service and states the following:

> 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.

With respect to the Tenant's claims for compensation for loss, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Furthermore, regarding A.D.'s reference to the BC Court of Appeal decision and the Landlord's reference to past decisions of the Residential Tenancy Branch, while I have considered these decisions, I find it important to note that I am not bound by these decisions when rendering this decision.

The first issue I will address pertains to whether the elevators are an essential service. While B.S. advised that the elevators are part of the building but were not part of the tenancy agreement, I find it important to note that Section 1(h) of the *Act* outlines that an elevator would be considered a service or a facility when provided or agreed to be provided by the Landlord to the Tenant. In my view, despite the Landlord's assertion that elevators were not specifically included in the tenancy agreement, it is clear that all

parties understood that this was a service or facility that was included as part of this tenancy.

According to Policy Guideline # 22, there are considerations regarding the determination of whether or not a service or facility is considered essential. However, in this particular case, I find that those considerations do not necessarily pertain to this determination because it specifically states that “an elevator in a multi-storey apartment building would be considered an essential service.” In my view, this is a multi-storey apartment building where elevators were provided to the Tenant as part of the residential complex and I am satisfied these are clearly an essential service or facility as contemplated under the *Act*.

As such, the second issue I will consider is whether the Tenant is entitled to a rent reduction for a loss of this essential service or facility. Regarding the Tenant’s claims for compensation, there is no dispute that from the time period of September 9, 2019 to January 23, 2020 there were varying disruptions in the availability of one or both elevators. While it is evident that the Landlord understood their requirement of Section 32 of the *Act* to repair and maintain the property and that the Landlord did immediately take steps to mitigate this issue, and made every effort to repair it in a timely manner, the undisputed evidence is that there were varying disruptions to this essential service or facility during this time period. Despite the Landlord’s assertion that they should not be responsible for compensation as this was an “act of god”, I am satisfied that an essential service that was provided to the Tenant by the Landlord was disrupted for a period of time and therefore, the Tenant should be entitled to compensation.

As noted above, when establishing the amount of compensation owed, the onus is on the Applicant to provide evidence that substantiates the amount of compensation claimed. I find it important to note that some considerations in this determination could come from Policy Guideline # 22 that would help establish justification for said compensation. Factors such as whether this essential service was “necessary, indispensable, or fundamental” and 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.”

When reviewing the totality of the evidence, there was no dispute of the Tenant’s spreadsheet recording of the complete elevator outages noted. As such, by my calculation, there were a total of 34 days where neither elevator was available for use. Furthermore, there was no dispute of the Tenant’s spreadsheet recording of only one elevator being available. Therefore, by my calculation, there were a total of 63 days

where only elevator was available for use. There was however, a dispute over the level of intermittent service of one elevator for 16 days.

In considering the amount of compensation awarded to the Tenant for the 34 days where neither elevator was available for use, I accept that because he required getting to his car daily, this outage would have impacted him at least twice a day. Furthermore, I also accept that this inconvenience would have made ordinary tasks such as getting groceries to be more onerous. Moreover, I accept that his mother, elderly or not, had no choice but to take the stairs during the one weekend. While B.S. and L.L. advised that the Tenant had access to the elevators in the adjoining building, they made no submissions on whether they advised the Tenant that this alternative was available as opposed to taking the stairs. However, the Tenant did not make any submissions whether or not he was aware that these other elevators were available to him either. As the Tenant provided scant evidence with how not having elevators directly affected him on a daily basis, I find that this impacts the amount of compensation awarded.

Consequently, based on the limited evidence submitted, I am satisfied that the Tenant has substantiated a claim for compensation, broken down as follows. Due to both the elevators being unavailable for 34 days, I grant the Tenant a monetary award of 10% of the monthly rent of $2,667.00 for those days ($2,667.00 / 30 days per month X 10% X 34 = **$302.26**).

In considering the amount of compensation awarded to the Tenant for the 63 days where only one elevator was available for use, for the same reasons as above, I accept that the Tenant suffered a loss. However, as there was one elevator available, I am satisfied that the Tenant's loss would be broken down as follows. Due to one elevator being unavailable for 63 days, I grant the Tenant a monetary award of 5% of the monthly rent of $2,667.00 for those days ($2,667.00 / 30 days per month X 5% X 63 = **$280.04**).

Finally, in considering the amount of compensation awarded to the Tenant for the 16 days where there was only intermittent use of one elevator, as the Tenant was at work for the majority of the day and could not speak directly to this intermittent availability, and as B.S. was at the rental unit every day, I am satisfied on a balance of probabilities that this intermittent service was minimal and did not impact the Tenant greatly, if at all. As such, I grant the Tenant a monetary award in a nominal amount of **$10.00**.

As the Tenant was successful in these claims, I find that the Tenant is entitled to recover the $100.00 filing fee paid for this application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a monetary award as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Loss of service or facility	$592.30
Recovery of filing fee	$100.00
TOTAL MONETARY AWARD	**$692.30**

Conclusion

The Tenant is provided with a monetary award in the amount of **$692.30** in satisfaction of these claims. Accordingly, the Tenant may deduct this amount from the next month's rent.

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: March 29, 2020

Residential Tenancy Branch