



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, RR, FF

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 in relation to the dispute of a rent increase - Section 43;
2. An Order for a rent reduction for loss of facilities - Section 65; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Has the Tenant received a rent increase that is not in accordance with the Act?

Has the Tenant lost services or facilities?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on June 15, 2009. Prior to a rent increase given on March 17, 2016 (the “Rent Increase”) rent of \$2,039.00 was payable monthly. The Rent Increase amount effective July 1, 2016 was \$59.00. It is noted that the allowable rent increase for 2016 is 2.9%.

The Tenant disputes the Rent Increase. The Landlord states that the Rent Increase was calculated in accordance with the Act.

The Tenant states that from the onset of the tenancy the Tenant was provided with use the courtyard area year round. The Tenant states that the courtyard area is provided in front of the

pool area and is larger than the pool area. The Tenant states that the use of the courtyard was completely restricted since February 2016 to use only when the pool is open. The Tenant states that the courtyard could not be used in May 2016 even though the weather was good solely because the pool was still closed. The Tenant states that before this the courtyard was always used even if the pool was closed and that other tenants would also smoke in that area.

The Landlord states that nothing in the tenancy agreement gives the Tenant access to the courtyard and that the courtyard is closed when the pool is closed including when the pool is closed for cleaning or repairs. The Landlord states that the courtyard is closed for safety reasons and that these closures have been in place since the onset of the tenancy. The Landlord states that he has been working at this building for 3 years. The Landlord states that he has no evidence from prior to this time.

The Tenant states that when she first entered into the tenancy, because she had no balcony, the Tenant was given permission to bring a portable barbeque for use in the courtyard area. The Tenant states that since mid-summer 2015 the Tenant was no longer given access to that area for barbequing. The Tenant states that she was told to go elsewhere to barbeque. The Tenant states that Tenants with balconies used their barbeques on the balconies.

The Landlord states that there is no information that tenants were ever allowed to use barbeques in the courtyard. The Landlord states that some of tenants with balconies have since signed an amendment to the lease restricting the use of barbeques on the balconies. The Landlord states that in the past 3 years there was never had a policy allowing use of barbeques on the balconies and that there is nothing in the agreement allowing use of a barbeque in the courtyard. The Landlord states that the Tenant provided no evidence and had the Tenant done so the Landlord would have negotiated with the Tenant. The Landlord declined the offer to negotiate at the hearing.

The Tenant states that she lost use of a common bathroom that was in the sauna area. The Tenant states that another bathroom is available in the same area. The Tenant states that the Landlord reduced its available work hours and that as a result the Tenant has a difficult time connecting with the Landlord unless there is an emergency. The Tenant states that the

Landlord provides a voice messaging service for after hours in addition to an emergency contact.

The Tenant claims a rent reduction of \$59.00 per month. The Landlord made no submissions on this claimed amount.

Analysis

Section 43(2) provides that a tenant may not make an application for dispute resolution to dispute a rent increase that complies with the Act. As the rental increase complies in relation to the form, dates and amount of increase, I find that the Tenant could not dispute the increase and I dismiss this claim.

Section 27(2) of the Act provides that a landlord may terminate or restrict a service or facility, if the landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and 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 of the Act provides that past or future rent may be ordered reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

I find the Tenant's evidence of use of the courtyard and barbeque since the onset of the tenancy to be believable and persuasive. The Landlord's evidence on the other hand was evasive and contradictory. As a result I find that the Tenant has lost use of facilities that were provided to the Tenant from the onset of the tenancy and that the Tenant is entitled to a reduction in rent that reflects the lost value to the tenancy.

Based on the Tenant's evidence that the sauna area still provides a bathroom and that the Landlord still provides the Tenant with a way to communicate after hours, I find that the Tenant has not substantiated a loss of any facility or service and I dismiss the claim for a rent reduction in relation to these services and facilities.

Given the lack of any submissions by the Landlord on the amount claimed by the Tenant for the loss of the facilities and service but considering that the Tenant has not been found to have lost a bathroom or ability to communicate with the Landlord, I find that the Tenant is only entitled to

a reasonable reduction of **\$50.00** per month for the loss of use of the ability to have a barbeque in the courtyard from August 2015 forward. I include the loss of use of the courtyard since February 2016 in this amount. I find that the Tenant is therefore entitled to a retroactive rent reduction of **\$50.00** per month from August 2015 to September 2016 inclusive in the amount of **\$700.00** (14 months x 50.00) and is also entitled to a rent reduction of **\$50.00** per month for the month of October 2016 and forward to the end of the tenancy.

As the Tenant's application has had merit I find that the Tenant is entitled to recovery of the \$100.00 filing fee. I therefore order the Tenant to reduce rent October 2016 rent by **\$850.00** and thereafter by **\$50.00** per month.

Conclusion

I order the Tenant to reduce October 2016 rent by \$850.00 and to reduce monthly rents thereafter by \$50.00.

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: September 09, 2016

Residential Tenancy Branch