Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC; FF

Introduction

This Hearing was convened in response to the Tenants' Application for Dispute Resolution seeking compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fees from the Landlord.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

The Tenants mailed the Notice of Hearing documents and copies of their documentary evidence to the Landlord, via registered mail, on September 12, 2015. The Tenants provided the tracking numbers for the registered documents. The Landlord acknowledged receipt. The Tenants also acknowledged receipt of the Landlord's documentary evidence, with the exception of the tenancy agreement (which the Tenants had also provided in evidence).

Issue(s) to be Decided

Are the Tenants entitled to compensation for the loss of use of the swimming pool at the rental unit and loss of peaceful enjoyment of the rental unit?

Background and Evidence

The rental unit is a 30 year old house with an outdoor swimming pool. This tenancy began on May 1, 2014. Monthly rent is $2,880.00. The Tenants paid a security deposit in the amount of $1,440.00 at the beginning of the tenancy.

On or about May 1, 2015, the Landlord put the rental unit up for sale. The Landlord sold the rental unit and the new owner became the Tenants' landlord on September 14, 2015, when the sale completed.

The Tenants gave the following testimony:

The Tenants testified that the swimming pool is a “main feature” of the rental property, and that they looked forward to using it daily between the months of May and September, as they had done the previous year.

The Tenants stated that there were repairs that were required to the faucets, cooktop, fireplace, vacuum and swimming pool. They said that after the Landlord listed the rental unit for sale, she referred the Tenants to “Charlie” if they needed repairs. The Tenants testified that Charlie didn’t have authority to approve any costs, so the Tenants were required by the Landlord to get estimates for the cost of repairs and, if the Landlord agreed to the cost, the Tenants would arrange for the repairs to be done.

The Tenants testified that on July 6, 2015, they sent a text to the Landlord advising that the pool was leaking and the hot water faucets were dripping. The Tenants also advised the Landlord that they were “very disappointed” because they wanted to use the pool for the summer. Copies of texts to and from the Landlord and Charlie were provided in evidence. The Tenants stated that Charlie came to the rental unit on July 7, 2015, and advised the Tenants to get quotes for repairs to the pool. The Tenants stated that neither of two contractors they contacted was available in the near future and that the water level in the pool was dropping. The Tenants allege that the Landlord was attempting to defer the costs of repairs to the new home owners. They stated that once the sale was pending, the Landlord absolved herself of any responsibility to the Tenants.

The Tenants testified that they suffered a loss of privacy and quiet enjoyment of the rental unit after the house was advertised for sale. They stated that Charlie (who is the Landlord’s realtor) began coming to the rental unit without notice and knocking on their door. The Tenants stated that once, on a Sunday in July, the Landlord arrived unannounced and rang their door bell 37 times. They testified that the purchaser’s realtor and the purchasers also came to the rental unit unannounced on September 14, 2015. The Tenants stated that the purchasers introduced themselves as their new landlords and apologized for coming without notice, but stated that the Landlord wouldn’t give them the Tenants’ phone number.

The Tenants wrote to the Landlord on July 26, 2015, complaining about their lack of quiet enjoyment and the “continued problems with the appliances, faucets, toilets, fire place, swimming pool, built-in vacuum, windows, cupboards and garage door”. A copy of the letter was provided in evidence.

The Tenants stated that the problem with the pool was compounded by the fact that there is a watering restriction in their municipality from July 20th to September 30th. Therefore, they were unable to top up the pool as the water depleted, or to heat the water in the pool, and the chemical balance in the water was affected.

The Tenants seek compensation in the amount of $2,500.00 for the Landlord’s breach of Sections 28 and 32 of the Act.

<u>The Landlord gave the following testimony:</u>

The Landlord denied visiting the rental unit without 24 hours' written notice. She stated that she always made an appointment to access the rental unit and did not enter the rental unit without the Tenants' permission. The Landlord stated that there were 2 open houses and 6 showings of the rental unit.

The Landlord provided written submissions that provide, in part:

1. The pool was cleaned and the motor was replaced before the Tenants moved into the rental unit.
2. The Tenants advised the Landlord that the pool was leaking on July 5, 2015.
3. Charlie called the Tenants at the end of July and "talked to them about the pool repair".
4. The Landlord sent the Tenants a text on August 8, 2015, to arrange a time to repair the pool.
5. The pool was inspected on August 13, 2015.
6. The pool was repaired on August 20, 2015.
7. The pool could not be used from July 20 to September 30, 2015, because of municipal water restrictions.

The Landlord stated that repairs to the faucet in the ground floor washroom were paid by the purchasers. She submitted that the purchaser's house inspection did not identify any issues with the fire place, and that there was no problem with the cook top on the stove.

The Landlord submitted that a landlord and tenant should "share responsibility for maintaining the rental property".

The Tenants gave the following reply:

The Tenants referred to Part 3, paragraph b) of the tenancy agreement, which provides, "owner to maintain proper functioning of pool, heater and pump." They submitted that if the Landlord had dealt with the leak prior to July 20, 2015, the Tenants could have used the pool all summer because they would not have been affected by the water restrictions. The Tenants noted that the invoice provided by the Landlord indicates that the purchaser, not the Landlord, paid for the pool inspection on August 10, 2015. The Tenants also submitted that another invoice provided by the Landlord and dated September 4, 2015, indicates that there was a small hole located in the vinyl liner and that a failing heat pump was repaired.

Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with the Act, regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides arbitrators with the authority to determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act provides that if damage or loss results from a party not complying with the Act, regulations or tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

Section 7(2) of the Act states in part that a tenant who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss.

Therefore, before an arbitrator can make an order under Section 67 of the Act, the applicant(s) must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant(s) took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not met. In this matter that burden was on the Tenants to prove their claim against the Landlord, on the balance of probabilities.

I find that the Tenants have submitted sufficient evidence to prove that the Landlord was aware of the need for repairs to the swimming pool on July 6, 2015, and that the pool was repaired on September 4, 2015.

Residential Tenancy Policy Guideline 16 provides that where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.

On the evidence I find that the Tenants, through no fault of their own, were deprived of the use of the swimming pool for the months of July, August and September, 2015. I am satisfied that the swimming pool was an important part of the tenancy agreement. In fact, a clause with respect to maintenance and repair of the swimming pool was in both tenancy agreements between the parties. I find that the Tenants are entitled to compensation for the loss of use of the pool from July 6, 2015 to and including September 30, 2015. Daily rent averages approximately $96.00. I find that $15.00 per day is a reasonable amount of compensation for loss of use of the pool and deck. I grant the Tenants a monetary award for loss of the value of the tenancy, calculated as follows:

$15.00 per day x 87 days = **$1,305.00**

With respect to the Tenants' application for compensation for loss of peaceful enjoyment, I find that the Tenants provided insufficient evidence to prove this portion of their Application and it is dismissed.

The Tenants' Application had merit and I find that they are entitled to recover the cost of the **$50.00** filing fee from the Landlord.

Conclusion

I grant the Tenants a Monetary Order for the sum of **$1,355.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims Court) and enforced as an Order of that Court.

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 15, 2016

Residential Tenancy Branch