



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES LIMITED  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RP PSF RR FFT

### Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) for a monetary order in the amount of \$680.00 for repairs to the unit, site or property, for an order directing the landlord to provide services or facilities agreed upon but not provided, for a rent reduction and to recover the cost of the filing fee.

The tenant PS (tenant) and an agent for the landlord ES (agent) attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence in documentary form prior to the hearing and to provide testimony during the hearing. Only the evidence relevant to my decision has been referred to in this decision.

Neither party raised any concerns regarding the service of documentary evidence during the hearing. I find the parties were sufficiently served as a result as both parties confirmed having been served with documentary evidence and having the opportunity to review that evidence prior to the hearing.

### Preliminary and Procedural Matters

At the outset of the hearing, the parties confirmed that the building elevator was repaired as of March 27, 2020. As a result, I find the repair order and order to provide elevator service is now moot and will not be considering either at this hearing. Given the above, I will consider only the tenants' claim for a rent reduction and for their filing fee.

In addition to the above, the parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties.

Issue to be Decided

- Are the tenants entitled to a rent reduction under the Act related to the loss of elevator use?
- Are the tenants entitled to the recovery of the cost of their filing fee under the Act?

Background and Evidence

The tenancy began on June 1, 2005. The building has one elevator that services multiples floors of an apartment building. The tenants live on the fourth floor.

The tenant testified that the tenant and their partner are dependent on the elevator for their employment and daily activities, such as bringing their snowboard equipment, musical gear, photography equipment, groceries, laundry and other personal items up and down to and from the rental unit. The tenant stated that their partner has speakers that weigh 400 pounds that they use on a regular basis and that are too valuable to be stored in a storage unit. The tenant added that they have 50 pounds of props and cameras for their business as a photographer. The tenant stated that elevator was out of service between February 11, 2020 and March 27, 2020.

The tenants are seeking \$20.00 per day compensation for loss of use of the elevator and stated that they arrived at that valuation by taking their average work income of \$40.00 to \$50.00 per hour and estimating that they spent an average of 30 minutes extra per day to use the stairs versus the elevator and are seeking \$20.00 per day as compensation for the loss of use of the elevator. The parties agreed that monthly rent is currently \$1,419.00 per month.

The tenant stated that they are not able to put their life on hold when the elevator is down and that the tenant injured their back on or about February 20-22, 2020, which caused the tenant to delay a photography job due to the elevators not being functional. The tenant submitted a letter to the landlord dated February 20, 2020 in evidence.

There is no dispute that a notice was placed in the building regarding the elevator repair on February 13, 2020. The tenant noted that the notice mentioned snow, which the agent stated was in error from a previous template they used.

The agent stated that their on-site manager had assisted others who required assistance during the elevator repair downtime. The tenant stated that this was not

mentioned by way of a notice and that the tenants would not have asked a manager to life their belongings as they didn't feel that was the right thing to do and just wanted the elevator repaired.

The agent testified and submitted documentary evidence to support that the initial cause of the elevator failure ended up being a much bigger issue involving accessing a buried elevator EMT (electrical mainboard transmitter) that had an electrical short and was filled with sand. The documents support that the EMT work involved locating, accessing, sourcing an outdated part, and arranging for the repair once a replacement part arrived. The agent stated that they approached two elevator companies over the course of two weeks and that the elevator was functioning again as of March 27, 2020. The agent clarified that they thought at first the repair would be relatively quick before they were advised the EMT was the issue and that sourcing the part was problematic, as was the re-routing of the wiring to the EMT above-ground.

The tenant stated that between February 27, 2020 and March 12, 2020, there was no information or updates, which the agent disputed by stating that there were weekly updates posted. The tenant also stated that one month for an elevator repair quote is too slow and that they feel the landlord did not act quickly enough. The agent stated that one elevator company was troubleshooting, and it was not until they advised they could not repair the elevator that they knew that problem was larger than they had expected. The agent stated that they rely on elevator repair experts for elevator repair advice.

### Analysis

Based on the above, and on a balance of probabilities, I find the following.

#### *Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Firstly, section 32(1) of the Act applies and states:

**Landlord and tenant obligations to repair and maintain**

**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, and

(b) **having regard to the age**, character and location of the rental unit, makes it suitable for occupation by a tenant.

[Emphasis added]

I find the tenants have failed to provide sufficient evidence that the landlord did not maintain the elevator given that the building and elevator is older than the almost 16-year tenancy before me.

I will now address section 27(1) of the Act, which applies and states:

**Terminating or restricting services or facilities**

**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.

I find that the tenants provided insufficient evidence that the landlord terminated the use of the elevator or restricted its use. In other words, I find that a repair to an elevator is

beyond the control of the landlord and that given the scope of the repair being related to the elevator EMT, that the landlords acted in a reasonable timeframe. I also find that the landlord relying on the expertise of the elevator repair technician is a reasonable position to take and was taken in the matter before me.

I find; however, that the tenants did suffer a loss of use of the elevator due to an unexpected repair for a period of February 11, 2020 to March 26, 2020, which is a total of 45 days. I find the amount being claimed by the tenants to be excessive for the following reasons. Firstly, the tenants have based their \$20.00 per daily rate of compensation based on their employment and this is not a commercial tenancy, it is a residential tenancy; therefore, I find their employment rate is not applicable, the rent is applicable. Secondly, the monthly rent is \$1,419.00 per month, which means for an average month of 30 days, the daily rental rate is \$47.30 per day. I find that the \$20.00 per day rate is just over 42% of the \$47.30 daily rent rate and that the elevator does not equal 42% of the value of the tenancy per month. As the tenants still had their rental unit to use and enjoy, I find that the tenants only suffered a loss in the value of their tenancy in the amount of 7.5%, which reflects a loss of \$3.55 of the daily rental rate value for a period of 45 days when the elevator was in need of repair and awaiting parts for the repair. I also find that 7.5% is reasonable given the evidence presented in this matter.

Therefore, while I find the tenants have failed to prove a breach of the Act on the part of the landlord, I find the tenants' tenancy was devalued by the amount of \$159.75. I have arrived at that amount by using \$3.55 per day as described above and multiplying that amount by the 45 days the elevator was awaiting repair.

As the tenant's claim was only partially successful, I grant the tenants  $\frac{1}{2}$  of their filing fee, in the amount of \$50.00 pursuant to section 72 of the Act.

Based on the above, I grant the tenants a one-time rent reduction from a future month of rent in the amount of **\$209.75**, pursuant to sections 62(3), 67 and 72 of the Act.

### Conclusion

The tenants' application is partially successful.

The tenants have been granted a one-time rent reduction from a future month of rent in the amount of \$209.75, pursuant to sections 62(3), 67 and 72 of the Act.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 1, 2020

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Residential Tenancy Branch