



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding HAVEN MANAGMENT CO. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

RR, RP, PSF, FFT

Introduction

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

- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover the filing fees for these applications from the landlord, pursuant to section 72 of the *Act*.

The landlord and seven tenants in this rental building who filed similar applications for dispute resolution attended the hearing. The hearing commenced at 9:30 am, and ended at 11:43 a.m. to ensure that all parties who were in attendance were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. All parties were also clearly informed of the RTB Rules of Procedure about behaviour. All parties confirmed that they understood.

The landlord confirmed receipt of the tenants' applications and evidence, and that they were ready to proceed with the scheduled hearing.

Preliminary Issue: Service of Landlord's Evidence

Although the tenants confirmed that they were served with the landlord's evidentiary materials, the tenants expressed concern that the evidence was not served at least 14 days prior to the hearing date. The landlord provided proof of service to show that each tenant was served by way of registered mail on May 16, 2023. In accordance with sections 88 and 90 of the Act, the packages are deemed served 5 days after mailing. The tenants confirmed that they had sufficient time to review the materials prior to the hearing, but wanted it noted that the landlord's evidence was late.

Rule 3.15 of the RTB's Rules of Procedure establishes that "the respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing"

The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.15 and the definition of days, the last day for the landlord to file and serve evidence as part of their application was May 15, 2023.

Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. In this case I am satisfied that the tenants had an opportunity to review the landlord's evidentiary materials. Accordingly, I allow the landlord's late evidence to be admitted for the purposes of this hearing.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute.

With the exception of the units on the floors 10 and 11, all parties agreed to the following final and binding settlement related to the rent reduction dispute for the period of January 8, 2023 to May 23, 2023.

1. Both parties agreed that units 601, 701, 201, 202, and 801 will receive a 20% rent reduction for the 100 days that they were without a functioning elevator,

specifically January 8, 2023 to April 5, 2023, April 9, 2023-April 12, 2023, April 28, 2023-May 1, 2023, May 16, 2023, May 19, 2023, May 22, 2023-May 23, 2023.

Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute related to the rent reduction application for the above period.

The remaining matters could not be settled, and the parties agreed that a decision may be rendered in accordance with the Act for the remaining disputes.

Issues to be Decided

Are the tenants entitled to an order for the landlord to provide services or facilities required by law?

Are the tenants entitled to an order that the landlord perform repairs?

Are the tenants entitled to the rent reductions requested?

Are the tenants entitled to recover the filing fee paid for their applications?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of these applications and my findings around it are set out below.

The tenants from seven different rental units in this 46 unit building filed similar applications related to the loss of use of an elevator in the building. All parties confirmed that they were requesting a 30% rent reduction related to the loss of use of this facility. As noted above, 5 units agreed to settle this matter with the landlord, and will be compensated with a 20% rent reduction for 100 days the elevator was not functioning up to and including the hearing date. The tenants in the units located on floors 10 and 11 did not accept the landlord's offer, and requested an additional rent reduction that reflects the fact that they live on higher floors.

The landlord does not dispute that the elevator had broken down on January 8, 2023. The landlord testified that they have been trying to restore the use of the elevator for some time, but due to delays waiting for parts, the elevator could not be repaired until

April 6, 2023. The landlord submits that they received confirmation from the company that maintains the elevator that the elevator should have been functional as of April 6, 2023.

The tenants testified that the elevator has continued to break down intermittently since April 6, 2023: specifically on April 9-12, 2023, April 28-May 1, 2023, May 16, 2023, May 19, 2023, and May 22-23, 2023. The tenants testified that as of the hearing date, the elevator was not working again. The landlord did not dispute that the elevator was still breaking down.

The tenants expressed their frustration as all 12 floors rely on the use of this one elevator. Without the use of the elevator, the tenants have to use the stairs. In addition to the obvious fact that those who reside in the higher floors would have more stairs to climb, the tenants testified that the hardship cannot be measured by the amounts of stairs alone. The tenants expressed their frustration over the matter as they feel the elevator is an essential facility that was not working for a long period of time. The tenant expressed further concern that the elevator is not fixed, and continues to break down on a frequent basis.

The tenants testified that the landlord responded with excuses for why the elevator could not be fixed within a reasonable amount of time, and argued that it was not only physically challenging having to use the stairs, but the loss of use of the facility has affected their mental health as well. Some tenants testified that have had to adjust how often they left their rental units because of the stairs. The tenants noted that the elevator is not only used by residents, but visitors as well.

Although 5 of the rental units accepted a settlement equivalent to a 20% rent reduction for the period up to the hearing date, the tenants requested an ongoing rent reduction as the elevator is still not working properly. The landlord argued that that the tenants should not only provided with a rent reduction until they received official confirmation that the elevator has been repaired. The tenants noted that they had received this confirmation in April 2023, but the elevator continues to break down. The tenants felt that an ongoing rent reduction should be applied as long as the elevators were not working.

Analysis

The tenants' applications were made in accordance with the following provisions of section 65 of the *Act* which allows me to make an order regarding past and future rent:

65 (1) *Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:...*

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;...

The landlord's obligations to maintain and repair facilities in a rental property are set out in section 32(1) of the *Act* which reads in part as follows:

32 (1) *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,...

Section 27 of the *Act* establishes the basis for a landlord to terminate or restrict services or facilities with respect to a tenancy:

27 (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, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

RTB Policy Guideline #22 provides further clarification of what constitutes an essential facility or facility:

B. ESSENTIAL OR PROVIDED AS A MATERIAL TERM

An “essential” service or facility is one which is necessary, indispensable, or fundamental. In considering whether a service or facility is essential to the tenant's use of the rental unit as living accommodation or use of the manufactured home site as a site for a manufactured home, the arbitrator will hear evidence as to the importance of the service or facility and will determine whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the rental unit as living accommodation. For example, an elevator in a multi-storey apartment building would be considered an essential service.

I find the use of the elevator an essential service as the tenants resides in a multi-storey building with only one elevator, and the only other alternative to access their rental units is to use the stairs.

In assessing the tenants' claims, I first note that the party applying for dispute resolution bears the responsibility of demonstrating entitlement to a monetary award. Based on the evidence before me, I find it undisputed that the tenants did not have the use of the elevator for 100 days in the period between January 6, 2023 to May 23, 2023.

I will now consider whether units located on floors 10 and 11 are entitled to a rent reduction for the above period. The tenants in these units are requesting a rent reduction of 30% as the tenants felt their hardships were even greater due to the location of their rental units.

As noted earlier, I am satisfied that the elevator is an essential facility. As noted by the tenants, their suffering cannot be measured by the number of flights alone. Although I recognize the impact that the loss of use of the elevator is unique to each tenant, I find that the upper floor tenants would be affected slightly more than the tenants who live on the lower floors due to the number of stairs that need to be climbed. I find that the tenants in units in these upper floors should be provided with a rent reduction that reflects this.

I find that the tenants have not demonstrated their entitlement to the requested 30% rent reduction. I do, however, find that a rent reduction is justified. Given that the other tenants have accepted the landlord's proposal of 20%, I find that an additional 5% reflects the fact that these tenants have to climb additional stairs to access their rental units. Accordingly, I allow these tenants a rent reduction of 25% for the 100 day period that the elevator was not functioning.

In response to the tenants' applications for the landlord to provide services and facilities as required, and for the landlord to perform repairs, I find that the landlord has acknowledged that the elevator is an essential service that must be restored and fixed in a timely manner. I order that the landlord follow up with the elevator maintenance company to obtain further information on why the elevator continues to break down. I order that the landlord provide all affected tenants with an update in writing by June 30, 2023 as to what is wrong with the elevator, and what the tenants can expect from the landlord and the maintenance company for the continued provision of this facility.

In consideration of the fact that the elevator was not functioning on the day of the hearing, and on multiple occasions after April 6, 2023, the date the elevator was confirmed as repaired, I find that the tenants should be entitled to an ongoing rent reduction for the loss of use of this facility. I find that the elevator continues to break down frequently despite the fact that the tenants have received confirmation that the elevator has been repaired. I am not satisfied that the evidence shows that the elevator has been repaired to the extent that the tenants can be confident that the elevator is fixed. For this reason, I order that the tenants be provided with an ongoing rent reduction of the previous rent reductions granted, for any future elevator break down that exceeds 12 hours, beginning on May 24, 2023, for the duration of these tenancies. The tenants may opt to reduce their future monthly rent payments to reflect these rent reductions, or make arrangements with the landlord for how these rent reductions can be applied.

As the tenants were successful with their applications, I allow the tenants to recover the filing fees paid for their applications.

Conclusion

The tenants will be provided with monetary orders to reflect the respective rent reductions granted up to May 23, 2023, as well as recovery of the filing fees paid. The tenants are provided with these Orders and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with these Orders, this Orders may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I order that the tenants be provided with an ongoing rent reduction of the previous rent reductions granted, for any future elevator break down that exceeds 12 hours, beginning on May 24, 2023, for the duration of these tenancies. The tenants may opt to reduce their future monthly rent payments to reflect these rent reductions, or make arrangements with the landlord for how these rent reductions can be applied.

I order that the landlord follow up with the elevator maintenance company to obtain further information on why the elevator continues to break down. I order that the landlord provide all affected tenants with an update in writing by June 30, 2023 as to what is wrong with the elevator, and what the tenants can expect from the landlord and the maintenance company for the continued provision of this facility.

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 24, 2023

Residential Tenancy Branch