



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hollyburn Properties Ltd and [tenant
name suppressed to protect privacy]

DECISION

Dispute Codes **RR, OLC, FFT**

Introduction

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

- Authorization to reduce rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order that the landlord comply with the *Act*, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agents.

As both parties were present service of documents was confirmed. The parties each testified that they had been served with the respective materials. Based on the testimonies I find each party was served with the materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a rent reduction?

Should the landlord be ordered to comply with the *Act*, regulations or tenancy agreement?

Are the tenants entitled to recover the filing fee from the landlord?

Background and Evidence

The parties agree on the following facts. This periodic tenancy began in March 2015. The current monthly rent is \$2,821.00 payable on the first of each month. The rental unit is a suite located on the fourth floor of a multi-unit building. The rental building has one elevator that services all the floors.

The parties agree that for a period of approximately 8 weeks from February, 2020 to March, 2020 the elevator of the rental building was out of service. The tenant testified that during this time they needed to use the stairs to access their rental suite. The tenant testified that this was quite burdensome to leave their home to go to work, buy groceries, run errands or have people over. The tenant submits that they had a pre-existing leg injury which made climbing and descending the stairs to be quite painful. The tenant is seeking a retroactive rent reduction of \$1,280.00, approximately 20% of the monthly rent paid during this period.

The landlord submits that the elevator malfunction was unexpected and unavoidable due to the age of the building. The landlord testified that they took all reasonable measures to have repairs completed in a reasonable timeframe. The landlord submits that they are aware of the inconvenience caused to the tenants and have offered a one-time lump sum offer of \$310.50, approximately 6% of the monthly rent for this period, in consideration of their loss.

The tenant also seeks an order that the landlord enforce the building rules by having another occupant of the building stop smoking in and around the building. The tenant testified that since the tenancy has started this has been an ongoing issue. The tenant gave evidence that they first began making written complaints to the landlord in November 2018 after several years of verbal complaints. The tenant said that since that time the landlord has taken inadequate steps including general reminders of the building's no-smoking policy issued to all occupants. The tenant submits that the issue has not been resolved in a satisfactory manner and that they continue to be inundated with smoke from the other suite of the rental property.

The tenant submits that the smell of smoke is pervasive throughout their suite and especially so in the master bedroom and main bathroom. The tenant submits that as a result their possessions reek of smoke and they are unable to use these rooms.

The landlord gave evidence that the agent ES took over management of the building in October, 2019 and since that time they have taken reasonable steps to deal with the

issue of smoking in the building. The landlord submits that since October 2019 the occupant in breach of the no-smoking rules of the building has been issued verbal warnings and three letters of warning in writing. The landlord submits that as the occupant did not amend their behaviour and continued to be in breach of the terms of the tenancy they were in the process of drafting a 1 Month Notice to End Tenancy for Cause in late March, 2020 when the *Ministerial Order M089* issued March 30, 2020 pursuant to the State of Emergency declared on March 18, 2020 came into effect prohibiting landlords from issuing Notices to End tenancies.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. This provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

I accept the evidence of the parties that tenants suffered a loss of the use of the elevator for this tenancy for a period of approximately 8 weeks. The parties have each suggested what they believe to be appropriate compensation for the loss in the value of the tenancy. I find that the tenant's suggestion of 20% of the value of the tenancy to be excessive for the loss as evidenced. While I accept the submissions of the tenants that they would make daily excursions from the rental unit for work, shopping and various errands, I do not find that there is evidence that these occasions were anything more than a momentary inconvenience of using the stairs. The tenant did not suggest that they were unable to continue their daily activities or that they curtailed their activities in any significant manner. While I accept that using the stairs caused some physical discomfort I find little documentary evidence that the tenants were unable to use the stairs or that they suffered any injuries or losses beyond the instances when they used the stairs.

It is undisputed that the tenants lost the use of the elevator in the rental property. Under the circumstances, I am issuing a monetary award which reflects that the tenants did suffer loss in the value of the tenancy agreement. Based on the evidence before me I find that the loss was not significant, had no major impact on the tenants' daily routine

and the tenants were able to continue to enjoy the rest of the rental unit. Under the circumstances, I find that the monetary award should reflect a smaller portion of the monthly rent and a monetary award for loss of \$282.50, approximately 5.0% of the \$2,821.00 monthly rent for the two-month period during which the elevator was unusable, to be appropriate given the paucity of evidence the tenants presented in support of their application.

I accept the evidence of the parties that the tenants have experienced a loss in their value of the tenancy due to the ongoing smoke emanating from their neighbors. I find that the landlord is taking some action in response to the complaints but find that these steps have only been taken under the current agent who took on the role in October 2019. I accept the evidence of the parties that the tenant provided the landlord with written complaints as of November 2018 and that the landlord was aware of the ongoing issue. While the landlord submits that some attempts at resolution were made I find little evidence in support to demonstrate what actions were taken. The documentary evidence of the landlord shows that reminders of the building policy and warning letters to the neighbor were issued in late 2019 and early 2020. I find there is little evidence that the landlord took action prior to the new agent being assigned to manage the rental building. In any event it is clear that the steps taken by the landlord have been inadequate in resolving the ongoing issue of smoking in the building.

I find that the landlord is now taking reasonable steps and find it unnecessary to make an order that the landlord comply with the Act, regulations or tenancy agreement.

I accept the evidence of the tenants that they have suffered some loss in the value of the tenancy due to the ongoing issue of smoking in the building. I accept their testimony that the smoke limits their enjoyment of the rental suite and that they avoid certain rooms due to the smell of smoke. However, while the tenants testified that they have contemplated moving out of the rental suite due to the ongoing issue I find little evidence to support the severity of the matter. The tenants continue to reside in the rental unit and they gave little evidence that their activities inside the suite have been curtailed or how they have been impacted by the smell of smoke. The testimony of the tenants and their documentary evidence is that this issue was noted in writing in or about November 2018 for the first time. While the tenants submit that they made verbal complaints prior to issuing a written complaint, I find little evidence in support of this submission. It is reasonable to expect that if this were an ongoing issue that there would be some written correspondence or complaint made rather than simply conversations with no documentation. The tenants' submissions consist of general

complaints but I find there is little detail of how the smell of smoke has restricted their activities or resulted in a change in their lifestyle.

Based on the foregoing I find that a monetary award in the amount of \$950.00, approximately 2% of the monthly rent of \$2,821.00 for the 17-month period from November 2018 when the issue was first reported in writing to the landlords to the date of the hearing, to be appropriate.

As the tenants were partially successful in their application, the tenants are also entitled to recovery of their filing fee for this application.

Conclusion

I issue a one-time monetary order in the tenants' favour in the amount of \$1,332.50 which includes the loss of the value of the tenancy to the date of the hearing and the filing fee for their application.

As this tenancy is continuing, I allow the tenants to recover the filing fee by reducing the monthly rent by that amount on the next monthly rental payment to the landlords. In the event that this is not feasible, I issue a Monetary Order in the tenants' favour in the amount of \$1,332.50.

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: May 15, 2020

Residential Tenancy Branch