



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RR, FF

Introduction

This hearing dealt with an application by the tenants for money owed or compensation due to damage or loss, to allow a tenant to reduce rent for repairs and recovery of the filing fee.

The tenant participated in the conference call hearing but the landlord did not. The tenant presented evidence that the landlord was served with the application for dispute resolution and notice of hearing by registered mail. I found that the landlord had been properly served with notice of the tenant's claim and the date and time of the hearing and the hearing proceeded in their absence.

Issue(s) to be Decided

Are the tenants entitled to any of the above under the Act.

Background and Evidence

This tenancy began in 1999 with current rent of \$1080.00.

The tenant testified that the indoor, heated swimming pool on the property was closed by the Health Department on June 8, 2011 and remains closed. The tenant stated that the swimming pool is part of the amenities provided as part of their tenancy in the building but stated that she was not sure if it was noted on the tenancy agreement. The tenant also states that there is no regular maintenance of the building, the floors are not washed, the windows not cleaned and the hallways smell like mold. The tenant also believes that the laundry facilities are inadequate for a building of this size and that the washers and dryers should be washed and disinfected for health reasons. The tenant did acknowledge that someone comes to vacuum once a week.

The tenant stated that her family used the swimming pool an average of 3 times per week and not having access to this facility any longer has greatly impacted her family's well being. The tenant stated that on September 19, 2011 she contacted the landlord in

writing about the pool not being repaired and lack of maintenance in the building but that she has never heard back from anyone.

The tenant stated that 2 weeks ago they finally got a new resident manager as they had been without one for months however the new resident manager has been assigned to manage 3 apartment buildings and as a result is not readily available to the tenants.

The tenant in this application is seeking \$1080.00 compensation and a \$200.00 per month rent reduction until the swimming pool is repaired and the building adequately maintained.

Analysis

Based on the documentary evidence and undisputed testimony of the tenant, I find on a balance of probabilities that the tenant has not met the burden of proving that they have grounds for entitlement to compensation for damage or loss and a rent reduction for services or facilities not provided.

It is acknowledged that the tenants have suffered a loss of this facility however the tenant did not provide a copy of the tenancy agreement and could not verify in this hearing if use of the swimming pool is in fact noted as a material term of the tenancy agreement. However while the swimming pool is not essential to the tenant's use of the rental unit, the landlord does have a duty to repair and maintain the property in accordance with section 32 of the *Act*.

I therefore Order that the landlord comply with section 32 of the *Act* and complete repairs on the swimming pool no later than February 29, 2012. If the landlord has not repairs to the swimming pool by this date; the tenant effective March 1, 2012 may make an application to this office for a rent reduction for facilities not provided and submit a copy of the tenancy agreement to verify the claim.

In regards to the maintenance of the building the tenant's photographic evidence does show scuffs on walls, dusty areas and laundry machines that may need to be wiped down. However the overall condition of the building is such that it appears to meet minimum standards of cleanliness although it does not meet the tenant's standard of cleanliness.

Consideration must also be given to the fact that the building as of 2 weeks ago, now has a resident manager and this manager should be allowed the opportunity to address any issues in the building. As the new resident manager may not be fully aware of the issues the tenant has brought forward IE: the maintenance of the building or the closed swimming pool; it would serve the tenant well to put her concerns in writing and submit them to the resident manager.

Residential Tenancy Act **Section 27 Terminating or restricting services or facilities**

- (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.*

Residential Tenancy Act **Section 32 Landlord and tenant obligations to repair and maintain**

- (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.*
- (2) *A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*

The tenant's application is dismissed without leave to reapply.

As the tenant has not been successful in their application the tenant is not entitled to recovery of the \$50.00 filing fee.

Conclusion

I hereby dismiss the tenant's application in its entirety.

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: October 27, 2011.

Residential Tenancy Branch