



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order allowing access for the Tenant - Section 70;
2. An Order for the provision of services and facilities - Section 65; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord provided no evidence for the hearing and did not raise any issues with the receipt of the Tenant’s evidence.

Issue(s) to be Decided

Is the Tenant entitled to an order allowing access to the pool and hot tub?

Is the Tenant entitled to the provision of a pool and hot tub?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the tenancy under written agreement started on September 1, 2021. Rent of \$2,110.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$947.50 as a security deposit and \$947.50 as a pet deposit. The unit was advertised as including access to a pool and hot tub located at the next door building for an extra fee. At the onset of the tenancy the pool was not yet completed. The Tenant was given a fob at that time and informed that when the area was available the fob would permit entry. The pool and hot

tub located at a next door building are under separate ownership and is not part of the property for the unit. Although last year the Landlord informed all the tenants in the building that the pool would shortly be available for use, such use is still not available. The Tenant has not paid any fee for access to the pool and hot tub. None of the tenants in the building with the Tenant have access to this area as of yet.

The Landlord states that they are frustrated by not having the pool available for access however they are unable to make it available due to legal and other issues with the other property that arose last summer and remain to be finalized. The Landlord hopes to make the area available as soon as a month away and likely no longer than the summer of 2023. The Tenant states that they rented this unit for the access to the pool area and that they feel that they have losses as a result of not having this access to date.

Analysis

Section 30(1) of the Act provides that a landlord must not unreasonably restrict access to residential property by the tenant of a rental unit that is part of the residential property, or a person permitted on the residential property by that tenant. Given the undisputed evidence that the access being sought it to is on another property and not part of the property where the unit is located, I find that the Tenant is not entitled to an order allowing access to the pool and hot tub, other than as offered by the Landlord for a fee.

Section 27(1) of the Act provides that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or providing the service or facility is a material term of the tenancy agreement. It is undisputed that the Tenant has been promised access to the pool and hot tub in the next door property for a fee and when such access became available. It is undisputed that the pool and hot tub were not available at the onset of the tenancy as there was no pool or hot tub completed until later in the tenancy. This

indicates that such access is not essential to the Tenant's use of the rental unit and is not a material term of the tenancy. It is undisputed that the pool and hot tub are still not available for access by the Tenant or any other tenant. It is undisputed that the Tenant has not paid any fee for access. For these reasons I find that the Tenant has not substantiated that the Landlord has restricted access as promised. As the Tenant's claim have not met with success, I find that the Tenant is not entitled to recovery of the filing fee and in effect the application is dismissed in its entirety.

Conclusion

The application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 31, 2023

Residential Tenancy Branch