



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: O RR FF

Introduction

This is the tenant's Application pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order or rent rebate as compensation for loss of use of the backyard and pool due to the landlord's failure to provide a working useable swimming contrary to section 27 of the Act;
- b) To recover filing fees for this application.

Both parties were present at the hearing but the landlord said he was not served with the tenant's Application. The tenant gave sworn testimony that he served the registered mail to the service address given by the landlord, which is the tenant's address. He said the landlord refused to give him any other address. The landlord said he found out about the hearing from the Residential Tenancy Branch. I examined the tenancy agreement and the Notice to End Tenancy dated August 15, 2015. I find the landlord gave the tenant's address as his address for service. Pursuant to my authority under section 71 of the Act, I find the Application and evidence is sufficiently served for the purposes of this hearing.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that the landlord has neglected to maintain the property contrary to section 33 of the Act and failed to provide facilities as promised and that he is entitled to compensation or a rent rebate for this neglect?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions.

It is undisputed that the tenancy commenced July 16, 2014, rent is \$1550 a month (to be \$1590 as of February 1, 2016) and a security deposit of \$750 was paid. The tenant said there is nothing in the lease about a pool but he and the landlord viewed it together and the landlord said he would get it up and running and the tenant could maintain it.

The landlord said when he showed the tenant the pool in July 2014, he said if the tenant wanted it, he would be responsible for it as the tenant was before him. He said when the tenant asked a contractor, he said it was too expensive and should be filled in. Then he said he heard again from the tenant in June 2015 that the neighbours were complaining about mosquitoes and it was a danger to the tenant's dog. He said this was the first time the tenant complained after the previous summer. Then he said he paid a contractor and the pool was filled in as of August 12, 2015. After the tenant challenged his evidence with that from the former hearing, the landlord backtracked and said he could not remember how often the tenant complained about the pool as they had lots of arguments.

The tenant said he complained constantly about the pool during 2014 and 2015, at least twice a month as was given in evidence in the previous hearing because he was finding dead crows and animals in it. He said the neighbours made a fuss and called the City. The City put a notice on the door in 2015 and that was when the landlord finally did something. He said he got prices from the contractor for the landlord and arranged to have it filled in August 2015 with the landlord's consent. Due to the pool's condition, the tenant said he lost the use of the backyard from July 2014 since the pool was fetid and dangerous. He could not use the backyard for barbeques, even in the winter months on sunny days. In the summer he was attacked by the mosquitoes it bred. The previous tenant had let it go so it was partly full of slime and he could not drain it as it had a liner. When he called a contractor in 2014, the contractor said it was not worth fixing so he told the landlord to fill it in but it wasn't done until August 12, 2015. The tenant requests \$200 a month rebate of rent for 12 months for loss of use of the pool and backyard which led to lack of ability to socialize with barbeques and loss of use of the backyard for his dog.

In evidence is a notice from the City Bylaw Inspector, a letter from the landlord dated June 26, 2014 giving the tenant the contact number for the pool cleaning and/or maintenance as supplied by the previous tenant, contractor's invoices, a contractor letter noting it was the tenant who contacted him to fill it in, a tenancy agreement, some photographs, many emails, registered mail receipts and Notices to End Tenancy. In the letter dated June 26, 2014, the landlord said there are 2 options 1) If you really like this pool, we can work together to make it run 2) If you do not like it, I will hire a contractor to fill it in.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

Section 1 of the Act defines 'residential property' as meaning a) the building b) the parcel on which the building resides, and d) any other structure located on the parcel or parcels. Although the swimming pool was not noted on the tenancy agreement, I find it was included in the residential property rented to the tenant as it was a structure in the backyard. I find the weight of the evidence is that the parties contemplated it as included for they immediately started communicating about it at the beginning of the tenancy.

I find the tenant communicated the problem with it at the beginning of the tenancy and the landlord offered two options. However, the landlord did not follow up and get it filled in when it became obvious that it was too expensive to get it up and running. Although the landlord initially said the tenant did not complain for a year, I find the evidence of the tenant more credible as his evidence in the former hearing was that he complained of it constantly and at least twice a month and the landlord retracted his former statement and said he did not remember. I find the tenant has proved on the balance of probabilities that the landlord failed to maintain the residential property contrary to section 32 of the Act which states a landlord must maintain residential property in a state of repair that complies with health, safety and housing standards required by law. This failure is confirmed by the issuance of the City Notice requiring the landlord to fill it in after neighbours complained of the situation.

The tenant requests compensation for the landlord's neglect. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I find this landlord violated the Act by failing to maintain the property according to section 33. I find his failure resulted in the tenant losing the use of his backyard space for his dog and barbeque time with his friends. I find the tenant did what was reasonable to minimize the loss by contacting contractors and the landlord but the landlord failed to act. Quantifying compensation for loss of use of the backyard is difficult. Taking into account, the fetid smell of the pool and the BC climate which allows use of a backyard even on good days in winter, I find the tenant entitled to a rebate of 10% of his rent for one year. His rent is \$1550 so I find him entitled to a rebate of \$155x12 for a total of \$1860 until the pool was filled.

Conclusion:

I find the tenant entitled to a rent rebate of \$1860 plus filing fee of \$50. The tenant has indicated he would prefer this as a rent rebate as early as possible.

I HEREBY ORDER THAT the tenant is entitled to a rebate of rent of \$1910.00 which means he will not owe any rent for January 2016 and will reduce his February 2016 rent by \$360.00.

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: December 10, 2015

Residential Tenancy Branch

