



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNDC and FF

### Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss and to recover the filing fee from the Landlord for the cost of filing this application.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Both parties were represented at the hearing and indicated they were prepared to proceed with the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

### Issue(s) to be Decided

Is the Tenant entitled to compensation for being denied the use of the swimming pool and to recover the cost of filing this Application for Dispute Resolution?

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on November 01, 2010, that for the period between August 01, 2012 and October 31, 2012 the Tenant was paying monthly rent of \$1,217.00 and for the period after November 01, 2012 the Tenant was paying monthly rent of \$1,267.00.

The Landlord and the Tenant agree that the Tenant had the right to use a swimming pool in the residential complex during her tenancy. The Agent for the Landlord stated that he believes the pool was drained and closed on August 29, 2012 and that it was reopened on December 18, 2012. The Agent for the Landlord stated that he has no direct knowledge of the closing and opening dates, and he is simply relaying information that was provided to him by another agent for the Landlord.

The Tenant stated that the pool may have been drained on August 29, 2012 but that it was closed on August 15, 2012, August 16, 2012, or August 17, 2012. She stated that she attempted to use the pool on December 19, 2012 but could not use it as it was being serviced and that she was eventually able to use the pool again on December 21, 2012.

She stated that she used the pool, on average, three times per week. She stated that she contacted the YMCA and determined that she could purchase a day pass for their pool and exercise facilities for \$15.00 per day and that she could purchase a monthly pass for \$64.00 per month.

The Agent for the Landlord stated that he contacted the Vancouver Aquatic Centre and determined that the Tenant could purchase a four-month pass for their pool and exercise facilities for \$144.64 per month.

The Tenant stated that she would only use the pool facility in either the YMCA or the Vancouver Aquatic Centre. The parties agree that the YMCA is closer to the rental unit than the Vancouver Aquatic Centre.

The Agent for the Landlord stated that the repairs were urgently needed as dangerous fluids were leaking from the heat exchanger and the pool itself was leaking. He argued that the Tenant should not be entitled to compensation because the withdrawal of services was the result of an urgent, mandatory repair. He stated that there was some delay in completing the repairs because there are only two companies in the area capable of doing a portion of the repair, and they were busy with other repairs.

The Tenant does not dispute that the pool was initially closed as a result of a dangerous fluid leak.

### Analysis

Section 27(1) of the *Act* stipulates that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

Section 27(2) of the *Act* stipulates that a landlord may terminate or restrict a service or facility, other than one referred to in subsection 27(1) of the *Act*, if the landlord gives 30

days' written notice, in the approved form, of the termination or restriction, and 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.

On the basis of the undisputed evidence, I find that the Tenant was prevented from using the swimming pool for a portion of August of 2012, for all of September of 2012, for all of October of 2012, for all of November of 2012, and for a portion of December of 2012. I find that this constitutes a short term termination of a facility that was provided to the Tenant and that the Tenant is therefore entitled to a rent reduction, pursuant to section 27(2) of the *Act*.

On the basis of the undisputed evidence that the pool was closed as a result of dangerous fluids leaking, I find that it would have been unreasonable, if not impossible, to provide tenants with thirty days' written notice of the pool closure. Regardless, I find that the lack of written notice did not impact the loss suffered by the Tenant.

On the basis of the testimony that the Tenant could get a monthly pass at the YMCA for \$64.00, I find that the pool closure reduced the value of this tenancy by \$64.00. I therefore find that the Tenant is entitled to monthly compensation of this amount for each full or partial month she was not able to use the pool, which equates to \$320.00.

In reaching this conclusion I have placed little weight on the Agent for the Landlord's testimony that the Tenant could have used the Vancouver Aquatic Centre for a lower fee. The undisputed evidence is that the YMCA is closer to the rental unit and, in my opinion, the Tenant should not be required to travel a further distance for the purposes of saving the Landlord money. It was further influenced by the fact that the Vancouver Aquatic Centre price was based on a four month commitment and the Tenant had no reason to know the pool would be closed for four months.

Residential Tenancy Branch policy suggests that it is necessary to balance the tenant's right to enjoy the rental unit with the landlord's right and responsibility to maintain the residential complex, however the tenant may be entitled to a reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize the disruption to the tenant. I fully concur this guideline. While I do not find that the Landlord acted inappropriately in closing the pool, I do find that this tenant should not be obligated to pay for a service that she was not permitted to use for a significant period of time.

### Conclusion

I find that the Tenant has established a monetary claim of \$370.00, which is comprised of \$320.00 compensation for being denied the use of the pool and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution. I hereby authorize the Tenant to withhold this amount from either her February or March rent payment, in full satisfaction of this monetary claim.

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: January 29, 2013

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Residential Tenancy Branch

