Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LMLTD Holdings Corp. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RR

Introduction

The tenant filed an Application for Dispute Resolution on February 12, 2021 seeking compensation for monetary loss, and a reduction in rent for repairs, services or facilities agreed upon but not provided.

The matter proceeded by way of a hearing on May 20, 2021 pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*"). In the conference call hearing I explained the process and provided each party the opportunity to ask questions.

The tenant and the agent for the landlord (hereinafter the "landlord") both attended the hearing and I provided each with the opportunity to present oral testimony. At the start of the hearing, each party advised they received the prepared evidence of the other. On this basis, I proceeded with the hearing as scheduled.

Preliminary Matter

The tenant initially applied on two grounds, one of which involved a continuing reduction in rent. The tenant applied for "a rent reduction of 50% for every month the elevator remains inoperable."

Through the testimony presented in the hearing and a review of the documentation, I find the parties agree that the elevator was repaired and operational on February 19, 2021. The tenant's Application here pre-dates this repair. In the hearing the tenant advised that they are withdrawing this portion of their application and monetary claim.

I consider this piece of the claim withdrawn, and the focus of this hearing is the sole issue listed below.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for loss or compensation pursuant to s. 67 of the *Act*?

Background and Evidence

At the outset of the hearing, both parties confirmed the basic details of the tenancy agreement. This is for the tenancy that started on June 1, 2018, continuing into the present with the rent amount at $937.

In the hearing, the tenant presented they were subject to the non-functioning building elevator from November 25, 2020 through to February 19, 2021. For this they request the full amounts of December and January rent, and one-half of the amount for February. This claim amount is $2,342.50. At the time of the Application, this was due to the ongoing, unreasonable disturbance on [their] quiet enjoyment the broken elevator has caused.

The tenant provided the following documentation:

- a letter setting out their submission dated February 2, 2021 – this gives the pertinent details:
    - the tenant is a disabled senior who relies on a wheelchair
    - since the elevator has been broken, they were unable to leave their home freely
    - they are unable to do laundry within the building or go grocery shopping, or take the garbage out
    - they called the building manager in late December and asked for a key to access the elevator in the other block of the apartment complex – this building ins connected to her block through a locked door
    - the manager denied this request – in the hearing they provided that the manager stated there was no key

- a letter dated February 2, 2021 jointly signed by 6 building residents, including the tenant here, setting out s. 32(1) of the *Act*, and the fact that the elevator was not working since November 26, 2020
- an undated announcement that sets out the management services' awareness of the inoperable elevator and advising that a solution is pending. This advised that "these things take time and some parts are hard to acquire." This letter also acknowledged residents' frustration.
- Three separate *Residential Tenancy Policy Guidelines*: Compensation for Damage or Loss; Entitlement to Quiet Enjoyment; and Landlord & Tenant – Responsibility for Residential Premises.

In the hearing the tenant provided the following points in their testimony:

- they experienced a fall on two occasions within this time
- this involves their access to a lower-level parking area – with the elevator inoperable this necessitated their passage through alternate walkways which were slippery in the winter months
- they asked for a key after their first fall in December, and a key was not provided
- after the second fall in early January, they were provided with a key for the other block.

The landlord presented their timeline of events. This involved inspections and assessments of the need for repair. The firm that regularly services the elevator determined it would need replacement. After this, the landlord made other attempts to receive parts from a nearer source, with the regular firm obtaining their parts from the U.S. Elevator firms advised on timelines, and a replacement part order was made on December 30.

The sole record submitted by the landlord shows a timeline from the manager of the regular elevator service firm. The building manager advised of the out-of-service elevator on November 25, 2020. The unit was taken out of service on November 26 due to safety concerns. This faulty part was deemed irreparable on November 30 and the entire power unit needed replacement. Following this, the landlord asked for "competitive quotes" due to the high cost and repair timeframe.

The landlord then provided the signed repair order December 30, and the elevator service firm ordered the material. The parts arrived in February and "The elevator was brought back to service thereafter."

In the hearing the landlord advised they were aware of the tenant's falls, and once they found out about the second fall, provided the keys to the other block. They were not sure of the communication between the building manager and the tenant at that time.

Analysis

The *Act* s. 27 sets out strict parameters on the termination or restriction of a service or facility:

> 1) A landlord must not terminate or restrict a service or facility if:
> a) the service or facility is essential to the tenant's use of the rental unit as living accommodation . . .

A tenant's right to quiet enjoyment is protected by s. 28 of the *Act*. This includes freedom from unreasonable interference. The *Residential Policy Guideline 6: Entitlement to Quiet Enjoyment* gives a statement of the policy intent of the legislation. This provides:

> 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.

Additionally, s. 32 of the *Act* sets out a landlord's obligation to repair and maintain residential property. This is in a state that "complies with the health, safety and housing standards required by law."

In the situation presented by the tenant here, this is a question of whether the landlord was aware of some interference that was, in effect, a breach of the tenant's right to quiet enjoyment, and did nothing. In these circumstances, I find a possible breach would arise from the landlord being aware of the inoperable elevator, then taking no steps to correct that. I find that is not the case here.

I find there is ample evidence to show the landlord took action when specific information was in place. This is shown in the landlord's evidence of their initial communication with elevator service, and then starting the process of obtaining parts before making the order at the end of December. This evidence points to the conclusion that this is not a situation where the landlord was aware of an interruption to a service– those involving

building residents' quiet enjoyment – and did nothing. In this way, it cannot be said that the landlord was not complying with the tenancy agreement or the *Act* concerning quiet enjoyment.

The evidence of the landlord shows they took the following actions:

- they were aware of the inoperable elevator and immediately took it out of service over safety concerns
- they were aware of the faulty power unit that needed replacement and determined cost-effective measures
- they made this decision with attention to the expediency of getting replacement parts as quickly as possible
- the order was made on December 30, this was after the landlord admittedly was "shopping around".

The landlord placed the order on December 30. After this, the arrival of the part was not until February. I find this factor was outside of the control of the landlord.

The tenant's evidence and presentation here does not prove that the landlord failed to take action on specific points when they were aware of the inoperable elevator. I find there is nothing egregious on the part of the landlord, and they did not substantially delay their work in getting the elevator back to an operable state. This is with the legitimate concern for safety and the need for a reliable elevator to be in place for all building residents for the future. This was not the place for a haphazard approach to elevator repair.

The tenant here made a claim for monetary compensation. Under s. 7 of the *Act*, a party who does not comply with the legislation or the tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;

2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

On my review of the facts here, I find the tenant's ease of access to their own residential unit was interrupted. This involved their access to their building from the parking area. The evidence shows they asked for a key for the other building block after their fall, and this did not happen. There is no satisfactory reason for the lack of elevator access via the other block, and this ties back to the landlord's duty as per s. 27 of the *Act* set out above. I find the tenant's access via elevator was restricted. On this piece, there was a breach of the *Act*, infringing on the tenant's right to quiet enjoyment.

From November 25, 2020 onwards, the tenant's easier access to their own unit was interrupted; however, this does not equate to an unlivable rental unit. I find the situation presented a significant problem to the tenant and acknowledge there was a significant hazard in place where the tenant risked falling in less-than-ideal pathways. Indeed, there is clear evidence to show they did fall on two occasions.

I find this is a restriction of the elevator facility that is essential to the tenant's enjoyment of their own unit. For this I award the tenant 25% of their rent from the period of November 25, 2020 through to January 4, 2021. Despite the landlord's best efforts, the tenant suffered a loss of use of an elevator for more than a short-term amount of time.

I find the hazards to the tenant represented a significant barrier to quiet enjoyment; however, this was alleviated by January 4th. At this time, their access to their own unit became an inconvenience rather than a hazard. From this time forward, I find there is no interruption to their own quiet enjoyment free from interference. From this time forward, I make no award to the tenant with respect to an amount of past rent reduction.

I calculate the final award amount accordingly:

- for November 26 to November 30, the full rent divided by 30, limited to 5 days at 25%: $39.04
- For December 1 to December 31, the full rent at 25%: $234.25
- For January 1 to January 4, the full rent divided by 31, limited to 4 days at 25%: $30.23.

For the reasons above, I award the amount of $303.52 to the tenant for the infringement on their right to quiet enjoyment of the rental unit. This was the impact of the termination of the elevator service in the building.

Conclusion

Pursuant to s. 67 of the *Act*, I grant the tenant a monetary order for the amount of award listed above. This amount is $303.52.

The tenant shall provide the landlord with this Order in the above terms and they must serve the landlord with this Order as soon as possible. Should the landlord fail to comply with this Order, the tenant may file it in the Small Claims Division of the Provincial Court where it can be 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 s. 9.1(1) of the *Act*.

Dated: May 21, 2021

Residential Tenancy Branch