



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VISTA REALTY LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR, MNDC, FF

Introduction

This hearing convened as a result of a tenant's application for dispute resolution wherein the tenant sought a monetary order for damage or loss under the Act, Regulation or tenancy agreement and to recover the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

The tenant made this application on July 19, 2016 and the parties attended a hearing that was scheduled for January 19, 2017. During that hearing, the parties spoke at length and the hearing went on for 77 minutes.

The hearing did not complete within the scheduled time. At the conclusion of the hearing, both parties had yet to complete their submissions and present their evidence. In addition the landlord's witness was not called to testify. As the hearing did not complete within the scheduled time, I adjourned these proceedings pursuant to Rules 6.3 and 6.4. An interim decision dated January 19, 2017 was issued to both parties.

The parties were notified of the hearing that was scheduled for March 01, 2017 at 9:00am. At the start of this hearing the landlord's agent informed me that the witness was unable to attend because he was at a citizenship ceremony. The agent requested that the hearing be adjourned. I attempted to resolve this dispute by mediation but the parties could not come to an agreement. In addition the landlord's agent stated that he was not in a position to negotiate a settlement without the consent of the owner, who was also not available to attend the hearing.

Due to the inability of the landlord's witness to attend the hearing and out of an abundance of caution, I determined that an adjournment was necessary to allow the landlord's witness an opportunity to testify.

The parties were notified of the hearing date and time which was scheduled for this date March 30, 2017. Both parties attended the hearing. In the prior hearings, the parties had acknowledged receipt of evidence submitted by the other. Additional evidence was not permitted to be filed. Both parties gave affirmed testimony.

Both parties provided extensive documentary evidence. All parties' testimonies, witnesses and evidence have been considered in the making of this decision. As this matter was conducted over three separate days and in excess of 2 hours of hearing time, I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issues to be decided

Is the tenant entitled to compensation? Was the landlord negligent with regard to maintenance of the rental unit?

Background and Evidence

The tenancy started on April 01, 2015 for a fixed term of one year. A tenancy agreement was filed into evidence. A clause in the agreement required the tenant to move out at the end of the fixed term. Sometime just prior to the end date of the fixed term, the parties entered into an agreement to extend the tenancy for an additional month. The tenant moved out on April 30, 2016. The monthly rent was \$15,000.00 payable on the first of each month. The tenant paid security and pet deposits which were dealt with at the end of the tenancy.

The tenant stated that the rental unit had multiple deficiencies that were not addressed in a timely manner, by the landlord. The specific issues were that the pool and hot tub did not function adequately, a kitchen leak was not attended to in a timely manner and several appliances did not work well.

The landlord stated that the tenant was provided with an email address to report all problems to and stated that complaints to this email address were received in the realty office and actioned upon immediately upon receipt. Instructions to send requests for maintenance to this email address were included in the tenancy agreement. The tenant agreed that he did not send his complaints to the email address that was provided to him. He stated that he contacted the manager and the manager did not remind him to send his complaints to the realty office.

The tenant stated that there were issues with several items at the start of the tenancy. The landlord's witness testified that he attended the rental unit and made a list of all the deficiencies that included problems with the electric gates, the landscaping lights, the pool and hot tub furnace and drawers/handles of cabinets. The witness stated that the list was provided to a repair person who completed the repairs and installed a new furnace for the pool and the hot tub.

The landlord stated that he had an ongoing contract with a commercial company for the maintenance of the pool and hot tub. A copy of the contract was filed into evidence along with the reminder letters from the company regarding the appointments to service these items and invoices for service. The landlord stated that the tenant was provided with a contact number for the pool service company and he was authorized to contact this company directly, for service.

The tenant stated that a maintenance person did attend sometimes but after November 2015, the pool was unusable because of a green layer of algae on the surface of the pool.

The landlord stated that that winter there were a few storms which would have sent debris into the pool but the pool service company made efforts to clean up between storms. The landlord stated in his written submission that he had contracted staff to look after the maintenance of the pool, spa and garden. The landlord also had a handy man available to take care of maintenance and contact information for all maintenance personnel was provided to the tenant.

The tenant stated that the hot tub was inoperative throughout the tenancy. He testified that the witness had attended in response to the tenant's complaint and fixed the problem but the hot tub worked for one day only. The witness stated that he did not fix the hot tub as he is not qualified to do so. He reiterated that the landlord had contracted a pool service company who serviced both the hot tub and pool.

The landlord pointed out that the controls for the hot tub were inside the house and this was inconvenient for the tenant. The landlord referred to an email dated August 17, from the tenant which refers to the location of the hot tub controls but also states that the hot tub is not operational.

The tenant testified about a kitchen sink leak which was supposed to be fixed in June 2015 but got done in August 2015

In an email dated August 17, 2015, from the tenant to the manager, the tenant lists some repairs that are required and requests to be compensated for the loss of enjoyment of the rental unit. The tenant also filed a copy of an email to the landlord dated February 29, 2016 asking for an extension of the lease for a further six months.

The landlord filed copies of invoices for service and repairs in response to the tenant's complaints. The dates on these invoices range from April 07, 2015 to May 03, 2016. Invoices include services for the in built vacuum system, electronics, a key, appliance repair, pool and hot tub service, landscape lighting and irrigation, gutter cleaning, plumbing and yard maintenance

Analysis

Based on the documentary evidence and verbal testimony, I find that for most part, the landlord acted on the tenant's complaints in a timely manner. I also accept the testimony of the tenant that there were multiple problems with various systems through the term of the tenancy.

Residential Tenancy Policy Guideline# 22 states that where there is a termination or restriction of a service or facility for quite some time, through no fault of the landlord or tenant, an arbitrator may find there has been a breach of contract and award compensation. In this case I find that the breakdown of various items in the rental unit occurred resulting in a reduction of the value of the tenancy and therefore I find that the tenant is entitled to compensation for the inconvenience and loss of enjoyment suffered.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situations, the length of time over which the situations existed, the loss of use of the facility and the amount of time taken by the landlord to respond and rectify the situations.

Regarding the pool and hot tub, I find that these items did provide problems for the tenant from time to time. However I also find that the landlord had contracted a pool service company to take care of the pool and hot tub. The landlord also filed evidence of invoices paid to the company for their service calls. The landlord testified that the contact information for this company was provided to the tenant and he was able to contact them directly for service.

I accept that there were multiple storms during the winter of 2015 which rendered the pool unavailable for use. I also accept that the controls to the hot tub were located inside the house which made it inconvenient to use. However, I find that the landlord had no control over these situations and the tenant had access to service when needed.

Regarding the leak under the kitchen sink, I find that the repair was delayed by almost two months. The tenant's email refers to a repair that was supposed to be done in June 2015 but was done on August 31, 2015. I also take into consideration that despite the conditions of the rental unit as described by the tenant himself as unsuitable; the tenant did not make application for dispute resolution to request an order directing the landlord to carry out the required repairs I also take into consideration that the tenant requested a six month extension to his lease, shortly before the end date of fixed term.

Section 32 of the *Residential Tenancy Act*, states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, make it suitable for occupation by a tenant.

Based on the above, I find that the landlord acted in a responsible manner and provided the tenant with contact information for general repairs, for a handy man and for a pool and hot tub service company. However, despite this, I find that the tenant endured some inconvenience from time to time, resulting from the breakdown of various appliances and the delay in fixing the leak in the kitchen.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Based on the documents filed into evidence and the testimonies of both parties and the landlord's witness, I find that apart from the repairs to the kitchen sink, the landlord provided the tenant with access to repairs and maintenance by providing the tenant with contact information for the realty office, the handy man and the pool/hot tub service.

In determining the amount of this award I was guided, in part, by section 72(2) of the *Act*, which requires a party who is claiming compensation for damage or loss to take reasonable steps to mitigate the loss. In these circumstances I find that if the appliances were not operational throughout the tenancy, the tenant could have filed an application for dispute resolution long before the end of the tenancy, to request an order requiring the landlord to repair the pool, hot tub and other appliances. I therefore find that the tenant is not entitled to compensation for the loss of the quiet enjoyment of the rental unit for the entire length of the tenancy.

Based on *Residential Tenancy Policy Guideline#16*, I find it appropriate to award the tenant \$500.00 for the inconvenience resulting from the delay in repairs to the kitchen. Since the landlord provided the tenant with contact information for maintenance, I find that the tenant is not entitled to compensation for the repair of appliances.

The landlord had an ongoing contract for the maintenance and the hot tub and provided the tenant with contact information for the company. The landlord filed adequate evidence to indicate that the pool and hot tub were serviced regularly. However the tenant did suffer a loss of use of these items during the multiple winter storms. Even though this loss was out of the control of the landlord I find it appropriate to award the tenant \$200.00 for this loss of use.

Since the tenant has proven a portion of his claim, I award him the recovery of the filing fee of \$100.00.

Overall the tenant has established a claim of \$500.00 for repairs, \$200.00 for the loss of the use of the pool and \$100.00 for the recovery of the filing fee for a total of \$800.00.

The \$800.00 awarded is in recognition of the initial inconvenience to the tenant, after which he should have filed an application for dispute resolution during the tenancy to request compensation for the loss of quiet enjoyment or an order directing the landlord to carry out the required repairs. I also take into account that the tenant requested an extension of six months to the lease prior to the end date of the lease. Compensation for the loss of quiet enjoyment is highly subjective and in these circumstances I find compensation in the amount of \$800.00 is reasonable.

I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for \$800.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of \$800.00.

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: March 30, 2017

Residential Tenancy Branch