



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

RR, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a rent reduction and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on October 15, 2018 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Tenant submitted to the Residential Tenancy Branch on October 12, 2018 were sent to the Landlord, via registered mail. The Landlord acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

On October 26, 2018 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was left in the Tenant's mail box on October 27, 2018. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided:

Is the Tenant entitled to a rent reduction because access to the recreational facilities was temporarily restricted?

Background and Evidence:

The Landlord and the Tenant agree that:

- the tenancy began on April 01, 2018;
- monthly rent is \$2,000.00;
- two people live in the rental unit;
- on May 30, 2018 the Landlord's father accidentally activated the fire alarm in the pool/gym area;
- the Strata Corporation determined that the person who activated the fire alarm was using a fob that is associated to the rental unit;
- as a result of the incident with the fire alarm the Strata Corporation disabled the fob that provides the Tenant with access to the pool/gym area;
- even when his fob was disabled the Tenant had access to a second gym in the residential complex, which is not as well equipped as the other gym;
- on June 04, 2018 the Landlord was informed that the Tenant's access to the pool/gym has been disabled;

The Tenant stated that he was unable to use the gym/pool from May 30, 2018 to July 06, 2018. The Landlord stated that he does not know when the Tenant's access to these facilities was suspended, but he understands access was re-activated on July 06, 2018.

The Landlord stated that he filed a dispute with the Strata Corporation on June 09, 2018. He argued that he should not be held responsible for the actions of the Strata Corporation, which suspended the Tenant's access to the recreational facilities without investigating the incident. He stated that once the circumstances regarding the fire alarm activation were explained to the Strata Corporation, no penalties were imposed.

The Landlord stated that if he is required to compensate the Tenant for being unable to use the facilities it should be limited to the cost of a monthly pool pass, which is \$57.00 per month. He stated that the pool is only a five minute drive from the rental unit.

The Tenant stated that the pool is a 14 minute drive from the rental unit. He stated that if compensation is based on the monthly pool pass, he thinks both occupants should be compensated by \$57.00 plus the cost of a monthly gym pass.

The Landlord and the Tenant agree that there are no gym facilities at the local pool. The Tenant stated that there is a gym near the rental unit, which he thinks has a monthly fee of \$60.00. The Landlord does not know the monthly fee of the gym.

The Tenant based his claim of \$500.00 on the basis of rent paid at a nearby residential complex which does not have a pool. He acknowledged that the comparable rental unit is not identical to his as it does not have two bathrooms or in-suite laundry and the residential complex is more than three times older than his complex.

The Landlord and the Tenant agree that the Landlord previously offered the Tenant compensation in the amount of \$57.00. The Tenant stated that the Landlord subsequently offered compensation of \$200.00 but that offer was withdrawn. The Landlord stated that the Tenant requested compensation of \$200.00 but the Landlord never agreed to pay that amount.

The Tenant has applied for \$500.00 in compensation, pursuant to section 27(2) of the *Residential Tenancy Act (Act)*.

Analysis:

On the basis of the undisputed evidence I find that on May 30, 2018 the Landlord's father accidentally activated a fire alarm and that the Strata Corporation responded to that incident by deactivating the fob that provided the Tenant with access to the pool/gym facilities. On the basis of the testimony of the Landlord and the absence of evidence to the contrary, I find that the Strata Corporation deactivated the fob without investigating the circumstances of the fire alarm activation and without providing the Landlord with prior warning of the deactivation.

Section 27(2) of the *Act* authorizes a landlord to restrict a non-essential service or facility if:

- that service is not a material term of the tenancy agreement;
- the landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and
- the landlord 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.

As the Strata Corporation suspended the Tenant's access to pool/gym facilities without the knowledge of, or direction from, the Landlord, I cannot conclude that the Landlord suspended the Tenant's access to the pool/gym facilities. I therefore find that the Landlord was not required to provide the Tenant with notice of the suspension nor was he required to reduce rent by any amount as a result of that suspension.

As the Tenant has failed to establish that the Landlord was required to reduce the rent because the Tenant's access to the pool/gym was suspended, I dismiss the Tenant's application for a rent reduction.

I find that the Tenant has failed to establish the merit of his Application for Dispute Resolution and I dismiss his application to recover the fee paid to file this Application.

Conclusion:

The Application for Dispute Resolution is dismissed, without leave to reapply.

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 20, 2018

Residential Tenancy Branch