



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Living Balance Property Investment Group  
Lonsdale & First Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** MNR; MNDC; OLC; ERP; PSF; RP

### **Introduction**

This matter was reconvened from January 31, 2013. An Interim Decision was provided on February 7, 2013, which should be read in conjunction with this Decision.

During the January 31<sup>st</sup> Hearing, the Tenant advised that he was in the process of moving out of the rental unit. At the outset of the reconvened Hearing, the Tenant confirmed that he has moved out of the rental premises. Therefore, the Tenant's application for repair orders; an Order suspending or setting conditions on the Landlord's right to enter the rental unit; an Order that the Landlord comply with the Act, regulation or tenancy agreement; and an order that the Landlord provide services or facilities required by law are dismissed because the tenancy has ended. The Hearing continued with respect to the remainder of the Tenant's application.

### **Issues to be Decided**

- Is the Tenant entitled to recover the cost of emergency repairs from the Landlord and compensation for damage or loss under the Act, regulation or tenancy agreement?

### **Background and Evidence**

This tenancy started in December, 2010. The rental unit is one of 10 residential units located in a 100 year old building. There are commercially rented units on the main floor. Monthly rent was \$950.00, due on the first day of each month.

The Tenant provided digital evidence in support of his Application, which was duly served on the Landlord by registered mail sent December 28, 2012. The Tenant provided his testimony on January 31, 2013, and the Landlord was provided opportunity to respond to the Tenant's digital evidence and oral testimony during the reconvened Hearing on March 7, 2013. It is important to note that the Tenant also provided the Residential Tenancy Branch with a second DVD on January 28, 2013. The Tenant testified that he did not serve the Landlord with a copy of the January 28<sup>th</sup> DVD and

therefore it was not considered and the Tenant was invited to provide this evidence orally.

The Tenant gave the following testimony:

The Tenant testified that there has been a history of problems with pigeons roosting on and in the rental property. Sometimes pigeons became trapped and died in the light shafts and their carcasses were left to decay. He stated that there were pigeon feces piled up to 3 inches on his balcony and elsewhere on the rental property. The Tenant stated that after he complained several times to the Landlord nothing satisfactory was done, so he had to file an application for dispute resolution. The Tenant provided in evidence a copy of the Decision with respect to this previous application. This Decision indicates that on October 29, 2012, the arbitrator considered the Tenant's application seeking compensation for damage or loss; an Order that the Landlord LBPIG comply with the Act; and a repair order. The Tenant's application was granted. The Landlord was ordered to clean the light shafts in the rental property by November 30, 2012, and to "mitigate pigeon issues over the next six months". The Tenant was provided compensation in the amount of \$2,850.00 for loss of use and loss of quiet enjoyment of the rental unit up to and including the date of the Hearing. The Tenant was also given leave to apply for further compensation if the Landlord failed to comply with the order.

The Tenant stated that he came home on November 22, 2012, to "air full of dust", which he considered to be environmental and health hazards because the dust was composed of pulverized pigeon feces. The Tenant testified that the Landlord had hired workers to remove pigeon feces from the building, in accordance with the October 29 Order, but that the workers did not properly contain the pigeon feces or clean up the dust that resulted from scraping the feces. The Tenant stated that he went to ask one of the workmen (the Landlord's witness AM), who was in the process of packing up for the day, if they were going to vacuum before they left. He testified that AM became very angry and uttered expletives at the Tenant. A verbal altercation ensued and AM called the police, who attended. The Tenant agreed not to interfere with the workmen the following day when they returned to finish the job, and the workmen left without cleaning up the mess.

The Tenant testified that he suffered from respiratory problems, anxiety and infections after November 22, 2013, and that he was healthy and seldom sought medical attention prior to moving into the rental unit. He submitted that one of his neighbours also became sick with respiratory issues, which she contributed to the poor air quality in the rental property. The Tenant testified that he had to move out of the rental property for health reasons because the Landlord did not properly address the occupants' concerns regarding the dust. The Tenant stated that he had to sign a lease at his new residence

and that his current rent is \$1,750.00 for a smaller place. The Tenant seeks the difference in cost between the rental unit and his new home for the term of his new lease (\$800.00 x 12 months = **\$9,600.00**). In addition, the Tenant is seeking a refund of his last three months rent (\$950.00 x 3 = **\$2,850.00**)

The Tenant submitted that the building should have been vacant while the work was being done and while the clean-up was taking place, but no such notice was given by the Landlord. He stated that the workers came back the next day, but did not do a satisfactory job of removing all of the dust. The Tenant stated that he cleaned fine dust off a neighbour's bike and vacuumed the hallways. The Tenant stated that he and his neighbour both e-mailed the Landlord asking that the pigeon feces be properly cleaned up, but as the Landlord did not respond to their request, the Tenant hired the services of a professional company to perform mould, fecal and bacteria swabs in the rental property. A copy of the report and invoice, dated December 19, 2012, were provided in evidence, along with "before and after" photographs. The Tenant seeks reimbursement of the following costs he incurred:

Description	Cost
Environmental report	\$1,344.00
Air purifier (on recommendation of family doctor)	\$223.99
Additional air purifier (first air purifier's filter became clogged after a few days)	\$1,007.99
Prescription for anxiety	\$65.51
Antibiotics for bacterial infection	\$31.13
Cost of cleaning down-filled comforter	\$58.22
Restaurant Gift certificate to a friend for allowing Tenant to stay a few weekends to escape illness and fatigue	\$150.00
Prescriptions for antibiotics and saline nasal mist	\$36.72
Cost of serving the Landlord (registered mail x 2)	\$20.78
Risk Class 3 approved face mask, drywall filter bag, microfiber cloth and washable hepa filter for vacuum	\$131.00
Hospitalization January 9, 2013	\$50.00
Estimated additional hydro costs for running air purifiers for more than 30 days at 24 hours a day	\$150.00
Additional fuel used for 14 trips (truck): walk-in medical clinic (4); hospital (2); family doctor(3); purchase air purifier; purchase hepa filter/dust mask; Residential Tenancy Office (3). 15 km per trip average = 210 kms (52 litres @ \$1.25 litre)	\$65.63
<b>TOTAL CLAIM for costs</b>	<b>\$3,334.97</b>

The Tenant stated that he is concerned about the health and welfare of other occupants in the rental property as well as the Landlord's employees who clean up the pigeon mess. The Tenant provided a copy of a WCB report in evidence which includes 4 orders against the Landlord.

The Tenant is also applying for **\$9,769.35** in lost income.

The Landlord's agent and witnesses gave the following testimony:

The Landlord's agent stated that she hired AM's company to clean up the mess and that he had a license to use pesticides and was familiar with safety measures required to dispose of pigeon feces. She stated that the municipal health authority had no problem with the methods used by AM's company. The Landlord's agent submitted that the Landlord has complied with the October 29<sup>th</sup> order fully, and provided a copy of the Invoice dated November 23, 2012, in the amount of \$9,329.60.

The Landlord's agent stated that the Tenant has "gilded the lily" with respect to his claim. She submitted that the rental property was properly cleaned and that it was done in a speedy manner. The Landlord's agent stated that the Tenant had arranged for the environmental report to be done without consulting the Landlord. She stated that the report was inconclusive and didn't support the Tenant's claim that he suffered ill health because of poor air quality in the rental property.

The Landlord's witness AM testified that in June, 2012, he gave the Landlord an estimate to clean and remove the pigeon feces from the exterior of the rental property and to install bird spikes to stop the pigeons from returning. He stated that 7 or 8 days later, he accessed the roof and fire escapes and noticed potted plants and plastic tarps on the Tenant's fire escape, which is contrary to a term of the tenancy agreement. AM testified that when he told the Tenant he was going to remove them pots and tarps, the Tenant threatened him and said that he would put spikes up himself to deter the birds. AM stated that 4 to 5 months later, birds are still coming to the Tenant's fire escape and leaving their droppings on the commercial property below (a restaurant's open-air seating area). It is important to note that the Tenant interrupted AM's testimony to state that he never had items on his balcony and that AM must be confusing him with someone else because he lives on the lower level. AM acknowledged that "it was possible it was somebody else".

AM stated that he has taken care of the Landlord's buildings for the past 4 years, which includes 10 – 15 buildings. He stated that he has never been called back after installing bird spikes, except for this building because the Landlord only partially spiked the building. He stated that two commercial tenants complained in September about

bird droppings, and that in November more spikes were installed and he cleaned up the area. AM stated that inspections were done by the municipal health authority and WCB and the work was approved. He stated that all disinfectants and deodorizers used were approved by the municipal health authority.

AM testified that there was a small amount of dust left on a bike on the second floor, but that occupants were not supposed to leave their bikes in the hallways. AM testified that he did a "light vacuum" at the end of the first day and returned the next day to do a more thorough clean. AM stated that he was a janitor for 20 years, 16 of those years as a professional janitor. He said that the methods used by the environmental inspection company would always show some degree of contamination on window ledges and baseboards, in any building, unless the building was "deep cleaned".

AM stated that he met the qualifications with respect to biohazards and that he had to submit a plan to WCB and had his plan and chemicals approved.

The Landlord's agent stated that after the work was done, she got a complaint from one of the Tenant's neighbours about pigeons returning to the light well. She stated she called AM to look into it. AM stated that he found no evidence of pigeons roosting and stated that the neighbour may have heard pipes rattling and mistaken them for birds.

The Landlord's second witness, PH, stated that the Landlord asked him to pressure wash the perimeter of the rental property and that the Tenant had insisted that he also clean the Tenant's balcony at the same time. He stated that the Tenant took photographs of him cleaning his balcony and reported to WCB. The Landlord's agent stated that the WCB report provided by the Tenant was in answer to PH's spraying the Tenant's balcony and not about AM doing his remediation work.

The Landlord's agent stated that she felt "set up" by the Tenant, which coloured how she dealt with him. She stated that she is not a bully, and that the Tenant has lied in the past about not having a dog. The Landlord's agent stated that she did not understand why the Tenant would be entitled to some of his costs and that she didn't know what the receipts were for.

The Landlord's agent stated that the building is very old and the Landlord is not in a financial position to do too much. She stated that the Landlord does minimal repairs until the Landlord can "do it right".

The Landlord's agent stated that the rents were kept low and have not been raised for 5 years because it is "an old building and lacking infrastructure". She submitted that the

Tenant moved to new and better accommodation and that the Landlord should not be made to subsidize the Tenant's decision to live in a nicer place.

The Landlord's agent denied receiving any complaints from other occupants of the building. She stated that the perimeter was kept clean of pigeon feces to keep the commercial tenants happy, and that it was usually pressure washed once or twice a year. The Landlord's agent admitted to being "slow to get the light well cleaned", but that the Landlord "paid for it". She questioned when the Tenant's photographs were taken and suggested that the Tenant's flu and reaction to the dust was not positively linked to the pigeons.

### **Analysis**

This is the Tenant's claim for damage or loss under the Act and therefore the Tenant has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Clearly, there was friction between AM and the Tenant and they disagreed on many facts surrounding AM's clean-up of the rental property in November, 2012. Where there was disagreement, I prefer the Tenant's version of events for the following reasons:

1. AM testified that the Tenant had unauthorized plants and tarps on his fire escape and that the Tenant verbally threatened him when AM advised that he was going to have them removed. When the Tenant challenged this, AM acknowledged that he wasn't certain it was the Tenant he argued with.
2. AM stated that he had to submit plans to WCB and had to have certain chemicals approved before the light wells could be cleaned. However, the Landlord did not provide a copy of the report to WCB, or a copy of their written approval. The Landlord's agent stated that she took AM "at his word that everything was OK".
3. AM stated that the rental property was properly cleaned and disinfected on the second day after the light wells had been cleared (November 23, 2012). However, the Environmental Report which was written after inspection of the rental property on December 4, 2012, indicates the following recommendations:

“[the inspector] suggests the following recommendations to rectify the contamination issues within the facility:

It is recommended that a professional mould abatement contractor conduct the feces and mould removal.

After all remedial measures have been undertaken; it is recommended that further surface and air sampling be conducted in the public hallway to ensure that abatement methods were successful.”

When the Landlord had a complaint about returning pigeons, she asked AM to look into it and AM told her he found no evidence of pigeons returning to the light wells. However, a photograph provided by the Tenant shows pigeons perched inside the building. The Tenant also provided photographs of the hall way and his neighbour's bike. There is a fine white dust or powder evident on the bike seat and on the carpets in the hallway.

The company who performed the mould, fecal and bacteria swabs was a neutral party. The Environmental Report indicates that fecal coliforms were found on baseboards and window ledges in the rental property. The report identifies three human diseases that are known to be associated with pigeon droppings. The report also identified high concentrations of several kinds of mould which produce mycotoxins, which can be toxic to humans and animals.

Taken in its totality with the Environmental Report; the Tenant's photographs; receipts for medication; and the Tenant's preferred testimony, I find on the balance of probabilities that the Landlord's agent AM did not clean up the pigeon feces properly. Based on the above, I am also satisfied that this had an adverse effect on the Tenant's health.

The Landlord's agent submitted that the building was very old and therefore the Landlord did not “do too much”, other than “minimal repairs”. Section 32 of the Act requires a Landlord to provide and maintain residential property in a state of repair that complies with the health, safety and housing standards required by law. I find that the Landlord did not comply with Section 32 of the Act and that the Tenant suffered a loss as a result of the Landlord's non-compliance.

I find that the Tenant is not entitled to the difference between what he is paying in rent now and what he paid at the rental unit. He did not dispute that his new home is in a newer, more desirable building. While I accept that the Tenant moved out quickly for health reasons, the Tenant provided no evidence that he was unable to find

accommodation in a building similar to the rental property. Therefore this portion of his application is dismissed.

The Tenant seeks a complete refund for the last three months of his tenancy at the rental property. However, the Tenant did have some use of the rental unit and I find that 100% abatement is unreasonable. Nevertheless, I find that the value of the tenancy was severely reduced by the Landlord's failure to comply with Section 32 of the Act and allow the Tenant a 75% rent abatement from November to January, in the total amount of **\$2,137.50**.

The Tenant sought an award for loss of income; however, I find that the Tenant did not provide sufficient evidence to support this part of his application. For example, he did not provide evidence with respect to how many hours or days of work he missed. This part of his application is dismissed.

I accept that the Tenant's physician recommended use of an air purifier and that the first purifier's filter became clogged. However, the Tenant provided no evidence that the use of air purifiers were recommended now that he is not living in the rental property. The Tenant may be able to sell the almost-new purifiers for at least 50% of their initial cost, and therefore I allow this portion of the Tenant's claim in the amount of \$223.99 (the cost of the first air purifier he purchased).

I dismiss the Tenant's claim for additional fuel, the cost of serving the Landlord, and the gift certificate for his friend. I find that the Tenant did not provide sufficient evidence with respect to his claim for fuel costs. There is no provision in the Act, other than for the recovery of the filing fee, for the cost of preparing for a Hearing or serving the other party. I find that the Tenant has already been awarded a sufficient amount (\$2,137.50 above) for loss of use of the rental unit.

The Tenant did not provide sufficient evidence to support his claim in the amount of \$150.00 for additional hydro costs (for example copies of bills before and after he purchased the air purifiers); however, I accept that it would use some extra power and therefore I allow a nominal amount of **\$50.00** for this portion of his claim.

I find that the Tenant is entitled to the balance of his application as claimed and as supported by documentary evidence. I find that the losses claimed were a direct result of the Landlord's breach of Section 32 of the Act. The Tenant has established a total monetary award, calculated as follows:



Description	Cost
Environmental report	\$1,344.00
Air purifier (on recommendation of family doctor)	\$223.99
Prescription for anxiety	\$65.51
Antibiotics for bacterial infection	\$31.13
Cost of cleaning down-filled comforter	\$58.22
Prescriptions for antibiotics and saline nasal mist	\$36.72
Risk Class 3 approved face mask, drywall filter bag, microfiber cloth and washable hepa filter for vacuum	\$131.00
Hospitalization January 9, 2013	\$50.00
Nominal award for additional hydro costs for running air purifiers for more than 30 days at 24 hours a day	\$50.00
Reduced value of tenancy for three months	\$2,137.50
<b>TOTAL AWARD</b>	<b>\$4,128.27</b>

The Tenant has been partially successful in his application and I find that he is entitled to recover the cost of the filing fee that would have been paid for a claim up to \$5,000.00, in the amount of **\$50.00**.

Section 62(3) of the Act states:

**62** (3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Although the tenancy is over, there remain other occupants in the rental property who may be adversely affected by the incomplete clean-up of the pigeon feces and the mycotoxin producing mould. Under the provisions of Section 62(3) of the Act, **I HEREBY ORDER the Landlord to comply with the recommendations of the Environmental Report.**

### **Conclusion**

I hereby provide the Tenant with a Monetary Order in the amount of **\$4,178.27** for service upon the Landlord. This Monetary Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that court.

**I HEREBY ORDER the Landlord to comply with the recommendations of the Environmental Report** and hire a professional mould abatement contractor to conduct

the feces and mould removal. After all remedial measures have been undertaken further surface and air sampling must be conducted in the public hallway by a professional company to ensure that abatement methods were successful, with that cost to be borne by the Landlord.

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 27, 2013

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Residential Tenancy Branch

