



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes RR

Introduction

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

- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties were also clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find the landlord duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the tenant entitled to the rent reduction requested?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application, and my findings around it are set out below.

This fixed-term tenancy began on April 1, 2022, with monthly rent set at \$10,000.00, payable on the first of the month. The landlord holds a security deposit of \$5,000.00 for this tenancy.

The tenant filed this application for a rent reduction related to the failure of the landlord to provide an included facility, specifically the pool. The tenant testified that they have not had use of the pool since they moved in, despite the fact that the pool is an included facility. The tenant argued that they had confirmed with the landlord about the pool, and both parties had agreed that pool maintenance was included in the monthly rent. The tenant submitted a copy of the tenancy agreement, which shows that pool maintenance was included, as well as proof of the tenant's inquiries about the pool prior to moving in. The tenant testified that other than location, the pool was one of the deciding factors for selecting this home to rent for the family. The tenant requested a rent reduction of \$900.00 per month, retroactive to April 1, 2022, for failure of the landlord to provide this included facility.

The tenant highlighted how they had emailed the landlord on March 27, 2022, asking specifically "will the pool be ready for use right away?". The landlord responded the same day that "The pool company who will be maintaining the pool will begin maintenance April 1st onwards. I will introduce you to the company as they will be maintaining it".

The landlord sent an email on April 6, 2022 to the pool maintenance contact in order to introduce the tenant to them, and coordinate maintenance visits. The pool maintenance contact emailed the landlord and tenant on April 13, 2022, informing them that "an HVAC specialist should inspect the air handling unit and make sure it is in working order". The landlord responded on April 14, 2022 that they "will be sending someone to take a look at the HVAC unit today and he will provide us with a report".

The landlord argued that the pool is not included as part of the rent, noting that "recreational facilities" is not checked off on the tenancy agreement. The landlord argued that only pool maintenance would be included, which the landlord specified as "cleaning and chlorinating the pool on a biweekly basis".

On April 22, 2022, the landlord emailed the tenant to inform them that “the hvac units need to be completely repiped and repaired which would cost approx. \$15k”. The landlord informed the tenant that they are not willing to incur the considerable cost, especially considering the short term lease, and if the tenant wants to initiate the work, the tenant would have to cover the bill. The landlord informed the tenant that if they were not willing to pay the cost of repairs, then the landlord would have to “decommission the pool totally”.

The landlord argued that the pool is in a separate area, and is not “essential living space”. The landlord disputes that the pool is included as part of the tenancy agreement, and therefore is not required to provide this facility or any associated compensation. The landlord further argued that the pool was not functional when the tenant moved in, and considering the fact that it would cost the landlord at least \$15,000.00 to repair, the landlord did not feel that it was justified to incur the cost of repairing the pool for the tenant. The landlord is also disputing the amount requested by the tenant, and argued that the tenant is already paying below market value rent for the home.

Analysis

The definition of a “tenancy agreement” is outlined in the following terms in section 1 of the *Act*:

“tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Section 16 of the *Act* states the following about when a tenancy agreement takes effect.

Start of rights and obligations under tenancy agreement

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

A tenancy can exist in the absence of a written tenancy agreement. In this case, although a written tenancy agreement does exist, I find that there was an implied agreement between the parties that the tenant and their family would have use of the

pool located on the property. I make this finding based on the following facts. Although “recreational facilities” is not selected, “pool maintenance” was. Furthermore, the tenant made a specific inquiry about the pool on March 27, 2022, asking if “the pool be ready for use right away?”. The landlord responded that the pool company “will begin maintenance April 1st onwards”, and put the tenant in contact with the company. At this point, I find the evidence clearly shows that the landlord had very clear intentions of providing the tenant with the use of the pool during this tenancy. Based on the correspondence between the parties, I find it reasonable for the tenant to believe that the pool was included, and that the landlord would incur the costs associated with ensuring the pool was functional and ready to use. I find that the tenant had pursued the necessary clarification to confirm that the pool would be ready for April 1, 2022, which the landlord answered affirmatively. I find that by confirming the pool maintenance for April 1, 2022, and by marking this off as an included service, there is no ambiguity as to whether the pool would be a facility that would be functional and useable by the tenant as part of the tenancy agreement.

Furthermore, the landlord never informed the tenant until April 22, 2022, after the tenancy had already started and after both parties had entered into the tenancy agreement, that the tenant would be responsible for repair costs. It was not until this date that the landlord had informed the tenant that the pool would be decommissioned if the tenant was not willing to pay the repair costs. For these reasons, I find it clear that the landlord did intend to include the use of the pool as part of the monthly rent, and only decided to withdraw this facility once they realized the significant cost of repairs to make the pool functional. By doing so, I find that the landlord is obligated to provide a rent reduction in accordance with section 27(2)(b) of the *Act*.

Section 27 of the *Act* establishes the basis for a landlord to terminate or restrict services or facilities with respect to a tenancy:

27 (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

In consideration of the evidence and testimony before me, it is obvious that the pool would not be considered essential to the tenant’s use of the living accommodation, and therefore section 27(1) of the *Act* would not apply. However, the tenant is entitled to a rent reduction pursuant to sections 27(2)(b) and 65 of the *Act*.

In this case, the tenant calculated the rent reduction using the approximate square footage of the pool. Although I recognize that the pool does occupy a portion of the property, I am not satisfied the tenant has established how this calculation reflects the value of the loss resulting from the loss of this facility. The landlord did not provide a break down of how many family members had intended to use this pool, and how often they would be using it. Alternatively, the tenant did not provide any estimates illustrating the cost of having to use an alternative facility such as a nearby recreational pool facility membership, or the losses associated with the hardship of being denied such a facility. For these reasons, I find that the tenant has not demonstrated their entitlement to a \$900.00 monthly rent reduction. I do, however, find that a rent reduction is justified. Given that the nearby public pool facility would cost a family \$7.00 per use, I find that a monthly rent reduction of \$300.00 would be fair. ($\$7.00 \times 30 \text{ days} = \210.00 , plus an additional \$90.00 per month for convenience and enjoyment of a private facility). I award the tenant a retroactive rent reduction for the twelve months the tenant did not have the use of the pool, for a total monetary order of \$3,600.00.

I further order that the tenant be provided with a \$300.00 monthly rent reduction for the duration of this tenancy, until the landlord is able to provide the tenant with a functional pool facility.

Conclusion

I issue the tenant a monetary order in the amount of \$3,600.00, in satisfaction of a retroactive rent reduction of \$300.00 for the months of April 2022 through to March 2023.

The tenant is provided with a Monetary Order in the amount of \$3,600.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I allow the tenant to deduct \$300.00 from their rent each month, effective April 1, 2023, for the duration of this tenancy, until such time the tenant has full use of the onsite pool.

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 21, 2023

Residential Tenancy Branch