



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OLC, LAT, LRE, PSF, MNDCT, RR, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on January 31, 2023, wherein the Tenant sought the following relief:

- an Order that the Landlord:
 - be restricted from entering the rental unit;
 - provide facilities as required by the tenancy agreement;
 - comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the residential tenancy agreement.
- an Order permitting the Tenant to change the locks on the rental unit;
- an Order for monetary compensation from the Landlord in the amount of \$13,603.11;
- an Order permitting the Tenant to reduce his rent by the cost of facilities not provided; and
- recovery of the filing fee

The hearing was conducted by teleconference at 11:00 a.m. on March 10, 2023. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the

evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Issues to be Decided

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. Hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as a tenant's request for emergency repairs or the validity of a notice to end tenancy are given priority over monetary claims.

It is my determination that the priority claims before me are the Tenant's request for an Order restricting the Landlord's right to enter the rental unit; the Tenant's request for an Order that the Landlords change the access code on the lock to the rental unit and the Tenant's request for an Order that the Landlord provide services or facilities and/or compensate the Tenant for the withholding of those services or facilities. I also find that this claim is not sufficiently related to the Tenant's monetary claim; accordingly, I exercise my discretion and dismiss the Tenant's monetary claim with leave to reapply.

Similarly I dismiss with leave to reapply the Tenant's request for an Order that the Landlords comply with the *Residential Tenancy Act*, the *Regulations*, and/or the residential tenancy agreement as that request appears to relate to matters raised in the Tenant's monetary claim.

Settlement

During the hearing the parties resolved some of the matters raised in the Tenant's application.

The Tenant conceded that the Landlords changed the keypad code such that this was no longer an issue. Accordingly, this request is noted as settled.

The parties also reached an agreement with respect to the Tenant's request for an order restricting the Landlords' right to enter the rental unit. In this respect they agreed to a schedule of monthly inspections as follows:

The Landlords shall be permitted to inspect the rental unit on a monthly basis at 5:00 p.m. on the first Tuesday of every month. Should the Landlords opt not to do an inspection they must give the Tenant seven (7) days notice.

Issues to be Decided

1. Should the Landlords be ordered to provide the Tenant access to the swimming pool?
2. Should the Tenant be entitled to a rent reduction for lack of access to the swimming pool?
3. Should the Tenant recover the filing fee?

Background and Evidence

In support of his claim the Tenant testified as follows. The Tenant confirmed that he moved into the rental unit on December 1, 2020. At the time the pool was inoperable as it had a large crack. The Tenant stated that the Landlord, D.M., showed him the rental property including showing him the pool before they went into the rental unit. After they viewed the rental unit they had a discussion about the pool. The Tenant stated that he told her that it was great they had a pool as he had a 16 year old daughter with mobility issues and she does hydrotherapy. The Tenant stated that the Landlord told her that they were trying to get the pool cracked fixed as they were looking for contractors.

The Tenant confirmed that he pays \$2,422.50 in rent for two bedrooms of approximately 720 square feet. He also confirmed it was furnished and utilities were included.

The Tenant stated that at no time did D.M. tell him the pool was not available for his use.

The Tenant stated that the pool was fixed in August of 2021 at which time the Landlords installed a locked pool cover and did not provide him access to the pool. He claimed that he spoke to M.M. about the pool but "let it go" as the season was almost done and he thought he would just ask about it the next year.

The Tenant stated that he then spoke to the Landlord, M.M., in August 2022 and M.M. avoided the topic; he further stated that when he talked to D.M. she told him that M.M. was shocked he even asked about it.

The Tenant stated that in his view the two solutions are that the Landlords give them access to the pool, or they reduce the Tenant's rent by \$200.00 from the time the pool was fixed in August of 2021.

The Tenant also stated that the Landlords have a habit of changing their minds, just as they did when he tried to talk to them about working from home. He referenced a conversation he had with D.M. regarding working from home and at one point in time she denied ever having the conversation, yet later remembered it had occurred. In this respect he provided recordings of conversations he had with the Landlords.

In response to the Tenant's claims the Landlord D.M. testified as follows. She stated that when she showed the Tenant the rental unit she specifically showed him his outside space, and their separate outside space. She also claimed that she told him that the pool was theirs exclusively.

D.M. confirmed that with their first tenant they let the tenant use the pool which they discovered was a mistake. She also stated that they have two children, 5 and 2 years respectively, and they have safety concerns which is why the cover is locked.

D.M. admitted that the Tenant stated that it would be nice for his daughter to use the pool as she does hydrotherapy. D.M. said that she responded with "that might be something we'd be open to" but denied telling the Tenant he could have regular access to the pool. She also confirmed that they would have been open to the Tenant's daughter using the pool but they would have had him sign something for liability reasons.

D.M. said that when she originally gave him the tenancy agreement, he noted that the hydro was not ticked off, and she corrected that. D.M. also stated that the Tenant did not raise the issue of the pool not being ticked off on the tenancy agreement.

D.M. also stated that in the previous tenancy they were clear that the tenant could use the pool on the tenancy agreement; this was also included in the advertising of the rental unit. After this experience they decided it was not appropriate for their tenants to use the pool.

D.M. claimed that the only time the Tenant brought it up was August of 2022 a year and eight months into his tenancy right at the time when there was tension regarding the furniture in the rental unit.

D.M. stated that they never denied the Tenant access to the pool as he never tried to use it because he knew it wasn't part of his tenancy agreement.

In terms of the option of having access to the pool or \$200.00 off his rent, D.M. stated they do not feel it fair to have to compensate him for something that was never included.

M.M. also testified. He stated that the Tenant does walk by the pool, but it is clear it is the Landlords' area as it is separated with the Landlords' outdoor furniture.

Analysis

After consideration of the testimony and evidence before me I find as follows.

I find that the use of the pool was not an included term of the tenancy agreement. While the parties may have discussed the pool at the time the Tenant viewed the unit, I do not find this sufficient to establish the Tenant's use of the pool as an included facility.

In making this finding I am persuaded by the Landlord, D.M.'s testimony that the original agreement failed to include the electrical utility; the Tenant brought this to the Landlord's attention and the appropriate box was ticked prior to the agreement being finalized. Had the pool use been an included item presumably the Tenant would have insisted it also be noted on the agreement.

I am also persuaded by the parties' testimony that the pool area is separated by the Landlord's outdoor furniture. In doing so I find the Landlords intended to create a private area for their exclusive use. The evidence before me suggests the Landlords created a designated outdoor area for the suite which was separate and apart from the Landlord's outdoor area.

The Tenant testified that he didn't raise the use of the pool with the Landlord in 2021 as at the time the pool was fixed the season was ending and he decided to raise it the following year. Again, had this been an included facility, I find it more likely that the Tenant would have raised this issue at the time the pool was fixed, particularly if he was

interested in using it. Further, the Tenant does not appear to have made any enquiries with the Landlord as to the date the pool might be repaired or when he might be able to use it. Again, I find it unlikely that this was an included facility based on the apparent lack of discussions between the Tenant and the Landlord.

For these reasons I find that the pool was not an included facility. I therefore also find that the Tenant is not entitled to monetary compensation for loss of use of this facility.

As the parties resolved some matters by agreement and the Tenant was unsuccessful in his Application for an Order for access to the pool and related compensation, I dismiss his request for recovery of the fee paid to file his Application.

Conclusion

The parties agreed that the access code to the rental unit was changed to provide more security to the rental unit.

The parties also agreed to a schedule of monthly inspections as set forth in this my Decision.

The Tenant's request for access to the pool is dismissed without leave to reapply. Similarly the Tenant's request for compensation for lack of use of the pool is also dismissed without leave to reapply as I find that use of the pool was not an included facility pursuant to the tenancy agreement.

The Tenant's request for an Order that the Landlords comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulations* and/or the residential tenancy agreement, as well as the balance of the Tenant's monetary claim are dismissed with leave to reapply.

The Tenant's request to recover the filing fee 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: April 6, 2023

Residential Tenancy Branch