



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCT, OLC, FFT**

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on January 19, 2023 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord comply with the Act;
- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The Tenant and the Landlord's Agent attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised, I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

While the parties confirmed that the Landlord served the Tenant with their Evidence package and the Tenant confirmed receipt, I note that the Landlord did not submit a copy of their evidence to the Residential Tenancy Branch for my consideration. The hearing was adjourned to allow the Landlord and opportunity to submit their evidence to the Residential Tenancy Branch for my consideration.

The reconvened hearing was held on September 5, 2023 and one again attended by the Tenant and the Landlord's Agent. At the start of the reconvened hearing, it was confirmed that the Landlord submitted this evidence to the Residential Tenancy Branch.

The Parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written

evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order to provide services or facilities required by tenancy agreement or law, pursuant to Section 62 of the *Act*?
2. Is the Tenant entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
3. Is the Tenant entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties agreed to the following; the tenancy began on December 1, 2001. Currently, rent in the amount of \$914.16 is due to the Landlord by the first day of each month, as well as a security deposit in the amount of \$317.50 was paid to the Landlord. A tenancy agreement between the parties was submitted in support.

The Tenant is seeking an order that the Landlord comply with the Act. The Tenant stated that the elevator at the rental property broke down for 8 days over Christmas. The Tenant stated that she is elderly and has difficulties navigating the stairs. As such, the Tenant was unable to go anywhere for Christmas. The Tenant stated that the status of repairs was not communicated to her. Furthermore, the Tenant stated that she asked for assistance with disposing of her garbage, which was refused by the Landlord. The Tenant is also seeking compensation in the amount of \$300.00 for the inconvenience.

The Landlord's Agent stated that as soon as the elevator broke down, she contacted the elevator repair company who ordered the necessary parts to repair the elevator. The Landlord's Agent stated that there was a delay in getting the parts given the holidays. The Landlord's Agent stated that they posted notices advising the Tenants that the elevator was out of service. The Landlord's Agent stated that they were not in a position to dispose of the Tenant's garbage on her behalf.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

According to Section 32 of the *Act*,

(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, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant...

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement...

In this case, it is an unfortunate time of year for the elevator of the rental property to break down. I find that the Landlord has provided sufficient evidence to demonstrate that once the elevator broke down, they took action to have it repaired. I find that it is reasonable to expect some delays in getting parts over the holidays. I find that the Tenant provided insufficient evidence to demonstrate that the Landlord breached the *Act*. Instead, I am satisfied that the Landlord conducted the repairs to the elevator.

As for the garbage removal, I find that while it would have been nice to offer assistance to the Tenant, it was not the Landlord's responsibility to remove the Tenant's garbage from their rental unit. I therefore dismiss the Tenants claim seeking an order that the Landlord comply with the *Act*.

In relation to the monetary compensation sought by the Tenant, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

Based on my finding that the Landlord has not breached the *Act*, I find that the Tenant is not entitled to monetary compensation for the elevator being broken down for 8 days over the holidays as I find that the Landlord took sufficient action to repair it in a timely manner. Seeing as the Tenant was not successful in their Application, the Tenant is not entitled to the return of the filing fee.

Conclusion

I dismiss the Tenant's application for an order that the Landlord comply with the *Act* and for monetary compensation 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: September 5, 2023

Residential Tenancy Branch