



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DUKE LIMITED PARTNERSHIP and  
[tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

MNDCT, FFT

### **Introduction**

On November 14, 2019, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a monetary order for compensation, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### **Issues to be Decided**

Should the Tenant receive a Monetary Order for compensation, in accordance with Section 67 of the Act?

Should the Tenant be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

### **Background and Evidence**

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on April 7, 2018 and continued as a month-to-month tenancy until July 6, 2019. The rent was originally \$1,371.00 and due on the first

of each month. The Landlord collected and has since returned the security deposit in the amount of \$1,371.00.

The Tenant testified that they have reduced their claim for compensation to the amount of \$5,141.00. The Tenant stated that this is approximately 25% of the total amount of rent paid throughout the tenancy, based on the original monthly rent.

The Tenant focused their testimony and subsequent evidence on the issue of an unreliable and intermittent elevator service within the residential property. The Tenant claimed that the Landlord did not adequately provide the essential service of an elevator for the Tenant who struggled with physical disabilities and lived on the 9<sup>th</sup> floor of the building.

The Tenant stated they started the tenancy in a new residential property where there were two elevators that serviced 202 units. The Tenant said that the troubles with the elevators began at the beginning of her tenancy and ultimately, caused her to end her tenancy. There were almost daily outages where, at times, both elevators would be out of service or one of the elevators were out of service, which would cause extensive delays.

The Tenant provided testimony and/or evidence to support the following:

- Tenant is in her 50's and suffers chronic pain from degenerative disk disease, fibromyalgia and arthritis
- Tenant uses a cane or walker to assist themselves while walking
- During the tenancy, the Tenant worked in an office during the weekdays and the unreliability of the elevators necessitated that the Tenant get up earlier for work
- Tenant would take the bus to work; however, on occasion when the elevator wait was too long, she was forced to take a taxi
- Tenant had two dogs that required outings 2-3 times a day
- There were many tenants that were frustrated with the unreliable elevator service (and other residential property issues) and they communicated with each other via Facebook and social media about this issue
- Tenant acknowledged that there was a separate service elevator that was sometimes available from the lobby to the mezzanine and when used, would mean five flights of stairs for the Tenant
- In June of 2018, the Tenant met with management to discuss the issues about the elevators, noise in the building and some safety/security concerns.
- In an email on October 4, 2018, the management of the building acknowledged ongoing problems with the elevators, that they were inefficient, and that management would be moving forward with a different elevator contractor if a fix was not provided.
- Some tenants of the building found themselves stuck in the elevators in September 2018, March 2019 and June 2019.

- When the Tenant moved out, there was only one elevator for the entire building. She could not lock it to keep it on her floor and; therefore, it took her 9 hours to move out.

The Tenant also testified about excessive noise and partying from other tenants on the roof-top common area and claimed that the management did not respond to the concerns in a timely or effective manner.

The Tenant also noted concerns with security and safety in the building and gave examples of how strangers would gain entry into the building to do stunts and take pictures. Further, the Tenant stated that when the building lost power on January 19, 2019, the emergency lighting failed and the generator did not work, leaving the entire building in darkness.

The Tenant is claiming an amount of \$5,141.00, mostly as compensation for the lack of access and poor service of the elevators. The Tenant stated the elevators were an essential service, especially given her physical limitations.

The Landlord testified that there were only ten days during the Tenant's tenancy when both elevators were not working. The Landlord stated that there were five days when the Landlord hired someone to manually operate the elevators and also times when someone was hired to provide assistance to tenants when they had to climb the stairs.

The Landlord said that the Tenant should have expected some wait times given there were 202 units in the building and that the Tenant's wait time estimates were exaggerated.

The Landlord provided testimony and/or evidence to support the following:

- Landlord took reasonable steps to try and fix the elevators
- Landlord eventually switched elevator repair companies
- Tenant did not move out of her rental unit as an attempt to mitigate the harm due to the lack of elevator services; therefore, the damage is overstated
- Tenant did not ask to move out of her rental unit to a lower floor
- Sometimes the Tenant took the service elevator to the mezzanine, which meant there were only five flights of stairs to climb
- There were many days when the elevators worked, and the Landlord should not have to compensate the Tenant for those days

The Landlord stated that they did address the noise and security issues by responding to the complaints, issuing fines, putting up signs and hiring security.

The Landlord submitted that if there is any compensation due to the Tenant, that it should be minimal (\$68.03).

### Analysis

Section 7(1) of the Act establishes that a party who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the other party for damage or loss that results from that failure to comply.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Based on the testimony and evidence of both parties, I do not find that the Tenant provided sufficient evidence of any significant issues of noise or security breaches that affected the Tenant in such a way that compensation is due.

Section 27 of the Act examines the issue of services which may or may not be terminated or restricted by a landlord. It states in section 27(1) as follows, "A landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or providing the service is a material term of the tenancy agreement."

I accept the Tenant's undisputed testimony that she has several physical complications that significantly challenge her to navigate multiple flights of stairs each day. When the Tenant signed the Tenancy Agreement for a rental unit in the new residential property, she expected to have the services of two working elevators. Based on the Tenant's personal circumstances, I find that having access to an elevator service is essential for the Tenant to enjoy her tenancy and to be free from significant interference.

I accept the Landlord's testimony that the Management of the residential property was diligent with their attempts to service the elevators. However, based on the combined testimony and evidence of both parties, I find that there were many days when no elevators were working; a significant amount of days when only one elevator was working; acknowledgements from Management that the elevator service was inefficient; and, that the problems continued and worsened towards the end of the Tenant's tenancy. As a result, I find that the Landlord failed to provide the service of reliable, consistently working elevators, a service that was essential for the unique circumstances of the Tenant, contrary to section 27 of the Act.

I acknowledge that there is no specific formula for compensation for this situation; therefore, I will consider to what extent the Tenant's tenancy was compromised by the lack of a reliable and consistent elevator service.

Based on the testimony and evidence, I accept the following:

- The Tenant paid \$1,371.00 rent per month for her first year of tenancy and then \$1,406.00 for the remaining months of her tenancy.
- The Tenant's physical abilities were compromised; therefore, walking up and down many flights of stairs several times a day caused her pain and suffering.
- The Tenant had to leave her 9<sup>th</sup> floor rental unit and exit/enter the residential property multiple times a day for many reasons, including travelling to and from work and to exercise her two dogs.
- When no elevators were working or when the waits were too long, the Tenant was required to walk a minimum of five floors and up to eight floors when the service elevator was not available.
- Disruptions to the elevator service occurred regularly during the entire tenancy and for the last few months there was only one unreliable elevator available for the 202 rental units.
- The Tenant ended her tenancy after 15 months as a result of her frustration with management and the elevator services.

When considering compensation for the Tenant's losses, I accept the Landlord's report that the Tenant had full use of her rental unit throughout her tenancy. However, I do find that the lack of a reliable elevator service regularly devalued the Tenant's ability to fully enjoy her tenancy without interference.

The Tenant submitted a claim for damages, that included unreliable elevator service, noise and security issues, valued at approximately 25% of her total rent paid. As I am

considering compensation only for the lack of elevator services, and that the Tenant had full use of her rental unit, I find that 10% of the total rent paid is reasonable. As such I issue a Monetary Order in the Tenant's favour under the following terms, which includes compensation for the filing fee:

<b>Item</b>	<b>Amount</b>
12 months rent @ \$1,371.00	\$16,452.00
3 months rent @ \$1,406.00	4,218.00
Approximate total rent paid during tenancy:	20,670.00
10% of total rent paid:	2,067.00
Plus, recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$2167.00</b>

### Conclusion

I grant the Tenant a Monetary Order for the amount of \$2,167.00, in accordance with Section 67 of the Act. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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 08, 2020

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Residential Tenancy Branch