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 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 November 1, 2016. Rent was currently established at $1,392.00 per month and is due on the first day of each month. A security deposit of $545.00 was also paid. The Tenant advised that a pet damage deposit in the amount of $150.00 was paid and B.S. was not sure of the accuracy of this; however, this detail is not pertinent to this Decision.

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 **$1,392.00** 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 confirmed this information, “to the best of his recollection.” The Tenant 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 the intermittent service of the elevators was frustrating as he would never know if the elevators would arrive or not. This led to a reduction in him getting groceries, it limited his life outside of the rental unit, and it changed the decisions of how he lived. He stated that he works graveyard shifts and he moves thousands of pounds of products at work. Consequently, he is physically tired and extremely fatigued, and when he gets home late at night, the last thing he wants to do is take the stairs. He described the

intermittent service of the elevators as “sparse”, but they were mostly unavailable, so he was often resigned to taking the stairs.

He explained that he had a 14-pound dog that suffered from medical difficulties, so he had to carry it up and down the stairs to take it out. In addition, he would sometimes dog sit for friends and he would repeatedly have to take the dog out and would need to take the stairs often. Furthermore, both him and his partner smoke, which requires them to take the stairs to go outside to do so. In addition, he stated that he suffers from sore knees and that both him and his partner suffer from severe medical conditions, which leave them in moments of being unwell and fatigued. He advised that the medications they take have particular side effects and also exacerbate the feelings of fatigue as well. Finally, he stated that there have been occasions where the side effects would force him to have to return to his rental unit urgently, and without the availability of the elevators, having to take the stairs was simply not feasible or realistic.

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 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.

L.L. advised that the building is a 14-year-old, 10 storey, two parkade building containing 58 units, and the two elevators service these units. 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 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 stated that the Landlord did everything necessary to approve costs and fix this problem as quickly as possible, and she is not sure what more the Landlord could have done. She advised that the intermittent service was due to the repair company waiting for parts.

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*. They are a necessity as the Tenant lived on the fifth floor, the Tenant had a dog and also dog sat occasionally, his ability to grocery shop was impacted, and the nature of his job and medical conditions emphasized his need for the elevators to be available and functioning. He referenced Policy Guideline # 22 which describes what could be considered an essential service and 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. He reiterated that the Tenant suffered from a total of four months of varied, disrupted elevator service, where two of these months the elevators were not operable at all.

B.S. advised that the elevators are "just a feature" 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. Furthermore, the disruption in elevator service was due to an act of god. The Landlord did not neglect this problem, they did not intend to restrict this service or facility, and they went above and beyond to spend the money and have this problem fixed in as timely a manner as possible. 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. While she did not question the legitimacy of the Tenant's medical issues, she noted that he did not provide any evidence to substantiate his conditions.

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 the Tenant's undisputed evidence of the nature of his work, the daily impact on his life not having an available elevator, and the medical conditions that necessitated a need for working elevators. I accept that the reduction of this service or facility represented a significant loss to the Tenant's daily life.

While B.S. advised that the Tenant had access to the elevators in the adjoining building, neither party made specific submissions on whether the Tenant was or was not made aware that this alternative was available as opposed to taking the stairs. Even if the Tenant had known about the access to the other elevators, I still find that the Tenant's daily life would have been affected by the increased inconvenience of having to navigate through another 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 20% of the monthly rent of $1,392.00 for those days ($1,392.00 / 30 days per month X 20% X 34 = **$315.52**).

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. While there was one elevator available, I am still satisfied that the Tenant's specific circumstances justify a loss broken down as follows. Due to one elevator being unavailable for 63 days, I grant the Tenant a monetary award of 12% of the monthly rent of $1,392.00 for those days ($1,392.00 / 30 days per month X 12% X 63 = **$350.78**).

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 there was limited evidence from either party with respect to the actual specifics of the intermittent availability, I am satisfied on a balance of probabilities that there was some level of intermittent service. While there was at least one elevator still available, based on the Tenant's specific conditions, I find that this uncertainty of whether or not an elevator would be available would have still had some impact on the Tenant. As such, I grant him a monetary award in a nominal amount of **$50.00**.

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	$716.30
Recovery of filing fee	$100.00
TOTAL MONETARY AWARD	**$816.30**

Conclusion

The Tenant is provided with a monetary award in the amount of **$816.30** 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