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 July 1, 2007. Rent was currently established at $1,656.00 per month, due on the first day of each month. A security deposit of $637.50 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 **$3,312.00** 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 that this was “accurate to the best of his[sic] recollection”. The Tenant advised that the availability of the elevators would be described as “intermittent at best” if the elevators would show up when called, and sometimes the elevators would not show up at all. He stated that he is a photographer and works from home most days, from 9:00 AM to 5:00 PM. He submitted that his equipment for work weighs between 80 and 100 pounds and he takes this to jobs at least three times per week. Thus, without knowing when or if elevators would be available, he would have to budget more time, make multiple trips, and taking the stairs was a hardship to and from the parkade where his car was parked. In addition, he stated that he has a 45-pound dog that he must walk at least three times per day. The uncertainty of having an elevator also affected his ability to shop. Finally, he advised that his girlfriend had planned to

move in with him in October 2019; however, this was not possible without working elevators. The hallway corridors were also full of other tenants' belongings, which made moving difficult. Although his girlfriend was ready to move in October 1, 2019, she did not officially move in until December 2019. Out of the Tenant's $1,656.00 rent, she was expected to pay him $900.00 per month to live there, so this partially formed the basis for his calculation of his loss of rent that he is seeking. He estimated that he would expect to pay 25% to 30% less for an equivalent rental unit without an elevator, but he would not rent another unit that did not have an elevator available. 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 his tenancy.

B.S. questioned if the Tenant could recollect that the specific dates on the spreadsheet were accurate; however, the Tenant advised that he could not confirm the accuracy of specific dates. She then asked how he could be sure of these dates or how much he contributed to the creation of this spreadsheet and he replied that it was accurate "to the best of his knowledge". He stated that he worked on the table and forwarded the information to A.D., but A.D. stated that they worked on it collaboratively.

She questioned the Tenant's solemnly affirmed testimony that he had a dog and the Tenant confirmed this information. She outlined that his tenancy agreement expressly indicated that pets were not allowed in the rental unit and that a pet deposit was never paid. She then questioned the Tenant's solemnly affirmed testimony that he had his girlfriend move into the rental unit with him, and the Tenant stated that he would prefer not to answer this question. A.D. also then interjected because it was his opinion that these facts were not relevant to the Tenant's Application. She submitted that the Tenant's tenancy agreement contained a no pets clause and listed him as the only person permitted to live in the rental unit. As the Tenant never sought permission from the Landlord to permit pets or to allow another occupant to live with him, these constituted breaches of the tenancy agreement that could jeopardize his tenancy.

At this point, I interrupted B.S. to inform her that while her line of questioning may form the basis for ending a tenancy under a One Month Notice to End Tenancy for Cause, this was not relevant to the Applicant's claim for a rent reduction. As such, I requested that she focus her submissions on the relevant matters.

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 Tenants' 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 stated that 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 three additional flights of stairs only. She stated that the Tenant appeared to be a bodybuilder so she assumed that he would have known about this access route and used the gym that was in the other building.

L.L. advised that as this flood and resultant damage was due to an act of god, and as the Landlord mitigated this issue by taking all the necessary actions and spending considerable money to have this repaired as quickly as possible, the Landlord should not be responsible for compensating the Tenant. She also stated that the building manager takes all new tenants on a tour of both buildings so the Tenant should have known about this access route. As well, the Tenant parks his car in the parkade of this adjoining building. She stated that the Landlord did not post notes specifically informing tenants that they could use the elevators of that other building as there was increased traffic that was noted between the buildings. She also stated that "everyone knows" about access to this other building as there is a pool and storage there.

A.D. questioned the Tenant if he was aware of this access route to the adjoining building so that he could access those elevators and the Tenant confirmed that he knew about this. He stated that he considered using these other elevators, but he did not because it was an additional 30 yards to walk there and it was inconvenient for him to do so.

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 they are an essential service or facility of this tenancy. 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. As the Tenant did not have access to two elevators for a significant amount of time, he must be compensated for this loss, to be made whole. He suffered a rental loss of $900.00 per month for three months as his girlfriend was unable to move in and pay him this amount. Furthermore, the Tenant is owed compensation due to the inconvenience suffered from not having consistent access to elevators and consequently, having to adjust his routine with a dog and his occupation accordingly.

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 reiterated that there is a clear history of the Landlord's records demonstrating that efforts were made to immediately address the issue, that repairs and overtime were always approved to minimize disruptions, and that significant expenses were incurred by the Landlord to correct this problem. As well, she stated that the Tenant was clearly aware of the option to use the elevators in the adjoining building; however, it was his own preference not to. Furthermore, she submitted that the Tenant did not provide any evidence to support any financial loss that he suffered. 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 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 were limited submissions from both parties with respect to 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 he worked from home and would leave the rental unit at least three times a week for work, that he would have to walk his dog multiple times per day, that it delayed his girlfriend moving in with him for several months, and that it was a general inconvenience. However, a substantial basis for his determination of how much compensation he believed he was owed was based

on the loss he suffered in anticipated rent that he suggested he would have received from his girlfriend. In my view, I find that this detracts from his claims of how much this outage actually impacted his daily life personally and is more of an attempt to recover as much compensation as he can. Further to this point, while he made efforts to detail the inconvenience of not having elevators and the effect it had on his work and pet routines, he acknowledged that he parked his vehicle in the adjoining building's parkade, that he was aware that this building had functioning elevators, and that he could access these elevators from his rental unit. However, the reason he did not use these elevators is because it was not convenient for him. While I acknowledge that it was at least an additional 30 yards to access these elevators, it does not make sense to me that if the Tenant was so inconvenienced by the lack of elevators, that he would still choose to carry all his photography equipment up and down the stairs as opposed to walking marginally further and taking the elevator in the other building, especially given that his vehicle was parked below this adjacent building anyways.

Based on these factors, while I have no doubt that there was some change in lifestyle that would have accompanied an absence of elevators for this period of time, I am not satisfied that the Tenant has substantiated that his daily routine was as significantly impacted as he alleges. Moreover, the Tenant knowingly had access to the elevators in the building next door that would have substantially minimized the inconvenience to him. Consequently, I am satisfied that the Tenant has substantiated a claim for compensation, broken down as follows (NB: I acknowledge that the Tenant is seeking total compensation in the amount of $3,312.00; however, this compensation calculation is based on the monthly rent as this was the best way to illustrate the amount of compensation the Tenant actually substantiated via his submissions). Due to both the elevators being unavailable for 34 days, I grant the Tenant a monetary award of 5% of the monthly rent of $1,656.00 for those days ($1,656.00 / 30 days per month X 5% X 34 = **$93.84**).

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 only 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 2.5% of the monthly rent of $1,656.00 for those days ($1,656.00 / 30 days per month X 2.5% X 63 = **$86.94**).

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 little evidence

from either party with respect to the actual loss of service, I am satisfied on a balance of probabilities that this intermittent service was minimal, but 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	$190.78
Recovery of filing fee	$100.00
TOTAL MONETARY AWARD	**$290.78**

Conclusion

The Tenant is provided with a monetary award in the amount of **$290.78** 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 25, 2020

Residential Tenancy Branch