



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, FFT

Introduction

This hearing dealt with a tenant's application for repair orders. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I noted that both parties had submitted evidence to the Residential Tenancy Branch and served each other within one to two days prior to the scheduled hearing, which is well after the service deadline provided in the Rules of Procedure. Both parties indicated they had reviewed the documents served upon them recently and were agreeable to the late served documents to be admitted into evidence and to proceed with this matter. As such, I was satisfied there was no prejudice to the other party and I deemed the parties sufficiently served pursuant to the authority afforded me under section 71 of the Act.

Issue(s) to be Decided

1. Is it necessary to issue repair orders?
2. Is it necessary and/or appropriate to issue any other orders to either of the parties?

Background and Evidence

The tenancy started on June 1, 2019. The tenants are required to pay rent of \$2,350.00 on the first day of the month. The residential property includes an inground pool and a hot tub. The property is oceanfront and is located on one of the gulf islands.

The parties provided consistent testimony that the tenants had expressed to the landlord that they have no interest in using or maintaining the pool when the tenancy

formed. As such, the pool was left in "winter mode" which, as described by the landlord, means the pool is left filled with unheated water and a tarp is placed on top of the pool, along with a pump that sits on top of the tarp to extract surface water from the tarp.

In mid-June 2019 the tenant notified the landlord that otters were getting into the pool, among other issues. In mid to late July 2019 the tenant notified the landlord again about otters in the pool and being disturbed by the otter's activity. The landlord responded by stating she had ordered a new winter cover for the pool. In mid-August 2019 the tenant made similar complaints to the landlord.

According to the landlord, the landlord had a maintenance person who made attempts to attend the property to perform various maintenance tasks, including servicing the pool, but that there were issues with gaining access to the property.

On or about August 22, 2019 a new tarp was placed on top of the pool by the landlord's maintenance man. The landlord also notified the tenant that she had been researched how to deal with the otters but that she would not be killing them or trapping them as it would not be effective. The landlord informed the tenant that the pool could not be drained since it was not of concrete construction and that the pool should be made less appealing to the otters by chlorinating the water. The landlord also indicated that she was enlisting the assistance of another pool maintenance person who maintains the pools at a resort located on the gulf island. The landlord requested the tenant keep her informed if the tenant continues to see otters so that she may monitor the progress.

The tenant stated that the new tarp was effective at keeping the otters out of the pool for about a week but eventually the otters found a way to enter the pool under the new tarp. The tenant sent a registered letter to the landlord dated August 29, 2019 advising the landlord that the otters had breached the tarp and walked across the top of the tarp and demanded the landlord take action within 12 days of August 29, 2019.

On September 3, 2019 the maintenance man informed the tenant that he was resigning from the property maintenance duties at the property due to tensions between the tenant and the landlord. The maintenance man then informed the landlord that he was quitting.

On September 16, 2019 the landlord requested an update on the condition of the property by way of an email sent to the tenant. The tenants respond by instructing the landlord to stop emailing them and to call them or use mail.

On October 5, 2019 the tenant filed this Application for Dispute Resolution seeking repair orders.

Before receiving the tenant's Application for Dispute Resolution the landlord issued a Notice of Entry on October 11, 2019 with an effective date of October 17, 2019 to do pool maintenance. The tenant communicated to the landlord that the tenants will be away, but that pool maintenance may proceed in their absence.

While the tenants were away, the landlord's pool maintenance person chlorinated the pool water, turned on circulation pumps and cleaned the filters several times to remove the accumulation of organic matter.

Upon their return at the end of October 2019, the tenants found the pool running. The landlord requested a meeting at the property so that the pool maintenance person could demonstrate how to run the pool to the landlord may add the chlorine and clean the filters more frequently than the pool maintenance person was available to attend the property. The tenant agreed to the meeting set for October 31, 2019.

On November 2, 2019 the pool was found to be draining of water. The landlord accused the tenants of draining the pool and the tenant denied doing so. The landlord also stated during the hearing that the pump that sits on top of the tarp had also been found unplugged a few times.

It was obvious to me in hearing from the parties and in reading their submissions that the tenancy relationship and the communication between the parties has deteriorated.

The tenant was of the view the landlord was not taking sufficient action to address the issue with the otters on the property. The landlord was of the position that the landlord was working on addressing the issue but that the landlord cannot eliminate all wildlife from the property. The landlord acknowledged that the otters' attraction to the pool and the attraction should be minimized.

I asked the tenant to describe the current situation with the otters. The tenant acknowledged that the otters have not been seen in or around the pool area recently; however, he believes he has seen signs of an otter or otters in the front yard (closest to the ocean front). The tenant described the pool as being in the back yard.

The landlord's proposal was to heavily chlorinate the pool, which would require the circulation pumps to run, in an attempt to make the pool unattractive to the otters.

However, wildlife, including otters are a chronic situation on the island and it is unreasonable to expect she can eliminate their ability to access the property. The landlord stated the pool cannot be drained as it will cause the pool to collapse and/or a great amount of damage and the pool line was new in 2017. The landlord stated that in order to run the circulation pumps, access to the detached garage will be necessary.

The tenant did not offer a proposal to deal with the otters. Since the tenant had requested a repair order, I asked the tenant to specify the repair order he was seeking. The tenant stated he seeks an order that the landlord be required to have a professional maintain the pool on the property.

The landlord stated that there are a limited number of persons on the gulf island that have experience maintaining pools. The maintenance person she did have had been consulting with others experienced in maintenance of the pool but quit in early September 2019. The landlord testified that there is one other person on the island that maintains pools for a resort on the island and she has been working with him on this issue.

The tenant did not appear overly optimistic that the heavily chlorination of the pool will be effective and requested that he may file another Application for Dispute Resolution if it proves ineffective.

Since the communication and tenancy relationship between the parties is obviously strained, I explored with the parties ways to accomplish pool maintenance, including communication with each other, and accessing the rental unit.

To gain access to the detached garage on the property, the tenant stated that he does not want to receive any more emails from the landlord and that she may contact him by telephone a few days in advance.

The landlord requested that the tenant inform her if/when he sees otters, or signs of otters on the property, so that she may monitor the situation.

The landlord also stated that, in recognition that the rental unit may not be meeting the needs of the tenants, the landlord will not enforce the fixed term of the tenancy agreement and that the tenants may end the tenancy by giving one full month of notice, as required under a month-to-month tenancy. I noted that there was evidence that the tenant had communicated to the owners of the property and the landlord's former

property maintenance person that the tenant did not wish to continue being involved with the property. As such, I was of the view the landlord's statement was made with a view to finding a resolution to the on-going conflict.

Analysis

A landlord's obligation to maintain a rental unit is found under section 32 of the Act. Section 32 of the Act provides as follows:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

[My emphasis underlined]

The tenant did not put forth any specific breach of a health, safety or building law by the landlord. However, the tenant put forth photographs of otter excrement by the pool and claimed several otters were attracted to the pool area and that resulted in the otter excrement and disturbances of the tenants by the noise that so many otters make when on the property at one time.

While wildlife may come onto a residential property from time to time, I find it is unreasonable to expect the landlord can prevent that; however, I also accept that several otters coming onto the property due to their attraction to the pool and leaving piles of excrement and creating a noise disturbance is a situation that needs rectification by the landlord so as to not unduly disturb the tenants.

I find the landlord's prior efforts and intentions to have the pool heavily chlorinated in an attempt to make the pool unattractive to otters is a reasonable solution at this point in the absence of any other proposals.

As far as who may perform the chlorination and operation of the pool, I am of the view that the landlord is capable of doing so, or someone she hires, and this is not a task that is must be performed by a "professional" especially considering the pool is not going to be used by people and is being maintained to dissuade otters from accessing the pool. I suggest the landlord enlist the services of the pool maintenance person to instruct her, or someone else she appoints, how to effectively chlorinate the pool, run the circulation pumps and clean the filters. Accordingly, I authorize and order the following:

1. The landlord, or the landlord's agent, may add chlorine to the pool, run the circulation pumps, check and clean filters as necessary, or perform any other pool maintenance task determined necessary by the landlord.
2. The landlord, or landlord's agent, may access the detached garage for purposes of turning on/off or checking on the pool equipment by way of: the landlord obtaining the tenant's oral consent over the telephone; or, by the landlord giving the tenant a 24 hour Notice of Entry in a manner that complies with section 29 of the Act and served in one of the ways permitted under section 88 of the Act.
3. The tenant may not interfere with the landlord's attempts to access the detached garage or interfere with the landlord's efforts to chlorinate, run the circulation pumps, or perform any other maintenance task on the pool if consent is obtained or a Notice of Entry is served.
4. The tenant shall promptly notify the landlord, via phone call or mail, if the tenant observes any more otters, or signs of otters, in the pool area or elsewhere on the property.

Should the landlord's efforts to make the pool unattractive to the otters prove ineffective, I encourage the tenant to communicate such to the landlord and if such communication fails to result in further or sufficient efforts by the landlord the tenant may make another Application for Dispute Resolution seeking further remedy. However, it is important to caution the tenant that elimination of any or all wildlife from accessing the property is likely to be seen as unreasonable and beyond the landlord's obligation to repair and maintain the property.

With respect to the filing fee paid by the tenant, I award the tenant recovery of the \$100.00 filing fee from the landlord. I make this award considering the following. The tenant had sent a registered letter to the landlord on August 29, 2019 that the landlord acknowledged receiving on September 3, 2019 in her chronological sequence of events. The landlord communicated to the tenant on September 16, 2019 seeking an update and when the tenants instructed the landlord to telephone or mail further communication, there was no more attempts by the landlord until October 11, 2019 when a Notice of Entry was served. I find the time that lapsed between September 2, 2019 and October 11, 2019 to be unreasonable and it resulted in the tenant filing this Application for Dispute Resolution on October 5, 2019. The tenants are authorized to deduct \$100.00 from a subsequent month's rent to satisfy this award.

Conclusion

I have issued authorization and orders to both parties with a view to minimizing the attraction of the pool on the property to wild otters.

Should the authorization and orders prove ineffective in dissuading otters from accessing the pool or pool area the tenant may make another Application for Dispute Resolution.

The tenant is awarded recovery of the \$100.00 filing fee. The tenants are authorized to deduct \$100.00 from a future month's rent in satisfaction of this award.

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