



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Cascadia Apartment Rentals Ltd. (d.b.a. Everlea Rentals) and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes PSF, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an order to provide services or facilities of a pool, which she says is required by the tenancy agreement or law; and to recover her \$100.00 Application filing fee.

The Parties attended an initial hearing with another arbitrator, who was unavailable for the reconvened hearing. The other arbitrator adjourned the hearing to give the Landlord time to resolve the problem, and the Tenant time to provide evidence of the cost of access to another neighbouring pool.

The Tenant and two agents for the Landlord, T.C. and S.A. ("Agents"), appeared at both teleconference hearings and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it.

During the hearing the Tenant and the Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed

these in the hearing. The Agent, T.C., updated the Landlord's email address for this proceeding. The Parties also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Early in the hearing, I enquired as to the Landlord's legal corporate name, as the name in the tenancy agreement and the interim decision is a doing-business-as name, not a legal name. T.C. advised me of legal corporate name of the Landlord, and therefore, I amended the Respondent's name in the Application, pursuant to section 64 (3) (c) and Rule 4.2.

Issue(s) to be Decided

- Should the Landlord be ordered to provide services or facilities required by the tenancy agreement or law, and if so, what and how?
- Is the Tenant entitled to Recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on August 1, 2021, ran to July 31, 2022, and then operated on a month-to-month basis. They agreed that the Tenant is required to pay the Landlord a monthly rent of \$2,100.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,050.00, and a \$1,050.00 pet damage deposit.

In the hearing, the Tenant said the Landlord has restricted her use of the pool and the hot tub, as it was promised in August 2021 when she moved in; however, the pool has never been available for use. She said:

It wasn't finished when I moved in, and then it's been open for a while now. It's been open 365 days a year now. They put out an email saying 'we're opening up the pool, get ready', it was definite meant to be used by us.

The Tenant said that she is a transit operator and has sore muscles, and as such, she would use the pool and hot tub every day to relax.

The Tenant provided a copy of a “Notice to all Tenants”, which states:

Dear Tenants,

We are currently in discussions with the [pool] building for the pool registration procedure and aim for a May 1st opening.

We will send a notice to all Tenants on the registration instructions when we are ready.

Thank you,
[email; Landlord]

The Agent, T.C., said:

Marketing on the website says there’s a pool for an additional fee. We never came out with the additional fee. She hasn’t paid for an additional fee. She entered the agreement that says it’s not included in the rent. The pool is at a different property - not same as where Tenant lives. The additional fee hasn’t been fully decided yet.

The Parties directed me to the following clauses in the tenancy agreement, which refer to the swimming pool as a common area.

Clause 27 of the tenancy agreement states:

- 27. COMMON AREA** The Tenant shall not abuse common areas of the building, but shall use them prudently, safely, and equitably; and shall conform to all notices, rules and regulations posted on or about the building concerning the use of common areas, including the use of laundry room, play areas, swimming pool, parking area, and storage, and including restriction of their use to tenant’s only, and restriction on use by children. All such use shall be at the risk of the Tenant or his guests.

[underlining emphasis added]

Further, clause 16 in the Addendum to the tenancy agreement states:

- 16. AMENITIES AND COMMON AREAS:** All Tenant’s and the Tenant’s guests agree that use of any of the building’s amenity rooms, fitness, pool, or similar

common areas are used at own risk of Tenant and shall not hold the Landlord or related party responsible for any losses thereof. The Tenant's and guests also agree to clean up after themselves and agree to a \$200 minimum cleaning charge for any neglect and agree for costs associated with any other repairs or cleaning. (no business activity to be conducted) .

[underlining emphasis added]

At the prior arbitrator's request, the Tenant provided evidence of the cost of her attending a neighbouring pool. The Tenant's evidence states that a monthly fee for pool and hot tub access is \$42.50 per month or \$475.00 per year for adults.

The Agent did not know what amount will be charged to the tenants for access to the pool and hot tub. However, the Tenant said: "My son and I can pay \$40.00 a month to get a pass somewhere else. Basically, access to a pool. So, it's \$20.00 for me personally, since I have been living there."

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 1 of the Act includes a definition of "service or facility", which "includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit. This definition includes: "Common recreational facilities".

Section 27 of the Act sets out a landlord's obligations regarding the termination and restriction of services or facilities. It states that a landlord must not terminate or restrict a service or facility, if it is essential to the tenant's use of the rental unit as living accommodation, or if providing the service or facility is a material term of the tenancy agreement.

Policy Guideline #22, states:

An 'essential' service or facility is one which is necessary, indispensable, or fundamental. In considering whether a service or facility is essential to the tenant's use of the rental unit as living accommodation . . . , the arbitrator will hear evidence as to the importance of the service or facility and will determine whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the

rental unit as living accommodation. For example, an elevator in a multi-storey apartment building would be considered an essential service.

Given these considerations, I find that the pool was not an essential service, such as having a washroom or a kitchen would be. However, the Tenant indicated that access to the pool was an important draw in her selecting this residential property. Further, it is noted as part of the common areas open to tenants, and “common recreational facilities” are included in the Act as a “service or facility”.

Based on all the evidence before me, I find that access to the pool is part of the tenancy, but that the Landlord failed to provide this facility to the tenants from the start of the tenancy, to the day of the hearing. Further, section 27 (2) (b) states that a landlord may terminate or restrict a service or facility, if 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.”

The Tenant said that she could access a pool elsewhere for \$20.00 a month. Therefore, I find it appropriate to award the Tenant with a \$20.00 rent reduction per month for the duration of her tenancy of August 2021 through May 2023 or for 22 months. The Tenant is **awarded \$440.00** for the lack of access to the pool for the duration of her tenancy, pursuant to sections 27 and 67 of the Act. The Tenant is authorized to deduct this amount from one upcoming rent payment in complete satisfaction of this award.

Further, the Tenant is authorized to deduct **\$20.00 per month** from any month in which the pool is not available as of the first of the month, **starting in June 2023**.

Given her success in this matter, the Tenant is awarded recovery of her \$100.00 Application filing fee from the Landlord, pursuant to section 72 of the Act. The Tenant is authorized to deduct this amount from one upcoming rent payment in complete satisfaction of this award.

Conclusion

The Tenant is successful in her claim for an order for the Landlord to provide services or facilities required by the tenancy agreement or law. Given that the Landlord is not able to provide this service currently, the Tenant is awarded compensation from the Landlord for the Landlord’s failure to provide this facility, which facility is set out in the tenancy agreement. The Tenant is also awarded recovery of her \$100.00 Application filing fee from the Landlord.

The Tenant is awarded **\$540.00**, for the failure of the Landlord to provide this facility, representing 22 months of the tenancy at \$20.00 per month (plus the \$100.00 Application filing fee recovery).

The Tenant is authorized to deduct \$540.00 from one upcoming rent payment in complete satisfaction of this award. The Tenant is also authorized to deduct \$20.00 from future rent, starting in June 2023, if the pool remains unavailable as of the first of the month.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: April 28, 2023

Residential Tenancy Branch