



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes RP, RR, FFT

Introduction

On June 19, 2019, the Tenant applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking the following relief:

- for an order for the Landlord to make repairs to the rental unit.
- to allow the Tenant to deduct the cost of repairs, services or facilities from the rent.
- to recover the cost of the filing fee.

The matter was scheduled for a teleconference hearing. The Tenant and the Landlord’s agent (“the Landlord”) were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Prior to this hearing, on September 9, 2019 the Landlord filed an Application for Dispute Resolution by Direct Request. The Landlord was seeking an order of possession for the rental unit due to unpaid rent or utilities and for a monetary order to recover unpaid rent or utilities.

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act*. The ex-parte review was completed, and a Decision was issued on October 10, 2019, granting the Landlord an order of possession for the rental unit.

The Landlord testified that he has not enforced the Order of Possession for the rental unit. Instead, the parties agreed that the tenancy will continue until February 28, 2020.

At the start of the hearing, the Tenant withdrew his claim for repairs of the rental unit.

The Tenant's application proceeded on the request for a reduction of rent due to services and facilities agreed upon but not provided.

Issues to be Decided

- Is the Tenant entitled to deduct the cost of repairs, services or facilities from the rent?

Background and Evidence

The parties testified that the tenancy began on March 1, 2018 as a one-year fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$2,250.00 is due by the second day of each month. A security deposit of \$1,125.00 was paid by the Tenants to the Landlord. The Landlord provided a copy of the tenancy agreement and addendum.

The Tenant testified that he has not had any use of a hot tub and he has not had full use of the garage. The Tenants application indicates that the Tenant is seeking compensation in the amount of \$470.00.

The Tenant testified that the tenancy agreement was to include the use of a hot tub. The Tenant testified that the tenancy agreement does not specifically mention a hot tub; however; the hot tub is located in the backyard of the property and the Landlord did not mention that it was not working when the Tenant viewed the rental property. The Tenant testified that they did not have a conversation about the hot tub prior to entering into the tenancy agreement. The Tenant testified that the Landlord later showed him where the switch is located to turn the hot tub on. The Tenant testified that the hot tub is not operational.

The Tenant testified that the rental property contains a two-car garage. He testified that one side of the garage door is boarded up and the Tenant does not have use of the space. The Tenant testified that the Landlord is using half of the garage. The Tenant testified that the Landlord did not inform him that the Landlord would be using half of the garage for storage. The Tenant testified that he believed he was renting the entire rental property which contains one residence.

In reply, the Landlord testified that the hot tub located on the rental property was not part of the tenancy agreement. He testified that he told the Tenant that the Landlord is not maintaining the hot tub and to use it at their own risk and discretion. The Landlord testified that he did not mention the hot tub when the Tenant looked at the rental property.

In response to the garage issue, the Landlord testified that page two of the tenancy agreement states that only one parking spot is provided. The Landlord acknowledged that the tenancy agreement does not specify that the Landlord is using one side of the garage for storage.

Analysis

Section 65(1) of the Act provides, if the director finds that a Landlord or Tenant has not complied with the Act, the regulations or a tenancy agreement, the director may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides the following information:

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- *loss of access to any part of the residential property provided under a tenancy agreement;*
- *loss of a service or facility provided under a tenancy agreement;*
- *loss of quiet enjoyment (see Policy Guideline 6);*
- *loss of rental income that was to be received under a tenancy agreement and costs associated; and*
- *damage to a person, including both physical and mental.*

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

I have reviewed the tenancy agreement and addendum provided by the Landlord. I find that the tenancy agreement makes no mention that there is a hot tub on the property, or that the hot tub is to be used at the Tenants own risk and discretion. I find that the tenancy agreement mentions storage but does not indicate that the Tenant only has use of half of the garage for storage or is sharing the garage space.

I find that the tenancy agreement entitles the Tenant to use of the entire rental property. I do not accept the Landlord's submission that the term of the tenancy agreement that indicates there is parking for one vehicle means that the Tenant only has use of half of the garage.

I find that it is reasonable to accept that the Tenant believed that the hot tub was operational. There is insufficient evidence from the Landlord that he informed the Tenant that the hot tub was not operational when he showed the property and that he informed the Tenant that the Landlord was not prepared to maintain it. I accept the Tenant's testimony that the Landlord showed him where the power switch to the hot tub was located.

I find that the Tenant has suffered a loss of value in the tenancy because the Tenant has paid the full amount of rent but has not had use of the hot tub or the full use of the garage.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful with his application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I find that the Tenant is entitled to a past rent reduction and a future rent reduction. The Tenant's application provides that the Tenant is seeking \$470.00. I find that the Tenant's monetary claim is reasonable. The Tenancy began in March 2018 and I find that the Tenant has not had use of the hot tub or full use of the garage for the past 19 months. I award the Tenant a reduction of rent in the amount of \$470.00 for the past 19 months up to and including September 5, 2019, the date of the Tenant's application. Including the filing fee, I authorize the Tenant to deduct the amount of \$570.00 from one (1) future rent payment.

With respect to a future rent reduction, from October 2, 2019 onwards, I authorize the Tenant to reduce the monthly rent in the amount of \$24.73 each month. This amount

was determined by dividing the Tenant's monetary claim amount of \$470.00 by 19 months to determine the monthly loss of \$24.73. The Tenant is authorized to pay monthly rent of \$2,225.27 from October 2, 2019, onwards until the tenancy is ended in accordance with the Act.

Conclusion

The Tenant's application to reduce rent for services or facilities agreed upon but not provided is successful. I authorize the Tenant to deduct the amount of \$570.00 from one (1) future rent payment. The amount of \$570.00 includes the filing fee paid by the Tenant.

I authorize the Tenant to reduce future rent by \$24.73 each month for a new monthly amount of \$2,225.27 from October 2, 2019, onwards.

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: November 13, 2019

Residential Tenancy Branch