Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cityviews Village Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, MNDCT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and for a monetary order for damage or compensation under the Act of $950.00.

The Tenant's advocate, L.W. ("Advocate") and the Tenant's counsel, T.C. ("Counsel"), and an agent for the Landlord, B.M. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Parties were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Agent testified that he received the Tenant's Notice of Hearing, Application, and documentary evidence and that he had time to review them. The Tenant said he received the Landlord's evidentiary package on March 17, 2021, and did not have time to respond. However, Rule 3.15 states: "…the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing." As the hearing was on March 25, 2021, I find that the Tenant was served with the Landlord's evidentiary submissions in a manner that is consistent with the Rules, and therefore, I find that both Parties were properly served pursuant to the Act.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed

these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Early in the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

I also asked the Agent for the Landlord's name in this matter, as the Landlord identified on the Application was different than that in the tenancy agreement. The Tenant had also named the building manager, J.R., as a Party to the matter; however, I find that J.R. is not a Party to this tenancy, and therefore, should be removed from the named Parties in this proceeding. The Agent advised me of the property management company representing the owner, so I have amended the Respondents' names in the Application, pursuant to section 64(3)(c) and Rule 4.2.

Issue(s) to be Decided

- Should the Landlord be ordered to comply with the Act or tenancy agreement, and if so, in what way?
- Is the Tenant entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The Parties agreed that the periodic tenancy began on September 16, 2020, with a monthly rent of $722.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of $340.00, and no pet damage deposit.

Order for Landlord to Comply

In the Tenant's first claim, he seeks an Order for the Landlord to Comply with the Act or tenancy agreement. The Tenant's counsel said:

> He has been treated unconscionably due to age, and disability, and he has had his quiet enjoyment disrupted. The Tenant would like to not receive needless notices alleging that he's done damage - or proof of any damage. He would like the Landlord and agents to resist pressuring him to move. He wants to be treated with respect, not to exploit his age and disability. And because he was half asleep when the agents pressured him to sign the lease, he would like to renegotiate the terms.

He also seeks an apology from building manager and the Landlord around the alleged damage that the Tenant did not do. And for pressuring him. A written apology would restore the relationship between the Tenant and Landlord.

The Agent said:

Some of the tenants have received notices, as standard requirements – normally for this lease – and he has signed every single page of lease. The managers acted in the standard way, proceeding according to the RTB.

The claim about pressuring the Tenant and how this happened? Our property manager has been trained on how to discuss things with tenants. She did not use extreme language or pressure the Tenant.

In terms of the Tenant being asleep, or pressuring him when he was asleep? I can't comment on that, unless the Tenant has other witnesses.

The Advocate said:

The Tenant told me that when he was surprised by the building manager; [the Agent] is not striking an understanding of what she is like. She was the opposite that day – he said: 'I was bullied and scared.' What the tenant was talking about was happening right before my eyes.

The Agent said:

[J.R.] is a live-in caretaker of the building, not a property manager. She normally – she's lived in the building for over 25 years. Was she trained? Yes, on how to talk to the tenants, but she is not licensed.

Monetary Claim

The Tenant's second claim is for a monetary order for damage or compensation under the Act in the amount of $950.00. In his Application, he said:

The tenant requests a monetary award for aggravated damages relating to the elevator being unusable for nearly two months. The tenant is a senior who depends on a scooter and was trapped in his unit while the elevator was broken. The tenant requests monetary compensation in the sum of [950] dollars for the

managers' unconscionable treatment of him as a vulnerable senior, as they pressured him to leave his home and charged him money for alleged damage to the elevator he didn't create.

Counsel said:

The elevator in the building was out of commission from October to December last year. When it was working, it would sometimes stop shy of the floor of the building. On December 12, the Tenant had an appointment. He had prearranged to have the elevator turned on. When he got home, it stopped two inches shy of the floor, and he knew he could get out by putting the chair forward. He didn't want to use a plywood ramp, but he did and it broke. He has a motorized scooter.

Later he received a notice to tenant. We submitted and re-submitted it . . . – it doesn't include proof of damage or a receipt justifying the amount. The note says that future actions will lead to eviction. He is low income.

There are two witness statements – one from his daughter, [A.G.], and one from his friend, [F.M.]. [A.G.] said the Tenant paid the fine, because he was afraid he would be evicted, which would make him extremely upset.

Also, there is evidence of the building manager, [J.R.], pressuring the Tenant to move out. His first statement by [F.M.] – addresses their pressure. [A.G.] corroborates that. The only contact he has had with management is that he should leave the building. This is a pattern of mistreatment.

In early October, two building managers pressured him to sign a lease when he was groggy. The current Landlord took ownership of the building. There was a five-page addendum – that he was pressured to sign under false pretences. Management assured him the terms and conditions were the same. The new lease is not the same – the five-page addendum was not part of the original lease. See this addendum as part of both lease submissions.

The Agent said:

First, the building is 55 years old. It's an old elevator. It is constantly requiring repair. With this elevator, we do provide the service – like she said - if a tenant makes a request especially with a wheel chair, [J.R.] will help people move in and out of elevator.

> Our evidence includes extensive repairs to the elevator. There are constantly repairs for people to move in. When the Tenant made his request – [J.R.] helped him to go out of the building, but when he came back, there was tape around the elevator – people were working on it. [J.R.] put plywood down, but he ignored it, and he just got in. He could have hurt himself and damaged part of the elevator status. He was not supposed to use the elevator alone. He was supposed to call [J.R.], who would make the elevator ready to take his scooter. He chose to enter the repair status.

When asked what damage the Tenant caused to the elevator, the Agent said:

> The service floor was not even with the building floor – a couple inches - because of the repair status. He drove in. There was a floor switch damaged. We can inspect it, but not repair it ourselves.

When asked how he knew that the Tenant damaged the floor switch, the Agent said:

> We had to make an emergency repair. [The Tenant] got into the elevator and tried to use the elevator to get to the second floor. According to the contractor, he can visually see the floor damage.

Counsel said:

> [The Agent] submitted Exhibit R4, which is an email from [D.B.] as the contractor; he refers to the transition strip in the elevator. That's the strip of rubber between the elevator and building floor. As previously mentioned, it typically costs $10.00 to $20.00 – there was nothing in the email that there was damage.

The portion of the Landlord's Exhibit R4 that deals with the Tenant states:

> Also, [the Tenant] didn't read the lg note on elevator and came back in afternoon around 4:30 and had to wait till [J.R.] got home from day off, to figure out how to get his wheelchair into elevator without destroying the floor. He would not listen when told to wait for [J.R.] to get to 2nd floor to set plywood down to protect transition strip from exiting elevator. He started his wheelchair without the plywood being down. Not sure how the transition strip is now.

Counsel continued, saying:

> The Landlord also submitted Exhibit R6 – the repair invoice for $3,340.00. This piece of evidence says the new selector switch needed to be installed and will help improve floor leveling performance. I called Tony who said these are components in the machine room that delegate what floor the elevator goes to. There's no evidence that the Tenant did any damage – at most some scuffing of a transition strip. Those are the inconsistencies in his testimony.

Counsel further clarified the Tenant's monetary claim, as follows. She said:

> The Tenant claims $500.00 compensation for loss of quiet enjoyment [of the residential property], because of the broken elevator. The Landlord did not do anything…. The number [claimed] is arbitrary. I asked him what would feel like a sum that your suffering has been acknowledged, and he said $500.00.
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> The Tenant also claims $450.00 for unconscionable treatment of him as a disabled senior. The statements confirm that he left his home once for a doctor's appointment.
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> [The Agent] says [J.R.] was available to help people, but he was never advised of this. We also included #6 and #16 Policy Guidelines regarding his having suffered damage or loss, including loss of the elevator, loss of physical and mental health.
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> Section 27 says that a Landlord must not terminate or restrict a facility. They must give 30 days written notice in an approved form.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Order for Landlord to Comply

The Tenant's claim is for the Landlord and their agents to treat the Tenant with more respect and dignity. The Tenant seeks to have the Landlord's staff stop pressuring him to move somewhere else. He also seeks an apology for this treatment.

I find that this claim falls under section 28 of the Act, which sets out a tenant's right to quiet enjoyment of the rental unit, and states that tenants are entitled to "reasonable

privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit, subject only the landlord's right to enter the rental unit in accordance with section 29, and use of the common areas for reasonable and lawful purposes, free from significant interference."

Policy Guideline #6 ("PG #6") clarifies this right, stating:

> A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.
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> Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.
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> In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.
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> A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or

completing renovations.

The Tenant has not asked for monetary compensation under this heading, but rather, he simply seeks that the Landlord's agents stop pressuring him to move. I find that there is sufficient evidence before me that this was intentionally aggressive behaviour on the part of the Landlord's agents, and I find that it amounts to a breach of the Tenant's quiet enjoyment of his suite. Further, the Advocate said that she witnessed this behaviour on the part of the Landlord's agents. As a result, and pursuant to sections 28 and 62 of the Act, I **Order** that the Landlord ensure that their agents stop further suggestions to the effect that the Tenant would be happier living elsewhere.

If the Tenant finds that the Landlord's agents continue this practice, he is recommended to take detailed notes of the incidents at the time, and to apply to the RTB for compensation in the form of rent reduction for any such substantial interference with the Tenant's lawful and ordinary right to quiet enjoyment of the premises.

I also **Order** pursuant to sections 28 and 62, and PG #6, that the Landlord provide the Tenant with a written apology for this behaviour. I **Order** the Landlord to provide this written apology to the Tenant **by Monday, May 17, 2021**. If the Landlord has not done so by this date, **the Tenant is authorized to deduct $50.00 from his rent** in June 2021, and in subsequent months until the written apology is delivered.

Monetary Claim

Policy Guideline #16 ("PG #16"), helps address requirements under sections 7 and 67 of the Act. PG #16 addresses the criteria for awarding compensation. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
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> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the *Residential Tenancy Act* for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

- "**Aggravated damages**" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money, or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

  [emphasis added]

The Tenant seeks $500.00 for loss of quiet enjoyment of the rental unit, due to his having been, essentially, trapped in his rental unit, because of the non-functioning elevator. The Tenant also seeks $450.00 as aggravated damages for treatment that the Tenant claims is unconscionable, given his age and disability.

As noted above, I found that the Tenant lost the benefit of quiet enjoyment of the residential property by not being able to come and go as he pleased, given the non-functioning elevator. I find the Tenant's claim for compensation for this is reasonable in the circumstances, and I award the Tenant with **$500.00** from the Landlord for this claim. The Tenant is authorized to deduct this from his next rent payment in full satisfaction of this award.

Aggravated Damages

Next, I turn to the Tenant's claim for aggravated damages of $450.00. In order to make an award of aggravated damages, I must find that the Landlord caused significant damage or loss either deliberately or negligently.

I find that the Landlord was responsible for arranging the repair of the elevator, but that they were limited by the schedule of the repair company, to some degree; however, the Landlord did not provide any evidence to support that they took steps to compel the elevator repair company to do the work as fast as possible.

The Landlord did provide evidence that the building manager could assist tenants who needed help using the elevator at times in the repair project; therefore, I find that the elevator was not completely out of service for the whole time. The Tenant took advantage of this opportunity on at least one occasion. However, this meant that the Tenant was constrained by the building manager's schedule, and by having to arrange ahead of time for her assistance for a trip. The Tenant was not able to come and go as he pleased, as I find that he should have been and used to be.

I find that there is no evidence before me that the Landlord intentionally or deliberately caused the elevator to be non-functional, and therefore, trapping the Tenant in his suite. However, I find that the elevator was not fully operational for approximately three months in October through December of 2020. I find that the Landlord has not provided evidence that they took steps to compel the elevator company to work as fast as possible, and that three months to fix an elevator is an unreasonable amount of time, given tenants' reliance on it to enter and exit the residential property.

Accordingly, I find on a balance of probabilities that the Landlord was negligent in this regard and that aggravated damages of $450.00 are warranted in this set of circumstances. I, therefore, award the Tenant with recovery of **$450.00** from the Landlord in aggravated damages, pursuant to sections 7 and 67 of the Act, and PG #16. The Tenant is authorized to deduct $450.00 from upcoming rent payments in full satisfaction of this award.

Conclusion

The Tenant is successful in his Application for compensation for tangible and intangible losses suffered as a result of the behaviour of the Landlord and their agents. The

Tenant provided sufficient evidence that the Landlord was negligent at best and intentionally aggressive at worst in their treatment of the Tenant in the last three months of 2020. As a result, the Landlord is Ordered to:

- ensure that their agents stop suggesting that the Tenant would be happier living elsewhere; and
- provide the Tenant with a **written apology** for their behaviour, with the apology being provided to the Tenant by May 17, 2021. The Tenant may deduct $50.00 from his June 2021 rent, if he has not received the written apology by that point.

The Tenant is also awarded **$500.00** from the Landlord for the loss of quiet enjoyment of the residential property, due to the inability to come and go from the residential property as he wished, given the non-functioning elevator in the building.

Finally, the Tenant is awarded aggravated damages of $450.00 from the Landlord for negligently allowing the elevator repair company to take so long repairing an elevator for the residential property.

The Tenant is authorized to deduct the $950.00 in damages from upcoming rent payments in complete satisfaction of this award.

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: April 21, 2021

Residential Tenancy Branch