



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      OLC

### Introduction

This hearing dealt with an application by the tenant for an order that the landlord comply with the Act, Regulation, or tenancy agreement.

Both the tenant and a representative of the landlord attended the teleconference hearing and gave evidence. The tenant was represented by counsel.

### Issue(s) to be Decided

Should the landlord be ordered to comply with the Act, Regulation, or tenancy agreement?

### Background and Evidence

The parties agree that the tenancy started December 1, 2004.

The tenant gave evidence that she walks with the aid of two crutches due to a physical disability. She claims the landlord is obligated to install slip resistant matting from the front entrance through to the elevators and mailroom, in the elevators, and from the elevators through the upstairs carpeted hallways. The tenant seeks an order that the landlord comply with such an obligation.

The tenant gave evidence that she has had two slip-and-fall incidents during her tenancy. The first, in 2010, occurred in the rear elevator which goes from the rental building to the underground mall, parking, and recycling area. She gave evidence that it was raining that day and her foot slipped on the wet tile flooring causing her to fall down. There was no carpet or matting in the elevator. The tenant gave evidence that someone entered the elevator and helped her up. The tenant did not sustain any injury.

The second fall occurred in February 2014. The tenant states she entered the building through the front doors, walked through the lobby, and entered one of the main elevators. Her evidence is that her crutch came into contact with wax on the floor and she fell. She states there is no matting or carpet running from the front door of the building to the elevators or within the elevator. The tenant was not injured in the fall.

The tenant's solicitor wrote to the landlord on February 18, 2014 to report the tenant's 2014 fall and to raise the tenant's concern that a fall could have been avoided had there been a rubber mat in the elevator. The tenant's solicitor also raised that there is no slip-resistant matting on the lobby tile floors, which can be quite slippery when wet.

The tenant's solicitor received a response from the landlord dated February 24, 2014, which states in part:

"We are sorry to hear of [the tenant's] unfortunate incident and are glad the event has not caused her any personal injury or hardship.

CAPREIT adheres to a comprehensive risk and loss prevention program of regular inspection and remediation of such hazards.

We feel that our current processes and procedures more than meet our duty of care to the public and our valued tenants. While we will take [the tenant's] recommendations under advisement there are no immediate plans to install matting in the elevators."

The tenant takes the position that the landlord has a duty of care to its tenants, and that its current practice of not providing slip resistant matting falls below that standard. The tenant relies on Section 32(1)(s) of the Act, as well as the law of negligence and the *Occupiers Liability Act*.

The landlord's position is that they adhere to a regular risk check procedure and are not required to install matting in the elevators. The landlord does not wish to install rubber-backed carpeting over the tile floors because they are a pet-friendly building and it would be difficult to clean. The landlord does intend to apply a solution called "Johnny Grip" to the tile floors in the elevators to reduce slipperiness. The landlord also notes that they have installed signage indicating that the floors may be slippery when wet.

The landlord provided a copy of a letter from the landlord's insurance company dated April 10, 2014. The letter states there have been no claims involving the elevators in the building during the period from November 1, 2008 to the end of March 2014.

### Analysis

The tenant seeks an order that the landlord comply with the Act, Regulation, or tenancy agreement. There is no explicit requirement in the Act, Regulation, or tenancy agreement that the landlord provide certain flooring or floor covering that may reduce the slipperiness of the floor surface.

The tenant took the position that the landlord is in breach of Section 32(1)(a) which reads:

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

...

The tenant did not provide evidence that certain flooring material is specifically required by law. I understand the tenant to mean that the landlord is not in compliance with common law regarding negligence.

The tenant's claim is framed as a claim in negligence. However, the tenant gave evidence that she has not suffered any loss or damage as a result of the landlord's alleged negligence. One of the elements in establishing a claim in negligence is to prove that actual harm resulted from the alleged negligence. Since the tenant has not proven any actual harm, I find that she has not established that the landlord is negligent in not providing slip resistant surfaces in various areas in the building.

The tenant also cited the *Occupiers Liability Act*, [R.S.B.C. 1996] c. 337. The *Occupiers Liability Act* sets out a duty of a landlord under a tenancy at Section 6. However, Section 6(3) states:

(3) For the purposes of this section

(a) a landlord is not in default of the landlord's duty under subsection (1) unless the default would be actionable at the suit of the occupier, ...

Since the tenant on her evidence is unable to establish a claim in negligence and she has not set out any other way that her claim is actionable, I find the tenant has not proven a default by the landlord under the *Occupiers Liability Act*.

Underlying this dispute is the question of whether the landlord is obligated to take certain steps because the tenant has a physical disability. The tenant's evidence suggests that she may believe the landlord has a duty to accommodate her disability. Such a claim would involve application of the *Human Rights Code*, [R.S.B.C. 1996] c. 210.

The *Residential Tenancy Act* provides by Section 78.1 that: "Sections 1, 44, 46.3, 48, 56 to 58 and 61 of the *Administrative Tribunals Act* apply to the director as if the director were a tribunal and to dispute resolution proceedings under Division 1 of this Part and reviews under Division 2 of this Part." Section 48.3 of the *Administrative Tribunals Act*, [S.B.C. 2004] c. 45 provides:

**Tribunal without jurisdiction to apply the *Human Rights Code***

- 46.3 (1) The tribunal does not have jurisdiction to apply the *Human Rights Code*.  
(2) Subsection (1) applies to all applications made before, on or after the date that the subsection applies to a tribunal.

I do not have jurisdiction to apply the *Human Rights Code* and I find that this precludes me from making a determination as to whether the landlord has any duty to accommodate the tenant on the basis of a disability in this circumstance.

For the foregoing reasons, I dismiss the tenant's application.

Conclusion

The tenant's application is dismissed.

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 05, 2014

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Residential Tenancy Branch

