



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. There were no issues raised with respect to service of the application and respective evidence submissions on file.

Issues

Is the tenant entitled to monetary compensation as claimed including recovery of the filing fee?

Background and Evidence

The rental unit is a unit on the 7th floor in a 14 floor - 200 unit apartment building. The tenancy began on August 15, 2019. The monthly rent is \$1975.00 per month.

The tenant originally filed a claim seeking \$8493.00 in compensation for loss resulting from chronic elevator issues and loss of quiet enjoyment due to the landlord failing to protect common areas of the building.

At the outset of the hearing, the tenant's counsel advised the claim was being reduced to \$896.25 which included a \$600.00 re-imbusement for move-in costs and \$296.25 in loss of use calculated as 10% of the monthly rent for loss of use/quiet enjoyment due to an elevator not functioning over a 1 ½ month period.

The tenant testified that since he moved into the building on August 15, 2019 to September 29, 2019, one of the two elevators was not functioning. The tenant testified that he waited on average 10-15 minutes each time he used the elevator and in some outlying instances he had to take the stairs. The tenant testified that on average he used the elevator four times/day resulting in wait times of 40-60 minutes per day. The tenant is seeking a 10% rent reduction over this period.

The tenant is also claiming he paid \$300.00 per hour to movers and his cost to move-in increased substantially as a result of the elevator issues. The tenant did not submit any invoices for moving expenses.

The landlord submits that the tenant's original claim did not even include a claim for moving expenses and it has only been brought up at the hearing. The landlord submits the tenant has not submitted any concrete evidence such as moving expenses/receipts in support of the alleged claim. The landlord submits that since the tenant moved-in there has always been one functioning elevator. The landlord submits the tenant only endured longer wait times for a period of 44 days.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. To prove a loss, the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Pursuant to section 28 of the Act, a tenant is entitled to quiet enjoyment of the rental unit including but not limited to rights to the following:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession of the rental unit, subject to the landlord's rights contained in section 29; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline #6 "Entitlement to Quiet Enjoyment" provides the following guidance:

In order to prove a breach of the entitlement to quiet enjoyment, the tenant must show that there has been substantial interference with the ordinary and lawful enjoyment of the rental premises. This includes situations in which the landlord has directly caused the interference or was aware of the interference but failed to take reasonable steps to correct it. It is also necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. Temporary discomfort or inconvenience does not constitute a basis for a breach under this section. In determining the amount by which the value of the tenancy has been reduced, consideration will be given to the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation existed.

I find the tenant failed to provide the landlord with any details of the claim for moving costs prior to the hearing date which hindered the opportunity for the landlord to respond to such. In either event, I find the tenant has failed to present sufficient evidence such as receipts or invoices in support of the alleged increased moving costs.

There was no dispute that one of the two elevators in the building was not functioning for a period of 44 days. There was no dispute that this resulted in increased wait times for the tenant. Although this may have been a temporary inconvenience to the tenant, I find that this did not constitute a substantial interference with the ordinary and lawful enjoyment of the rental premises which would warrant a rent reduction.

Conclusion

The tenant's application is dismissed in its entirety 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: July 27, 2020

Residential Tenancy Branch