# 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, RP, RR, FFT**

Introduction

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

- A monetary order for damages or compensation pursuant to section 67;
- An order for regular repairs pursuant to sections 32 and 62;
- An order to reduce rent for repairs/services/facilities agreed upon but not provided pursuant to section 65; and
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72.

The tenant attended the hearing with an advocate, TC. The landlord was represented at the hearing by property manager, EJ. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Notice of Dispute Resolution Proceedings package and the tenant acknowledged service of the landlord's evidence. Neither party raised any issues with timely service of documents.

Preliminary Issues

At the commencement of the hearing, I noted the respondent named on the tenant's Application for Dispute Resolution was different from the landlord named on the tenancy agreement. The landlord acknowledged the name as it appears on the Application for Dispute Resolution is the correct name as the party named as landlord is the owner of the building while the landlord named on the tenancy agreement is a property management company.

The tenant's advocate advised me that the elevator has been repaired subsequent to the filing of their application and as such, their issues of seeking an order for repairs and a future rent reduction for services not provided are no longer sought. I dismissed those issues without leave to reapply at the commencement of the hearing.

Issue(s) to be Decided

Is the tenant entitled to compensation for loss of quiet enjoyment for having a temporary loss of the elevator service?
Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The tenancy began on August 1, 2014. Rent is currently $820.00 per month payable on the first day of each month.

The tenant's advocate gave the following submissions. Due to a breakdown of the building elevator on November 25, 2020 until it was repaired on February 19, 2021, the tenant has suffered a loss of quiet enjoyment of the rental unit. The tenant is a disabled senior who lives on the first floor of the building whose car is stored in the underground parkade. As a result of the elevator being out of service during between late November and mid-February, the tenant has had to go grocery shopping more frequently, bringing back smaller loads, aggravating his chronic pain. The tenant's life was severely disrupted, and the landlord did nothing to alleviate this. The tenant's advocate argues that another tenant living in the same building was discovered to have been provided with a front door key to the adjoining building that shares the underground parking lot with the tenant's; thereby making it easier for that tenant to use the other building's elevator to get to the parking lot. No such convenience was offered to this tenant.

The tenant testified that he had a stroke 14 years ago and is partially paralysed on his right side. He suffered a fall 4 years ago and pinched a sciatic nerve and he has severe arthritis in both hips and knees. He also has had throat cancer and requires surgery and radiation treatment. He still suffers from balance issues from the stroke and his

arthritis makes it difficult for him to walk. The tenant is scared of using stairs since he has to use one hand to hold the handrail while carrying groceries in the other. Most of his energy is spent going to get food. His life enjoyment was decreased due to the elevator being out of order since his only recreation was going to his friend's acreage and he had to suspend this activity due to not being able to easily access his vehicle in the underground parking.

The tenant seeks $2,050.00 as compensation based on 100% of the rent paid from the time the elevator went out in late November until when it was fixed in mid-February, a total of approximately two and a half months at $802.00 per month. The tenant's advocate acknowledges she did not provide any scale to quantify the value of the damages she seeks from the landlord.

The landlord gave the following testimony. The elevator broke down on November 25th and the building manager contacted OTIS, their elevator contractor to take a look the following morning. On November 26th, the mechanic from OTIS discovered that an oil tank had a leak. In the OTIS letter to the landlord, supplied as evidence, the mechanic states that *"due to the design limitations of the power unit, the mechanic could not advise any repair of the tank and took the unit out of service for safety concerns. OTIS notified [ the landlord] of the issue and started working on a replacement."*

On November 30th, OTIS sent out a specialized crew who confirmed the oil tank was irreparable and required a replacement of both the tank and the entire power unit.

The landlord testified that the cost of the replacement part was expensive and would take a long time to be delivered. He wanted to see if the oil tank could be repaired rather than replaced by another elevator company. The landlord contacted two other elevator servicing companies to see if they would repair the oil tank and discovered their timelines for repairs or replacement were further out than OTIS's and that both couldn't repair the oil tank. It also took time for both those elevator contractors to come visit the building since they were not under a service contract with the landlord and therefore it wasn't a priority for them.

OTIS received a signed repair order from the landlord on December 30th and the material was ordered. Parts to replace the power unit arrived on February 19th and the elevator was brought back to service thereafter, according to the letter from OTIS.

The landlord argues that he tried to get the elevator fixed as soon as possible by trying to get the oil tank repaired rather than replaced. When it was determined the entire

power unit required replacement, the landlord made those arrangements as soon as he could. Any delay in the elevator being fixed was due to parts coming from the USA during a pandemic. If it were possible to have it fixed within a week, he would have – the nature of the repairs requires time to order parts and wait for delivery.

Lastly, the landlord argues that the tenant could access the underground parking via the ramp/walkway leading to a sidewalk then walk down the driveway to access it. The tenant countered that the ramp is a long, steep incline and the walk from the door to the sidewalk/driveway is about an entire block long. Too difficult for him with his mobility issues.

Analysis

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

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 that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, 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.

The tenant seeks compensation for the landlord's breach of section 28 of the *Act* for failing to provide quiet enjoyment of the property. This entitlement is discussed in Residential Tenancy Branch Policy Guideline PG-6 [Entitlement to Quiet Enjoyment].

> **B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT**
> 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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**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.

In the case before me, I find the landlord has suffered a loss of his entitlement to quiet enjoyment for not being able to use the elevator from November 25th to February 19th, a period of approximately 3 months. I find the tenant's mobility issues, coupled with his decreased ability to access his vehicle while the elevator was out of service, led to a decreased ability to bring home groceries thereby diminishing the tenant's quality of life during this period. I find the tenant has established the existence of the damage or loss (point 1 of the 4-point test).

As the policy guideline states, "*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."* In this case, I find the landlord has made reasonable efforts to minimize the disruption to the tenant in making the repairs to the elevator by seeking to repair rather than replace the broken oil tank. It was both prudent and sensible in terms of saving money and time. Unfortunately, it was irreparable, leading to a further delay while waiting for the parts to arrive for a replacement. Despite the landlord's best efforts, the value of the tenancy was still diminished for the 3 months while the elevator was out of service.

PG-6 states:
*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.*
The tenant was still provided with a residential property in a state of decoration and repair that complies with all other health, safety and housing standards required by law and was suitable for occupation by a tenant. When the tenant applied for the monetary order, the elevator had not been repaired and the tenant sought 100% rent returned up from when the elevator stopped to the date of filing ($820.00 x 2.5 = $2,050.00). The tenant provided no reasoning for seeking 100% of the rent to be recovered, acknowledging it was difficult to supply a valuation for the percentage requested. I find the tenant has not provided sufficient evidence to satisfy me the value of the damage or loss is a 100% rent reduction (point 3 of the 4-point test). I further find the amount of compensation sought is not commensurate to the diminishment of quiet enjoyment experienced by the tenant in this case.

The tenant's primary argument for the loss of quiet enjoyment was that he was less able to go get groceries while the elevator was out of service. During the hearing, I heard no evidence from the tenant regarding whether he made use of grocery delivery services or volunteer food delivery for seniors with disabilities available in his area. In this case, I find the tenant has provided insufficient evidence to establish he has taken all the steps to mitigate the damages he seeks. (point 4 of the 4-point test).

Based on the evidence before me, I find the value of the damage or loss from the loss of entitlement to quiet enjoyment should be closer to 20% of the rent paid during the 3-month period the elevator was out of service. As such, I find the tenant is entitled to a monetary order in the amount of $492.00. [$820.00 x 20% x 3 (months) = $492.00].

As the tenant's application was successful, the tenant is also entitled to recovery of the $100.00 filing fee for the cost of this application.

Pursuant to the offsetting provisions of section 72 of the Act, I order that the tenant is entitled to deduct $592.00 from a single payment of rent due to the landlord.

Conclusion
The tenant is entitled to deduct $592.00 from a single payment of rent due to the landlord.

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 25, 2021

Residential Tenancy Branch