



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OLC, MNR, PSF, LAT, RR, and FF

Introduction

This hearing was scheduled in response to the Tenants' Application for Dispute Resolution, in which the Tenants made application for a monetary Order for the cost of emergency repairs; an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; an Order requiring the Landlord to provide services or facilities; for authority to change the locks; for authority to reduce their rent in compensation for repairs, services, or facilities agreed upon but not provided; and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution. At the hearing the Tenant withdrew the application for authority to change the locks, as the locks in the rental unit have been changed.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord has complied with the terms of the tenancy agreement in relation to the pool that is attached to this rental unit and, if not, what remedies are applicable.

Background and Evidence

The Tenants submitted a written tenancy agreement that declares this tenancy began on June 01, 2009; that the Tenants were required to pay monthly rent of \$1,800.00; and that the Tenants were responsible for maintenance of the swimming pool. The Tenant submitted a copy of a condition inspection report which was completed and signed by an agent for the Landlord and one of the Tenants on June 01, 2009.

The Agent for the Landlord and the Tenant agreed that the pool needed to be professionally cleaned at the beginning of the tenancy. The Agent for the Landlord stated that the pool has been partially cleaned since the beginning of the tenancy but that it is not yet fully functional, as the chemicals need balancing.

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The Tenant stated that similar rental units without a pool in this area typically rent for \$1,500.00 per month, so he contends that the value of the tenancy has been reduced by \$300.00 per month. The Tenant submitted no evidence to corroborate this statement. The Tenant is seeking compensation in the amount of \$300.00 per month until the pool is fully functional.

The Agent for the Landlord stated that similar rental units without a pool in this area typically rent for \$1,600.00 per month, so she contends that the value of the tenancy has been reduced by no more than \$200.00 per month.

The Agent for the Landlord and the Tenant agree that on June 25, 2009 the Tenant notified the Landlord, via email, that the gas heater for the pool was not working. The parties agree that on June 25, 2009 the Agent for the Landlord advised the Tenant, via email, that she did not consider the heater to be an urgent matter that should be repaired without the consent of the owner of the rental unit. The parties agree that on July 02, 2009, the Tenant advised the Agent for the Landlord that he will be making arrangements to have the pool heater repaired.

The Agent for the Landlord and the Tenant agree that the Tenant provided the Landlord with a bill, in the amount of \$355.00, for repairing the pool heater, although this bill was not submitted in evidence. The Tenant is now seeking compensation for this repair bill.

At the hearing the Tenant attempted to discuss several minor deficiencies in the rental unit, such as missing light bulbs; broken fence latches; and broken fences. As these issues were not clearly outlined on the Application for Dispute Resolution, I declined to hear evidence on those deficiencies. The Tenant retains the right to file another Application for Dispute Resolution in relation to these matters.

Analysis

I find that the Landlord and the Tenants entered into a tenancy agreement on May 26, 2009, which required the Tenants to pay monthly rent of \$1,800.00, commencing June 01, 2009. Based on the oral evidence provided by both parties; the notation on the tenancy agreement that declares the Tenants are responsible for maintaining the swimming pool; and the notation on the Condition Inspection Report that declares the pool needed to be professionally cleaned at the beginning of the tenancy, I find that the tenancy included the use of the swimming pool. The undisputed evidence is that, at the time of the hearing, the swimming pool was still not fully functional, as the chemicals had not been properly balanced.

I find that the Landlord failed to comply with a term of the tenancy of this tenancy agreement when it failed to provide the Tenant with access to a functional swimming

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pool. I find that the absence of the pool reduced the value of this tenancy and that the Landlord must clean/repair the pool or compensate the Tenant for the absence of the pool.

There is a general legal principle that places the burden of proving the extent of a damage or loss on the person who is claiming compensation for damages or loss, not on the person who is allegedly responsible for the damage or loss. In these circumstances, the burden of proving the value of the reduced tenancy rests with the Tenants and I find that the Tenants have submitted no evidence to corroborate the statement that similar rental units without pools would rent for approximately \$300.00 less per month. Based on the Agent for the Landlord's acknowledgment that similar rental units without pools would rent for approximately \$200.00 less per month, I accept that the value of this tenancy has been reduced by \$200.00 per month because the pool is not functional.

Section 33 of the *Act* stipulates, in part, that tenants may have emergency repairs made only when emergency repairs are needed and that landlords must reimburse tenants for emergency repairs in certain situations.

The *Act* defines emergency repairs as repairs that are urgent; necessary for the health or safety of anyone or for the preservation or use of residential property; and are made for the purpose of repairing major leaks in pipes or the roof, damaged or blocked water or sewer pipes or plumbing fixtures, the primary heating system, damaged or defective locks that give access to a rental unit, the electrical systems, or, in prescribed circumstances, a rental unit or residential property. I find that that repairing a heater for a pool does not meet this definition of emergency repairs and I, therefore, dismiss the Tenant's claim for compensation for the cost of emergency repairs.

In reaching this conclusion, I note that the Tenant filed an Application for Dispute Resolution on June 02, 2009 to resolve a dispute about the swimming pool; that a hearing had been scheduled for July 14, 2009; and that on July 02, 2009 the Tenant advised the agent for the Landlord that he would be making arrangements to have the heater for the pool repaired. In these circumstances, I find that it would have been reasonable and prudent to wait until the matter had been resolved in accordance with the *Act*.

Conclusion

I hereby Order the Landlord to clean and repair the swimming pool so that it complies with health, safety, and housing standards. I further Order that the Landlord provide the



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Tenant with documentation from a qualified professional that establishes the pool complies with health, safety, and industry standards.

Pursuant to section 65(1) of the *Act*, I hereby authorize the Tenants to reduce their monthly rent by \$200.00 per month, beginning on August 01, 2009 and continuing on a monthly basis, until such time as the Landlord provides the Tenants with written documentation that the swimming pool is functional and that it complies with health, safety, and industry standards.

I further Order, pursuant to section 65(1) of the *Act*, that the Tenants reduce their next monthly rent payment by \$400.00 as compensation for being without the pool for June and July of 2009.

I find that the Tenants' Application for Dispute Resolution has merit and I find that the Tenants are entitled to compensation, in the amount of \$50.00, for the cost of filing this Application for Dispute Resolution. I therefore Order that Tenants reduce their next monthly rent payment by an additional \$50.00 as compensation for the cost of filing this Application for Dispute Resolution.

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: July 23, 2009.

Dispute Resolution Officer