



Dispute Resolution Services

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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

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

The tenant appeared with his counsel AD, while the landlord was represented by BS and LL in this hearing. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As the parties or their representatives were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

Issues

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to recover the cost of the filing fee from the landlord for this application?

Background and Evidence

Both parties provided written submissions and evidence, as well as sworn testimony in the hearing. While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions

and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began in February of 2013. Monthly rent is currently set at \$2,641.00, payable on the first day of every month.

The tenant is applying for the following rent reductions equivalent to two month's rent in the amount of \$5,282.00 as broken down below, plus recovery of the filing fee:

Item	Amount
17% Rent Reduction for 240 days of only partial or intermittent use of elevator	\$3,522.00
40% Rent Reduction for 50 days of completely no service or intermittent use of elevator	1,760.00
Total Monetary Order Requested	\$5,282.00

It was undisputed by both parties that the tenant lost the use of one or both elevators during a period of time due to a flash flood that took place on September 9, 2019. The damage was significant, and the building suffered extensive damage that required significant repairs to the two elevators in the 9 floor building.

The tenant provided extensive records of when the tenant lost use of the elevators, either in part, or both elevators. In addition to being out of service, the elevators would function intermittently. The tenant provided detailed records of when one or both elevators would not be functioning properly, or not at all. The tenant submits that there were issues prior to September 10, 2019.

The tenant is applying for the above rent reductions as he feels that the elevators are essential to the tenant's use of his rental unit. The tenant submits that he not only suffered a substantial loss of this essential facility or service, but that the loss was aggravated by the fact that he relied on the elevators due to his back injury he sustained in 2017, and nature of work that requires him to frequently meet clients. The tenant resides on the fifth floor, and in order to access his car he has to travel to the P2 to access his vehicle. The tenant testified that due to his back injury, he had difficulty climbing stairs, as well as lifting heavy objects.

The tenant testified that he often met clients in his home office four to five days a week, and as a result of the elevator issues, he had to travel outside of the home to meet clients in other locations, which included cafes and restaurants. The tenant testified that

not only did the frequent meetings cause him considerable physical pain as he had to take the stairs, but also a monetary loss averaging \$20.00 to \$35.00 per day for the cost of traveling to see his clients, which included added expenses such as mileage, gas, and parking. The tenant testified that the nature of his job often entailed last minute meetings, which would take place on average twice per week, and timeliness was an issue.

The tenant testified that he had difficulty transporting groceries from his vehicle to his rental unit, often having to make multiple trips. The tenant testified that he made efforts to adjust his lifestyle in order to accommodate the loss of use of the elevator such as having less guests, and scheduling his meetings in order to make less frequent trips. The tenant testified that he also relied on the delivery of packages to his door, which was impacted by the lack of elevator service.

The tenant testified that he has a secondary job which involves handling heavy equipment. Due to the lack of elevator service, the tenant had to request the assistance of friends to assist him moving the equipment, and compensating them with meals for their time and labour. The tenant testified that he often had to store the equipment for additional days due to his inability to move the equipment.

The landlord testified that both elevators were functional as of January 24, 2020, and although the landlord does not dispute that the tenant's access to the elevators was impacted for a period, the landlord did not intentionally withdraw or terminate that facility, nor was the loss of use due to the landlord's deliberate or negligent act or omission. The landlord testified that due to the flash flood, the elevators required significant repairs, and the landlord not only fulfilled their obligation to repair the damage as soon as possible, the landlord did their best to mitigate the impact that the repairs would have on the tenant and other occupants.

The landlord testified the water damage was substantial and 12 feet of water entered both elevator shafts. The landlord testified that they took immediate action and called the company that provides the maintenance service for the elevators. The technician determined the damage to be extensive, and returned the next morning with a crew to commence repairs.

The landlord testified that they had approved all overtime to expedite the repairs, and the delays were due to the delay in obtaining replacement parts such as the electrical panel. The landlord testified that they performed temporary repairs to restore the use of one elevator as soon as possible to lessen the impact on tenants. The landlord testified

that the damage was so extensive that the temporary repairs were not sufficient, and the landlord was concerned about safety issues such as rusty cables.

The landlord testified that they sustained \$335,000.00 in repair costs associated with this unanticipated repair, and that they performed the repair in a timely manner considering the amount of damage, and with consideration of restoring as much service as possible to the tenants.

The landlord testified that the tenants were provided the use of an alternative elevator located in the building next door. The landlord testified that the elevator could be accessed through the second level, and was accessible to all tenants. The landlord testified that a meeting room was also available to the tenant next door. The landlord disputes the tenant's monetary claim stating that the landlord was only responsible for the losses associated with this tenancy, and not the tenant's use of the facility for his work. Furthermore, the landlord feels the tenant did not sufficiently support the losses claimed.

Analysis

The tenant's application for rent reduction was made in accordance with the following provisions of section 65 of the *Act* which allows me to make an order regarding past and future rent:

65 (1) *Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:...*

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;...

The landlord's obligations to maintain and repair facilities in a rental property are set out in section 32(1) of the *Act* which reads in part as follows:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law,...

Section 27 of the Act establishes the basis for a landlord to terminate or restrict services or facilities with respect to a tenancy:

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.

(2) *A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord*

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

RTB Policy Guideline #22 provides further clarification of what constitutes an essential facility or facility:

B. ESSENTIAL OR PROVIDED AS A MATERIAL TERM

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.*

I find the use of an elevator an essential service as the tenant resides in a multi-storey building. I must now determine whether the tenant is entitled to any financial compensation in the amount of the rent reductions applied for.

In assessing his claim, I first note that the party applying for dispute resolution bears the responsibility of demonstrating entitlement to a monetary award. Based on the evidence before me, I accept that the landlord had temporarily withdrawn a facility or service that

was part of the original package of services and facilities that the landlord committed to provide to the tenant. I accept the testimony of the tenant that due to the nature of a previous injury, he relies on the use of an accessible elevator to and from his rental unit on the fifth floor.

Based on the tenant's testimony, I find that the tenant did suffer the loss of one or both elevators in his building, and as a result had to make accommodations that affected his daily life. Although I acknowledge that the tenant was impacted by the loss of use of one or both elevators during the referenced time periods, I am not satisfied that the tenant provided sufficient evidence to support the rent reductions claimed

The tenant referenced several expenses in his testimony such as the cost the cost parking and travelling to meet clients, as well as the cost of storing equipment and reimbursing friends for their assistance. However, these amounts were not supported by any witness testimony or any actual receipts or invoices. Furthermore, I find that the landlord not only fulfilled their obligations under section 32 of the *Act* to perform repairs, but exceeded them by acting in a timely manner to mitigate any loss of use suffered by the tenant. I accept the landlord's testimony that the landlord provided an alternative elevator and meeting room for the tenant, and although inconvenienced by the loss of use of the service, the tenant was provided with a reasonable alternative given the circumstances. I am not satisfied that the tenant is entitled to a rent reduction in the amounts claimed, but I do find that the tenant did suffer a loss of a use of an essential service that reduced the value of his tenancy for at least the period of 50 days when both elevators were inaccessible to the tenant.

Residential Tenancy Branch ("RTB") Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

Although I am satisfied that the tenant lost the use of an essential facility, I am not satisfied that the tenant had supported the true value of his loss. As per RTB Policy

Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the tenant nominal damages of \$10.00 for each of the 50 days the tenant did not have the use of both elevators, for a total monetary order of \$500.00.

I allow the tenant to recover the \$100.00 filing fee for this application.

In order to implement the monetary awards granted in this application, I order the tenant to reduce his future monthly rent payment until the full amount is paid.

Conclusion

I issue the tenant a monetary order in the amount of \$600.00. In order to implement the monetary awards granted in this application, I order the tenant to reduce his future monthly rent payment until the full amount is paid.

The remainder of the tenant's application is dismissed without leave to reapply
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: April 8, 2020

Residential Tenancy Branch