



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC FF O

Introduction

This hearing dealt with a tenant's application for a monetary order and an order that the landlord comply with the Act, regulation or tenancy agreement. An agent for the tenant and an agent for the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

As the tenancy ended at the end of February 2012, I do not find it necessary to address the portion of the tenant's application regarding an order that the landlord comply with the Act, regulation or tenancy agreement.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on April 1, 2010 and ended on February 29, 2012. The monthly rent was \$992. One of the amenities identified on the tenancy agreement was use of the building's swimming pool. The swimming pool was closed for repairs beginning in March 2011.

Tenant's Evidence

The tenant sent anonymous letters the landlord, on October 14, 2011 and January 6, 2011, informing the landlord that as the pool, a contractual amenity, was not useable, the landlord was required to compensate each tenant in the building with a reduction in

rent. The landlord did not respond to these letters, so on January 31, 2012 the tenant sent the landlord a third letter regarding the pool, and signed the third letter.

By January 31, 2012, the tenant had already given notice to end her tenancy in her rental unit and the landlord had accepted her application to move into another unit in the building beginning March 1, 2012. The tenant was planning to move into the new unit with her common-law spouse. After the tenant served the landlord with her third, signed letter, the landlord denied the tenant's spouse's application to move into the new unit. The tenant was therefore forced to move out of the building. The tenant believes that the landlord refused the tenant's spouse's application as a direct result of the tenant's request for compensation for loss of use of the swimming pool.

The tenant has claimed the following monetary compensation:

- 1) \$660 for compensation of \$60 per month for 11 months of loss of use of the swimming pool – the tenant looked at the cost for a monthly pass for the nearest facility, which was \$66 per month. In the hearing, the tenant's agent acknowledged that the tenant did not in fact purchase a pass or incur any cost to use a swimming pool elsewhere. The tenant's agent did not know whether the tenant had used the pool in the rental building before the repairs began, and could only say he knew of her using it twice.
- 2) \$530 for moving costs to move out of the building, including truck rental and hired labour
- 3) \$200 compensation for losing a day of work while moving.

Landlord's Response

The landlord needed to do emergency repairs because of a leak near the pool, and then they made the decision to renovate the pool area. The pool is not really for swimming, as it is only approximately 14 by 18 feet in size. The landlord did not respond to the tenant's first two letters because the letters were not signed. The landlord did not terminate the tenant's tenancy, she gave notice to move. The landlord did not approve the tenant's spouse's application for tenancy based on financial information.

Analysis

When a landlord terminates or restricts a facility that is not essential or material, the tenant may be entitled to a reduction in rent equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the facility. In this case, the tenant did not provide sufficient evidence to establish the monetary value of her use of the swimming pool. The tenant's agent could not confirm whether the tenant had used the swimming pool more than twice, and the tenant did not incur any expense to replace the lost use of the swimming pool. I therefore find that the tenant is not entitled to compensation for loss of use of the pool.

The tenant's tenancy ended because she had given notice to vacate. The tenant had planned to move into another unit in the same building but then did not do so because her spouse's application was not accepted. The landlord made a determination, based on financial information provided by the tenant's spouse, to decline his application. I find that the tenant is not entitled to recover her moving costs, including a day's lost wages.

As the tenant's application was not successful, she is not entitled to recovery of her filing fee for the cost of her application.

Conclusion

The application of the tenant 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: March 27, 2012.

Residential Tenancy Branch