



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 for Dispute Resolution by the tenant for a monetary order for compensation for loss under the Act, to allow a tenant to reduce rent for facilities agreed upon but not provided and to recover the cost of filing their application from the landlord.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties confirmed receipt of all evidence and there were no disputes in relation to review of the evidence.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for loss under the Act?

Is the tenant entitled to reduce rent for facilities agreed upon but not provided?

Background and Evidence

The tenancy began on April 15, 2007, and current rent is in the amount of \$1,182.00 payable on the first of each month. A security deposit of \$550.00 was paid by the tenant.

On March 19, 2012, the tenant was served with a notice of rent increase effective July 1, 2012, in accordance with part 3 of the Act. Therefore, the tenants new rent effective July 1, 2012 will be \$1,232.00 as stated in the notice of rent increase, subject to the outcome of this decision.

The parties agreed the pool in the building was closed in the fall of 2009 and will not be reopening. The sauna has been reopened.

The tenant testified that he seeks compensation for loss of the pool and sauna facilities for the period from the fall of 2009 to May 31, 2012, in the amount of \$5,850.00. The tenant stated that amount is calculated at a rate of 17% while both the pool and sauna were closed and was reduced to 9% after the sauna was reopened as he believes the tenancy was devalued by that amount each month.

The tenant stated he sent a letter to the landlord in 2010, and called the landlord sometime in 2012, requesting compensation for loss of the facilities. Filed in evidence is a copy of the letter, however, there is no date on the letter.

The tenant testified that he also seeks a rent reduction for loss of a facility effective June 1, 2012, as the landlord had not provided a reduction of rent for the loss of the facilities.

The tenant testified that he lived in this building on a previous occasion and used the pool extensively and this was a major factor in deciding to rent in this building again in 2007. The tenant stated he used the pool regular until it was closed in 2009 and seeks a monthly rent reduction in the amount of \$120.00 as that is the amount he pays at a facility with a pool for him and his spouse.

Counsel for the landlord submits the pool is not a facility provided under the terms of the tenancy agreement. Counsel argues clause 33 of the tenancy agreement stated any changes or addition to the tenancy agreement must be in writing and if they are not in the tenancy agreement or in writing they are not enforceable.

Counsel submits the landlord did not receive a letter in 2010, and the letter filed in evidence is not dated. Counsel submits the tenant has not made a reasonable effort to mitigate his loss as required by the Act and should not be entitled to any compensation.

Counsel submits if the pool is found to be a facility then the tenant should only be compensated for the value of an adult monthly pass at a local aquatic centre. The value should not exceed \$50.00 per month.

Counsel submits the tenants spouse is not a tenant under the tenancy agreement and they are not required to compensate an occupant as they have no rights under the tenancy agreement.

The landlord's agent testified the tenant did not receive a rent increase in 2010 and 2011, and submits the tenant has therefore already had the benefit of significant saving in the amount of \$2,994.00. The landlord's agent stated the tenant was not provided any letter to explain their decision not to increase rent and there were also other factors beside the pool considered when not increasing the rent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Upon review of the tenancy agreement I accept the tenancy agreement does not specifically provide for use of a pool. However, it is not uncommon that tenancy agreements do not list all amenities in a building. For example: it is rare to see use of an elevator in a tenancy agreement even when one is provided.

However, in this case the tenant filed his application for dispute resolution on June 1, 2012, and the pool was closed in the fall of 2009. The tenant only sent one letter to the landlord in 2010. In 2012, he made telephone contact with the landlord to discuss the closure of the pool and sauna facilities.

Section 5 of the Residential Tenancy Policy Guideline Manual explains the duty to mitigate as follows:

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

I find the tenant has failed to take reasonable steps to mitigate his loss which is an obligation the tenant has under section 7(2) of the *Act*. As a result, the tenant's application for compensation from 2009 to May 31, 2012 is dismissed.

With respect to the tenant's request for a rent reduction for loss of a facility not provided effective June 1, 2012, section 27 of the *Act* states.

Terminating or restricting services or facilities

27 (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.

In this case, the landlord did not provided 30 days' written notice, in the approved form to terminate the facility as required by the Act. However, this service was terminated in 2009.

The landlord submits the tenant has already been compensated as the tenant did not receive a rent increase in 2010 and 2011. However, no discussion or letter was provided to the tenant stating a rent increase was not given due the closure of the pool. Therefore, I do not find the tenant received a rent reduction in the value for the termination of the facility.

The evidence of the tenant was he pays \$120.00 per month for the same facility; however that also included an amount for an occupant, his spouse.

An occupant is defined in the Residential Tenancy Policy Guideline Manual, section 13 as follows: where a tenant allows a person who is not a tenant to move into the premises, the new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent, tenant, occupant) agree to enter into a tenancy agreement to include the new occupant as a tenant.

As a result, the occupant is not entitled to compensation for loss of facility under the Act.

Counsel submits the amount of reduction should be no more than \$50.00 as that is the value of an adult membership at the local aquatic center.

In light of the above, I grant the tenant a rent reduction of \$50.00 per month. The tenant is hereby authorized to reduce rent payable by \$50.00 per month. This rent reduction shall be effective starting June 1, 2012. Given the date of this decision, the tenant is authorized to deduct the \$50.00 monthly rent reduction for June 2012 and July 2012 from August 2012, rent payable.

I further award the filing fee to the tenant. The tenant is also authorized to deduct \$50.00 from a future month rent payable in satisfaction of the fee.

Conclusion

The tenant's application for a monetary order for compensation for loss is dismissed.

Starting June 1, 2012 the tenant is authorized to reduce rent by \$50.00 per month. The tenant is also authorized to deduct the \$50.00 filing fee paid for this application from a future month rent payable.

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 3, 2012.

Residential Tenancy Branch