



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Tenant R.R. and an agent of the landlord (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

Tenant R.R. testified, and the agent confirmed, that the tenants served the landlord with the notice of dispute resolution form and supporting evidence package. The agent testified, and tenant R.R. confirmed, that the landlord served the tenants with their

evidence package. I find that all parties have been served with the required documents in accordance with the *Act*.

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 1, 2019 and is currently ongoing. Monthly rent in the amount of \$1,877.75 is payable on the first day of each month. A security deposit of \$925.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Tenant R.R. testified that on December 26, 2020 at approximately 9:00 p.m. he and tenant N.J. returned to the subject rental property after having been away for the holidays and found that the elevator to their fourth floor unit was out of service. Tenant R.R. testified that they tried to take the stairs, but the door from the stairwell to the fourth floor was locked, and the tenants did not have a key.

Tenant R.R. testified that they were unable to contact the property manager because it was outside of regular office hours. Tenant R.R. testified that he called the call center responsible for issues occurring outside regular office hours but the call center personnel did not deem the issue an emergency and didn't do anything.

Tenant R.R. testified that because they were unable to gain access to the fourth floor, they could not gain access to their unit and had to spend the night in a hotel.

Tenant R.R. testified that the next day, December 27, 2020, they ran into a neighbour who had a key to the fourth floor. Tenant R.R. testified that the neighbour let them onto the fourth floor and so they were able to gain access to their unit.

Tenant R.R. testified that the elevators were not repaired until mid-day December 29, 2022. Tenant R.R. testified that since they did not have keys to the fourth floor, the tenants were unable to leave the subject rental property until the elevators were fixed because if they left, they would be locked out.

Tenant R.R. testified that on December 30, 2020 they asked the landlord for a key to the fourth floor and were provided with one that day.

Tenant R.R. testified that the landlord's failure to properly maintain the elevators at the subject rental property caused the tenants to suffer monetary damages. The tenants' application for dispute resolution and monetary worksheet set out those damages as follows:

Item	Amount
Loss of access to floor	\$131.25
Hotel stay	\$118.91
Lost wages	\$436.96
Key cut	\$10.00

Loss of access to floor

Tenant R.R. testified that the claim for \$131.25 is an arbitrary amount for the loss of use of elevator.

Hotel stay

The tenants entered into evidence a receipt for their hotel stay from December 26, 2020 to December 27, 2020. Tenant R.R. testified that due to the landlord's failure to maintain the elevators at the subject rental property, the tenants had to spend a night in a hotel because they could not otherwise gain access to their unit.

Lost wages

Tenant R.R. testified that he was scheduled to work on December 28-29, 2020 but was unable to go to work for fear of not re-gaining access to the subject rental property. The landlord's monetary worksheet claims \$436.96 in lost wages; however, a document entered into evidence by the tenants titled Wage_Loss_Summary claims lost wages in the amount of \$512.40. Tenant R.R. testified that the original sum claimed did not take into consideration their taxable benefits. The tenants entered into evidence time sheets for the relevant time period.

Key Cut

Tenant R.R. testified that the landlord only provided the tenants with one key for the fourth floor and so they had to have another key cut which cost \$10.00. No receipt for same was entered into evidence.

Landlord's Response

The agent testified that the landlord has not breached its obligation to maintain the elevators. The agent testified that the landlord completes monthly inspections of the elevators at the subject rental property and more in-depth quarterly inspections of the elevators at the subject rental property.

The agent testified that the call centre referred to by the tenant was first notified of the elevator malfunction on December 27, 2022, not December 26, 2022. The agent testified that there is no evidence to support the tenants' submissions that the elevator stopped working on December 26, 2022.

The agent entered into evidence the call log from the call center from December 26, 2020 at 0:00 to December 29, 2020 at 23:59 which states that the first call to the call center in that time period was December 27, 2020 at 17:55:43. The comment for that call is "one of the elevators is inoperable, on earthquake mode". Numerous additional calls can be seen to have been made between the above date and time and December 28, 2020 at 22:52:59 pertaining to non-operational elevators.

The agent testified that the landlord responded promptly to the reports made to the call centre about the non-functional elevators. The agent testified that the elevator repair company was called and a temporary fix was made while waiting on parts; however the

temporary fix did not hold and the elevator again stopped working and the repair could not be made until the required parts came in on December 29, 2020.

The agent entered into evidence an email exchange between the agent and the elevator repair company as follows:

- Agent: I would like to know when we placed a service call and when the technician attended to the issue please. Our elevator was out of service during the holidays and I am trying to find out when we reported it to you.
- Elevator repair company: Hi [agent], Below is the reply from our dispatch...

I have searched the recordings in question, and it appears that I am unable to access the particular phone recordings for those dates. It is possible that the recordings are no longer available on our servers. I can see that there was a service call on 12/27/2020 placed at 7:17pm, [number redacted], for all equipment down in the building in which the technician appears to have left the unit running with a temporary fix, "We box in our needs replacing temporary fix unit running." I see that the customer called in again the next day reporting the same situation. Customer [name redacted] authorized overtime for immediate service at 12:48 on 12/28/2020, [number redacted], but we did not go as parts were on order for the repair that was apparently related to seismic error. [Name redacted] called in the matter on the same day at 18:46, [number redacted] which was cancelled for the same reason. I apologize that these call recordings are not available. Please let me know if you have any other questions".

The agent testified that the landlord did everything it could to fix the issue but the elevator could not be fixed until the parts came in. The agent testified that during the time in question she resided in the subject rental building and on December 27, 2020 she taped all of the doors from the stairwells to the floors to prevent the doors from locking, so that all tenants could gain access to their units and were not locked out.

The agent testified that tenants are usually given keys to the stairwell door at the start of their tenancy but that, for an unknown reason, the tenants in this application for dispute resolution were not given keys to the stairwell door at the start of their tenancy.

Tenants' Reply

Tenant R.R. testified that he did not know if the doors were taped because he did not want to risk getting locked out so he didn't check the stairs after gaining access to his unit on December 27, 2022. Tenant R.R. testified that he suffers from COPD and so using the stairs is not a realistic option for him on a regular basis.

Analysis

Section 7 of the *Act* states that 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. A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the *Act* states that without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the tenant's claim fails.

Loss of Quiet Enjoyment and Landlord's Obligation to Repair and Maintain

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Policy Guideline 6 states that 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 tenants' right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

Section 32 of the *Act* states that a landlord must provide and maintain residential property in a state of decoration and repair that:

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Based on the call logs entered into evidence between December 26, 2020 and December 28, 2020, I find that the broken elevator was first reported to the call centre

on December 27, 2020 at 17:55. Based on the email from the elevator repair company, I find that the landlord first contacted the elevator repair company about the broken elevator at 19:17 on December 27, 2020. The time between the first report of the broken elevator and the landlord's call to the elevator repair company was 1 hour and 22 minutes.

I find that the landlord acted reasonably and expeditiously in contacting the elevator repair company 1 hour and 22 minutes after the first report of a broken elevator. Based on the email from the elevator repair company, I find that on December 27, 2020 the elevator repair company attempted to temporarily fix the elevator while waiting for a necessary part; however this temporary fix did not work and that the elevators remained non-functional until sometime on December 29, 2020. I find that thanks to the timely efforts of the landlord, the elevator was only non-functional from December 27-29, 2020. I find that in acting promptly to repair the elevator, the landlord complied with section 32 of the *Act*.

I find that while the tenants were undoubtedly significantly inconvenienced and disturbed by the loss of the elevator for those dates, the landlord is only responsible for that loss of quiet enjoyment, pursuant to Policy Guideline #6, when 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.

I find that shortly after learning of the elevator outage, the landlord took reasonable steps to correct that outage, in that the landlord contacted a repair company who attended that day, December 27, 2020.

Tenant R.R. submitted that the elevator's broke due to the landlord's failure to maintain them. I find that the tenants have not provided any evidence to prove, on a balance of probabilities, that the landlord did not comply with industry standard maintenance of the elevators in the subject rental property. I accept the agent's testimony that the elevators are regularly inspected. I find that regular inspections are unlikely to catch every and all issues that may arise between inspections.

I find that the tenants have not proved that the landlord caused the elevator to break, through action or inaction, and have not proved that the landlord failed to take reasonable steps to repair the elevator. I therefore find that the tenants' claim for loss of quiet enjoyment under section 28 of the *Act* fails.

As the tenants have not proved that the landlord breached any section of the *Act*, tenancy agreement or regulation, I dismiss the tenant's application for lost wages, loss of quiet enjoyment and the December 26, 2020 hotel stay, without leave to reapply.

Residential Tenancy Branch Policy Guideline #1 states:

The landlord must give each tenant at least one set of keys for the rental unit, main doors, mail box and any other common areas under the landlord's control, such as recreational or laundry rooms. The tenant must return all keys at the end of the tenancy, including those he or she had cut at his or her own expense.

I find that the landlord was required to give both tenants keys to the stairwell door (not just one tenant). In this application for dispute resolution the tenants did not provide a receipt for the cost of cutting a second key. As no receipt or proof of the value of the loss suffered was entered into evidence, I find that the tenants have not proved the value of that loss and are therefore not entitled to compensation. The tenants' claim for the cost of cutting the second key is therefore dismissed without leave to reapply.

As the tenants were not successful in their application for dispute resolution, the tenants are not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

The tenants' application for dispute resolution is dismissed without leave to reapply.

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: December 2, 2022

Residential Tenancy Branch