



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

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.

Issue to be Decided

Is the tenant entitled to monetary compensation for loss or damage under the Act, regulation or tenancy agreement?

Is the tenant entitled to the recovery of the filing fee?

Background, Evidence

The tenant's testimony is as follows. The tenancy began on November 1, 2019 and ended on August 31, 2020. The tenant was obligated to pay \$4500.00 per month in rent in advance plus all the utilities including the pool costs. The tenant testified that due to an unseasonably cold year, they were not able to use the pool until late June 2020. The tenant testified that they were only able to use the pool for 19 days during the summer. The tenant testified that they paid all the hydro costs to run the pump as well the cleaning costs and maintenance costs for the chemicals. The tenant testified that

the pump wasn't working for 42 days during the summer. The tenant testified that the primary reason he rented this home was to have a pool.

The tenant is applying for the following:

| | | |
|-----|----------------------------------|------------------|
| 1. | One Months Rent as Compensation | \$4500.00 |
| 2. | Hydro costs to run the pool pump | 558.00 |
| 3. | Pool Maintenance Costs | 1477.41 |
| 4. | Filing Fee | 100.00 |
| 5. | | |
| 6. | | |
| 7. | | |
| 8. | | |
| 9. | | |
| 10. | | |
| | Total | \$6635.41 |

The landlord gave the following testimony. The landlord testified that the tenant is being unreasonable in his requests. The landlord testified that the tenant originally requested to be compensated \$940.00 for loss of use for the two months of the summer. The landlord testified that the pool was inoperable from July 14, 2020 to August 13, 2020 which is one month. The landlord testified that he offered the tenant half of his request; \$470.00. The landlord testified that as of this hearing he still feels the tenant is entitled to the \$470.00 compensation but not the amount sought in this application.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or

damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

One Months Rent - \$4500.00

The tenant submits that since the pool was inoperable for a period of time in the summer, and because of the unseasonably cold weather, he should be entitled to one months rent as compensation. The landlord cannot be held responsible for the weather and cannot be held responsible for loss of use for that reason. In addition, the tenant has not provided sufficient evidence to show how there was any negligence or recklessness on the part of the landlord. I find that the amount offered by landlord for the one month loss of use, which was what the tenant was seeking on a monthly basis, is the appropriate amount of compensation under these circumstances, accordingly; I find that the tenant is entitled to \$470.00.

Hydro - \$558.00

The tenant testified that the amount sought was “a rough calculation as I haven’t isolated the exact amount”. As noted above, to be successful in an application, the party must show the exact cost incurred, as the tenant has not provided sufficient evidence to do that, I must dismiss this portion of his application.

Pool Maintenance Costs - \$1477.41

The tenant confirmed and acknowledged that pool maintenance costs were the responsibility of the tenant as per their tenancy agreement. The tenant testified that “I knew what I was agreeing to”. The tenant submits because of poor weather and very limited use of the pool he should now be entitled to recover those costs. As noted above, the landlord has no control over the weather and cannot be held liable for an unseasonably cool year and limited pool use, accordingly; I dismiss this portion of the tenant’s application.

As the tenant has been partially successful in this application, they are entitled to the recovery of the \$100.00 filing fee.

Conclusion

The tenant has established a claim for \$570.00. I grant the tenant an order under section 67 for the balance due of \$570.00. This order may be filed in the 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: December 17, 2020

Residential Tenancy Branch