



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

OLC, MNDCT, FFT

### **Introduction:**

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on March 31, 2021 the Dispute Resolution Package and evidence the Tenant submitted to the Residential Tenancy Branch on April 16, 2021 and April 20, 2021 were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On April 21, 2021 the Tenant submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, on April 21, 2021. The Agent for the Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On April 22, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, on April 20, 2021. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided:

Is the Tenant entitled to compensation for being without an elevator and for the cost of filing this Application for Dispute Resolution?

Background and Evidence:

The Tenant is seeking compensation for being without use of the elevator for a total of 67 full days and for being without use of the elevator for some portion of 157 days.

The Tenant and the Agent for the Landlord agree that:

- The tenancy began in 2009;
- The current monthly rent is \$1,521.00;
- In a letter dated November 09, 2018 the Landlord informed the Tenant that elevator would be out of service for approximately three months in the summer of 2019;
- The Tenant was periodically advised that the repair to the elevator was being delayed;
- The elevator was out of service between January 04, 2021 and February 19, 2021;
- The Tenant received \$100.00 in compensation for being without elevator service between January 04, 2021 and February 19, 2021;
- For 8 various days in 2016 the elevator was out of service for the entire day, due to the need for repairs;
- For 8 various days in 2019 the elevator was out of service for the entire day, due to the need for repairs;
- For 4 various days in 2020 the elevator was out of service for the entire day, due to the need for repairs;
- For 4 days in 2018 the elevator was not working for a period of time, due to the need for repairs;
- For 28 days in 2019 the elevator was not working for a period of time, due to the need for repairs;
- For 2 days in 2020 the elevator was not working for a period of time, due to the need for repairs; and
- For 1 day in 2021 the elevator was not working for a period of time due to the need for repairs.

The Agent for the Landlord stated that:

- The elevator was out of service between January 04, 2021 and February 19, 2021 as a new elevator was being installed to replace the elevator that had been previously installed in 1969 and was experiencing mechanical failures;
- The Landlord offered to relocate the Tenant into unit 103 to minimize the impact the loss of the elevator would have on him;
- The Landlord would have considered either a full-time or temporary relocation, if the Tenant had expressed an interest in the offer of a relocation;
- The Tenant declined the offer of a relocation;
- The Landlord sent a letter, dated December 18, 2020, in which the Landlord reminded the Tenant that the elevator would be out of service for approximately 7 weeks, commencing January 04, 2021;
- In the letter of December 18, 2020, the Landlord directed tenants to contact the Landlord if they needed assistance due to the elevator being out of service;
- The Landlord assisted some tenants with laundry, grocery delivery, and garbage removal;
- The Tenant did not request assistance as a result of the elevator being out of service;
- When the elevator was not working for a portion of a day, she does not know the duration of most service disruptions, although she knows the elevator was only out of service for ½ hour on the partial day of 2021;
- She does not have access to records from 2010, so she does not know how long the tradesmen worked at the property repairing the roof and balconies; and
- She has spoken with one of these tradesmen and he informed her that they did not use the elevator frequently to transport tools and materials.

The Tenant stated that:

- He declined the offer to relocate to unit 103, as he did not understand the move could be temporary if he was so inclined;
- He did not ask the Landlord if the relocation to unit 103 could be temporary;
- He declined the offer to relocate to unit 103 because he thought he may be able to be away while the elevator was out of service;
- He is a physically fit so he was able to use the elevator without any significant physical impact;
- While the elevator was out of service between January 04, 2021 and February 19, 2021, he could not have guests, as they did not wish to climb the stairs;
- While the elevator was out of service between January 04, 2021 and February 19, 2021, he had to plan his day to avoid unnecessary use of the stairs;
- While the elevator was out of service between January 04, 2021 and February 19, 2021, he had to carry smaller loads of groceries and laundry;
- He did not request assistance from the Landlord as a result of the elevator being out of service;
- When the elevator was not working for a portion of a day, he does not know the duration of the service disruption;
- In 2010 the Landlord was repairing the roof and two balconies;

- The tradesmen repairing the roof/decks in 2010 used the elevator to transport material and tools; and
- The tradesmen's use of the elevator interfered with the Tenant's ability to use the elevator in a timely manner for 122 days.

Analysis:

Section 32(1) of the *Residential Tenancy Act (Act)* stipulates that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. I find that the Landlord complied with section 32(1) of the *Act* when they replaced the aging elevator.

Section 27(1) of the *Act* stipulates that a landlord must not terminate or restrict a service or facility if that service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement. Section 27(2) of the *Act* stipulates that if the landlord terminates or restricts a service or facility, other than one that is essential or a material term of a tenancy the landlord must provide 30 days notice and reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy.

While I accept that there have been periods of time the Tenant has not been able to use the elevator for the entire day, I find this was temporary in nature and was not intended to be a permanent withdrawal or restriction of those services.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline 6, with which I concur, reads, in part:

*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.*

*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.*

*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.*

....

*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.*

On the basis of the undisputed evidence, I find that the elevator was out of service between January 04, 2021 and February 19, 2021 while the elevator was being replaced.

I find that the Landlord made reasonable efforts to minimize the impact the loss of the elevator had on the Tenant. Specifically, I find that the Landlord offered to relocate the Tenant; the Landlord offered to assist to the Tenant while the elevator was out of service between January 04, 2021 and February 19, 2021; and the Landlord provided a one-time rent reduction of \$100.00.

In spite of the Landlord's efforts, I find that being without an elevator between January 04, 2021 and February 19, 2021 breached the Tenant's right to the quiet enjoyment of his rental unit, for which he is entitled to compensation of \$235.00. (\$5.00 per day) In determining that the Tenant is entitled to compensation for a breach of his right to quiet enjoyment for this period, I was influenced by the fact his unit is on the ninth floor and that it is inconvenient to navigate nine flights of stairs, even for a fit individual. Compensation of \$235.00 is being granted in recognition of the inconvenience of navigating those stairs for things such as shopping and doing laundry and the impact the loss of an elevator would have on guests who wished to visit the unit.

In concluding that the Tenant is not entitled to more than \$235.00 in compensation for being without an elevator for the period between January 04, 2021 and February 19, 2021, I was influenced, in part, by the fact the Tenant declined the offer of assistance

the Landlord provided to him in the letter of December 18, 2020. Had the Tenant requested assistance, he could have avoided some of the inconveniences associated to being without an elevator during that period.

In concluding that the Tenant is not entitled to more than \$235.00 in compensation for being without an elevator for the period between January 04, 2021 and February 19, 2021, I was influenced, in part, by the need to balance the Landlord's obligation to repair/replace the elevator with the Tenant's quiet enjoyment of this unit.

In adjudicating the claim for being without an elevator for the period between January 04, 2021 and February 19, 2021, I have placed no weight on the fact the Tenant declined an offer to relocate to unit 103. I find that relocating to a different unit, even on a temporary basis, is inconvenient in itself and, for some people, would outweigh the inconvenience of being without an elevator for several weeks.

On the basis of the undisputed evidence, I find that the elevator was out of service for 20 various days in 2016, 2019, and 2020. I find that this was also a breach of the Tenant's right to quiet enjoyment, for which the Tenant is entitled to compensation of \$100.00 (\$5.00 per day). In granting the same amount of compensation for these 20 days, I am aware that the Landlord did not offer the same level of assistance as was offered in 2021, but I find the inconvenience experienced on these dates would be less, as shopping and doing laundry could be more easily coordinated around the dates the elevator was out of service, as the service disruption was for shorter periods of time.

On the basis of the undisputed evidence, I find that for 35 days between 2018 and 2021, the elevator was not working for a period of time on each of those days. As the Tenant submitted no evidence to establish the duration of this service disruption, I find it difficult to determine the true impact it had on the Tenant. Even if I were to conclude that each service disruption was for an hour or less, I find that the disruptions, when considered collectively, breached the Tenant's right to the quiet enjoyment of the rental unit. I therefore grant the Tenant compensation of \$50.00 for all of these inconveniences. I find compensation in this amount to be reasonable, given the duration of most of the service disruptions has not been established, and that on one occasion service was disrupted for only ½ hour.

On the basis of the undisputed evidence, I find that in 2010 tradesmen used the elevator for many days to transport material and tools needed to repair the roof and two balconies. Although this may have been an inconvenience for the Tenant, I find that he is not entitled to compensation for that inconvenience. In reaching this conclusion I was

influenced by the fact this is a shared elevator and is not provided to the Tenant for his private use. As this is a shared elevator, the Tenant must accept the inconveniences of other people using the elevator. I therefore decline to award compensation for inconveniences associated with the elevator in 2010.

I find that the Tenant's Application for Dispute Resolution has merit some merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of \$485.00, which includes compensation for being without an elevator and \$100.00 as compensation for the cost of filing this Application for Dispute Resolution. This award must be reduced by the \$100.00 rent reduction already granted by the Landlord.

I therefore grant the Landlord a monetary Order for \$385.00. In the event the Landlord does not voluntarily 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.

Pursuant to section 72(2) of the Act, the Tenant has the right to reduce a rent payment by \$385.00, if he does not wish to serve and file the monetary Order.

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 11, 2021

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Residential Tenancy Branch