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*.

The Tenant attended the hearing with A.D. attending as his advocate. B.S. and L.L. attended the hearing as agents for the Landlord. 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 12, 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 24, 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 February 21, 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 April 15, 2019. Rent was currently established at $2,100.00 per month and is due on the first day of each month. A security deposit of $1,050.00 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 **$2,100.00** 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.

A.D. had the Tenant 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 stated that it was not correct; however, she then stated that this was accurate “overall”. She advised that “at some point” she took pictures of the dates where both the elevators were completely out of service and listed those dates as: September 19 to 29, October 1, 11, 13, 14, 30, and November 1 to 3. She stated that there were times where someone would be moving in and their belongings were blocking the elevators and access to her mailbox. She has pictures of these incidents on October 30, and November 1 and 2. She advised that she was away for US Thanksgiving and from December 23-30 so she could not speak to the state of the elevators on these dates; however, the elevators were not working on December 31, 2019.

Regarding the impact the elevator outages caused, she stated that she parked her car on P1, and she would have to walk seven flights of stairs to get there. She stopped having friends over, getting groceries was more onerous, and her daily life was more difficult. She worked from 9:00 AM to 5:30 PM but she would occasionally come home for lunch. She submitted that there was an issue with bedbugs in the building in September, so she had to carry 20 bags of clothing up and down the stairs as part of this remediation. However, she did not buy a new bed as it would have been too difficult without use of the elevators. She stated that her mother was scheduled to visit but this was cancelled as her mother had knee surgery and would be unable to walk the stairs. The Tenant stated that there were two functioning elevators at the start of the tenancy, albeit not reliable, and there was an expectation that these would be functioning throughout her tenancy.

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 but the service was intermittent as the repair company had to check this twice a day, for a total of an hour per day, and to repair parts. She questioned the Tenant about her input into the accuracy of the spreadsheet depicting dates of elevator outages and the Tenant stated that she “thinks” she contributed to the accuracy of the document and that she “believed” that she did.

B.S. 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 reiterated that the Landlord’s cost to repair this damage has exceeded $300,000.00 and the Landlord had approved all repair costs. She 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. She stated that the Tenant would be aware of this as the adjacent building had a shared gym, conference room, and outdoor patio. She stated that “lots of people use it” so the Tenant should have also been aware of this.

The Tenant stated that it was never communicated to her that the elevators in the adjoining building were available for her to use and she never thought about this as an option. However, if she were to use these, it would be a fair distance as she would have had to walk four flights of stairs to access the elevators in the next building. She stated that the first time that there was any notification of a problem with the elevators in her building was on October 13, 2019.

B.S. stated that there was no communication about the elevators in the other building as the Tenant was familiar with the two buildings. She stated that she kept in touch with the Tenant since September 11, 2019 via email about the status of the elevators in her building, “amongst other issues”.

The Tenant refuted that there was no communication about the elevators in the building next door and she stated that there was not information about when the elevators in her building would be operational again.

B.S. confirmed that there was no mention of the elevators in the next building being an option and she stated that there was no communication about the status of the repair of the elevators as it was a massive job and there was uncertainty from the elevator repair company of the repair timeline.

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. The elevators are an essential service in this situation, as defined by the *Act*, and they are a necessity as the Tenant lived on the sixth floor, that she parked her car on P1, and that her access to the rental unit was limited by the loss of the elevators. As the Tenant did not have access to two elevators for a significant amount of time, she must be compensated for this loss, to be made whole. 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.

B.S. advised that the elevators are part of the building but were not part of the tenancy agreement. She submitted that the case that A.D. relies on cannot be considered as the fact pattern is different and the loss of elevators was only a small component of that decision. 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 the building was brand new in 2005 and as this flood and the resultant damage was due to an act of god, the Landlord should not be

responsible for compensating the Tenant. To support this, she referenced a number of past decisions of the Residential Tenancy Branch to support the Landlord's position that the Tenant 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 some dispute of the Tenant's spreadsheet recording of the elevator outages noted; however, while B.S. questioned the Tenant's accounting of this, I do not find that that she made any submissions to directly contradict the outages as outlined. Consequently, I find that I prefer the Tenant's evidence on this point. As such, by my calculation, there were a total of 34 days where neither elevator was available for use, there were a total of 63 days where only one elevator was available for use, and there were a total of 16 days where there was an intermittent level of service of one elevator.

In considering the amount of compensation awarded to the Tenant for the 34 days where neither elevator was available for use, I accept that her vehicle was parked in the parkade and that this outage would have impacted her access to this; however, she did not specifically address the direct impact to her. Although, I do also accept that this inconvenience would have made ordinary tasks such as getting groceries to be more onerous. Moreover, I accept that the visit of her mother was cancelled due to the elevator issue. In addition, as there was an apparent bed bug issue that did not appear to be her fault, I accept that she would have had substantial difficulty taking 20 bags of clothing up and down the stairs and that the lack of elevators prevented her from replacing her bed. Finally, I am satisfied that the Landlord did not advised her that there were functioning elevators in the adjoining building. Consequently, based on the 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 15% of the monthly rent of $2,100.00 for those days ($2,100.00 / 30 days per month X 15% X 34 = **$357.00**).

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 the Tenant noted that she was on holiday for specific dates, I have removed November 28 and 29, and December 23, 24, 25, 26, 27, and 29 from those calculations. As such, as there was only one elevator available for 55 days, I am satisfied that the Tenant's loss would be broken down as follows. Due to one elevator being unavailable for 55 days, I grant the Tenant a monetary award of 8% of the monthly rent of $2,100.00 for those days ($2,100.00 / 30 days per month X 8% X 55 = **$308.00**).

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 neither party provided much evidence outlining the specific intermittent availability, I am satisfied on a balance of probabilities that there was intermittent service but it was of minimal impact. As there was at least one elevator available, and as the evidence is limited with how much this affected the Tenant, I grant her a monetary award in a nominal amount of **$20.00**.

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	$685.00
Recovery of filing fee	$100.00
TOTAL MONETARY AWARD	**$785.00**

Conclusion

The Tenant is provided with a monetary award in the amount of **$785.00** 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