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 RR, MNDCT, RP

Introduction

This hearing was scheduled to deal with a tenant's applications for repair orders; for authorization to reduce rent payable due to repairs not made or services or facilities not provided; and, monetary compensation for damages or loss under the Act, regulations or tenancy agreement.

Both the landlord and the tenant appeared for the hearing. The tenant was also assisted by an advocate. The parties were affirmed and the parties were ordered to not record the proceeding.

I confirmed that the parties had exchanged their respective hearing materials upon each other rand I admitted their materials for consideration in making this decision.

The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process. The parties were also given the opportunity to try to settle their dispute.

Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and procedural matters

This tenant had identified a number of remedies in this application and the hearing was scheduled on a priority basis as the tenant indicated she was in need of repair orders. I explored the tenant's need for repair orders and the tenant and her advocate responded that the elevator was repaired shortly after filing this Application for Dispute Resolution. The tenant withdrew the request for repair orders. The tenant's confirmed that the primary issue to resolve is her request for compensation.

As for how the claim for compensation was calculated, the tenant's advocate stated the tenant is seeking a 100% rent abatement for the month of December 2020 and January 2021 and a 50% rent abatement for the month of February 2021 since the elevator was repaired in February 2021. I noted that there was no Monetary Order worksheet or detailed calculation provided and the Application for Dispute Resolution indicates the tenant was seeking authorization to reduce rent by 50% for each month, or part thereof, the elevator was not in service which is different than the calculation put forth at the hearing.

I turned to the landlord to determine whether it would be fair to proceed given the change in calculation. The landlord stated that the day prior to this hearing he was party to a different dispute resolution hearing with the same Advocate and he learned then the revised calculation. Despite the late notice of the change in calculation the landlord stated he was prepared to proceed and respond to the claim as calculated and put forth during the hearing.

Having been satisfied the landlord was not unduly prejudiced by the change in calculation, I continued to hear this case, as amended.

Issue(s) to be Decided

Is the tenant entitled to compensation for loss of use of the elevator, and if so, in what amount?

Background and Evidence

The tenancy started on December 1, 2019 and the tenant is required to pay rent of $1075.00 on the first day of every month. The rental unit is on the third floor of an apartment building with an elevator.

It is undisputed that between the dates of November 26, 2020 and February 18, 2021 the elevator was out of service.

The tenant testified that she is a senior with mobility issues that are the result of two knee replacements, osteoarthritis in her back, and tendinitis in her arm. The tenant relies upon the elevator to do laundry in the building, check the mailbox in the building, go shopping, and have friends visit her as they are also seniors. The tenant testified that she had to go shopping more frequently due to the loss of elevator because she

places her items in a cart and the cart would be too heavy to lift up the stairs if she purchased too many things as once. The tenant submitted that going shopping more often increased her risk to exposure to Covid-19. The tenant submitted she also felt isolated, especially over the Christmas season, as her friends could not visit and this impacted her mental wellbeing. The tenant did acknowledge that social gatherings and going out to socialize were diminished due to the pandemic during the relevant time but the tenant submitted she did have a couple of friends in her "bubble" who are also seniors.

The tenant testified that there was some vague communication from the landlord indicating they were waiting for parts to repair the elevator, which was frustrating to the tenant. The tenant and other tenants had written a demand letter for repairs on February 2, 2021. The tenant provided a copy of the landlord's notice concerning the elevator and the tenants' demand letter of February 2, 2021 as evidence.

The tenant's advocate argued that the landlord is required to provide services or facilities and that includes the elevator. The loss of the elevator is a breach of the tenant's right to quiet enjoyment of the property under section 28 of the Act and that entitles the tenant to compensation.

The tenant was of the view that a 100% rent abatement was fair because she was of the view the landlord did not make sufficient efforts to communicate with tenants or act in a reasonably timely manner to have the elevator repaired. The tenant was of the view that one month would have been a reasonable amount of time to repair the elevator although she did not explain how she arrived at that estimation or indicate any expertise in elevator repairs. The tenant's Advocate stated that the requested compensation reflects the level of disruption to the tenant having been forced to use the stairs which inhibited her daily enjoyment.

The landlord's agent submitted the landlord is not willing to compensate the tenant anything because the landlord did what they needed to do to facilitate the repair as fast as they could. The landlord's agent explained the oil tank for the elevator cracked and was leaking, meaning it could no longer hold sufficient pressure to run the elevator. The landlord was provided an estimate by their elevator company that indicated it would take 2 to 3 months to get replacement parts and the delay was largely due to Covid-19. The landlord then looked into getting the tank patched so that the elevator may be returned to service sooner but after a specialist inspected the elevator it was determined the tank could not be patched. The landlord proceeded to obtain more estimates from different

elevator companies but the other companies estimated an even longer wait time so the landlord decided to proceed to have the repair made by current elevator contractor.

The landlord acknowledged that, in hindsight, investigating the option to patch the oil tank turned out to be a waste of time; however, the landlord did not unreasonably delay in getting the elevator repaired. The landlord pointed to the time frame provided by their elevator company, submitted as evidence by the landlord.

After hearing from both parties, I informed the parties that it was my view that their respective positions regarding compensation were outside of the realm of reasonableness. With respect to the tenant's claim for a 100% rent abatement I pointed out to the tenant that I heard she still had full use of her rental unit. With respect to the landlord's position that no compensation should be payable, I pointed out that the elevator is a service or facility to be provided by the landlord and that policy guideline 16 provides that a loss of use by a tenant, even when it is no fault of the landlord, may entitle the tenant to compensation. I suggested the parties give more thought to proposing a more reasonable amount of compensation for loss of use of the elevator, which the parties did.

The tenant submitted than an award of 40% – 50% of her rent would be a reasonable award for her loss given the disruption to her activities. The landlord submitted that compensation of 20% – 25% was more reasonable considering she still had use of her rental unit and going out and socializing was largely reduced due to Covid-19 restrictions. I tried to facilitate a settlement between the parties but the parties were too far apart. However, both parties indicated they were agreeable that I would consider their respective proposals and make a decision as to which is more reasonable.

Analysis

It is undisputed that the elevator at the residential property was out of service between November 26, 2020 and February 18, 2021. The tenant seeks compensation for the damages and losses she suffered as a result of loss of use of the elevator.

An elevator is included in the definition of "service or facility" under section 1 of the Act.

Residential Tenancy Branch Policy Guideline 16: *Claims in Damages* provides, in part:

> **B. DAMAGE OR LOSS**
> Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:
> • loss of access to any part of the residential property provided under a tenancy agreement;
> • loss of a service or facility provided under a tenancy agreement;
> • loss of quiet enjoyment (see Policy Guideline 6);
> • loss of rental income that was to be received under a tenancy agreement and costs associated; and
> • damage to a person, including both physical and mental.
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> **D. AMOUNT OF COMPENSATION**
> In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.
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> [my emphasis underlined]

As the claimant, the tenant bears the burden of proof. The tenant's advocate submitted the tenant's mental well-being was impacted to due loss of the elevator; however, I find there is insufficient evidence to support harm to the tenant's mental health. I was not provided any medical evidence of a professional qualified to evaluate one's mental health or wellbeing. Nor, was I provided evidence to corroborate the tenant's friends could not visit the tenant during the relevant period and would have had it not been for the lack of an elevator. Accordingly, I find there is insufficient compelling evidence to make an award for harm to the tenant's mental health or wellbeing associated to the loss of use of the elevator and I proceed to consider an appropriate award due to loss of use of a service or facility.

Residential tenancy Policy Guideline 6: *Entitlement to Quiet Enjoyment* provides, in part:

> **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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> 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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> 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.
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> 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.

I consider the period of November 26, 2020 to February 18, 2021 to be more than a temporary inconvenience. Upon review of the timeline drafted by the elevator company, I accept the landlord acted in a reasonably timely manner as repairing an elevator is typically specialized work that is costly and may require the import of special parts. I also find it reasonable that a landlord would obtain more than one estimate, especially for a significant repair. Nonetheless, I find the loss of use of the elevator over such a period of time amounts to significant interference with the tenant's right to lawful use of

the common property and a breach of quiet enjoyment. Therefore, I find the tenant is entitled to compensation.

I have weighed the proposed awards put forth by the parties during the hearing. If I were to grant the tenant's request for an award of 40% – 50% of the monthly rent, that would amount to an award of approximately $430.00 to $537.50 per month. If I were to award the tenant an amount based on the landlord's suggestion of 20% to 25% of the monthly rent, that would amount to an award of $215.00 to $268.75 per month. All tings considered, I find the landlord's proposal is more reasonable in my view. I make this decision considering the following factors:

- The rental unit remains fully useable during the relevant period of time.
- Access to common areas such as the laundry room and mailbox remained available although it required the tenant to navigate two flights of stairs.
- The rental unit is located on the third floor and the tenant was able to travel up and down the stairs as she testified she went shopping more frequently.
- The tenant did not provide medical evidence to corroborate her testimony that she suffers from mobility issues.
- Covid-19 health orders largely restricted a person's ability to socialize and engage in other events during the relevant time period.
- The tenant did not provide corroborating evidence that she was unable to have friends from her "bubble" visit during the relevant period of time due to the loss of the elevator and did not provide a reason she did not visit her friends outside of rental unit as she was able to navigate the stairs.
- The tenant did not provide a reason why she did not avail herself of grocery delivery services rather than go shopping more frequently.
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In light of the above, I find it appropriate to award the tenant a rent abatement of 20% for the period of time the elevator was unavailable.

I calculate the tenant's award as follows:

Per diem rent abatement: $1075.00/31 days = $34.68 x 20% = $6.94
Number of days without elevator: 84 days
Award: $6.94 x 84 days = $582.96

The tenant is provided a Monetary Order in the amount of $582.96 with this decision. I authorize the tenant to withhold $582.96 from rent otherwise payable to satisfy the Monetary Order and in doing so the landlord must consider the rent paid in full.

Alternatively, the landlord shall present payment to the tenant to satisfy the Monetary Order.

Conclusion

The tenant is awarded $582.96 and is provided a Monetary Order in this amount. The tenant is authorized to deduct $582.96 from rent otherwise payable in satisfaction of 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: June 09, 2021

Residential Tenancy Branch