



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DUTTONS & CO. REAL ESTATE LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDCT, RP, OLC, FF

Introduction

This hearing was convened in response to an application filed by the tenant July 26, 2018 seeking Orders under the *Residential Tenancy Act* (the Act) as follows:

- A Monetary Order for compensation for loss under the Act, regulation or tenancy agreement – Section 67
- For repairs to the unit – Section 62
- For the landlord to comply with the Act – Section 62
- To recover the filing fee for this application – Section 72

Both parties participated in the conference call hearing and provided testimony. The landlord testified they were served with the tenant's application and evidence. The landlord claims they provided the Branch with their evidence however it was not received. The landlord acknowledged they were able to provide their evidence in testimony as their submissions were not abundant. The tenant stated they *did* receive the landlord's evidence and were able to respond to it. The parties were further provided opportunity to mutually resolve or settle their dispute to no avail. Therefore, the hearing proceeded on merits of the tenant's application. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The parties were informed that only *relevant evidence* would be considered toward a final and binding Decision. The tenant clarified that what they sought in their application is an abatement of rent due to a pest infestation and a resulting loss of quiet enjoyment.

Issue(s) to be Decided

Is the tenant entitled to a reduction of the rent or value of the tenancy agreement pursuant to a loss of quiet enjoyment?

Is the tenant entitled to an abatement of rent in the amount claimed?

Background and Evidence

The undisputed relevant evidence is as follows. This tenancy started May 15, 2018 and continues. It is relevant that the tenant did not actually begin occupying the rental unit until the first week in June 2018. The tenancy is guided a tenancy agreement of which I have benefit. Rent of \$1995.00 per month is payable on the first of each month. A security deposit is held in trust by the landlord.

It is undisputed that on June 04, 2018, soon after the tenant began occupying the rental unit, the tenant informed the landlord agent they were encountering cockroaches in the rental unit. The landlord immediately notified a pest control contractor whom attended the unit on June 05, 2018. Since then the tenant acknowledges that they have been receiving the services of a pest control technician and their service efforts to eradicate the pest. The tenant testified that the pest problem has been slowly abating but that there continues to be cockroaches in the unit to this day. It is undisputed that the tenant has effectively co-operated with the pest control professionals and has accommodated them and the landlord with a view to doing what is required to eradicate the problem. The tenant testified that they also maintain a clean environment as requested of them; however the cockroaches seem resilient and persist. The tenant has determined that they should be awarded a rent reduction of 50% until the cockroach problem is eradicated in its entirety as a reflection of the reduced value of the tenancy agreement.

The landlord testified that at the outset of the tenancy neither party were alerted or knew of a cockroach problem nor that the landlord knew of such an issue during the previous tenancy. They testified that they have done all of what they can to address the problem and have offered the tenant the option of vacating the rental unit prior to the fixed term of the tenancy agreement without penalty as well as the total of \$300.00 in compensation. The tenants testified they considered the landlord's offer, but decided that a move would be disruptive and costly, having made the move to the rental unit from the lower mainland of the Province to Vancouver Island.

The tenant further testified that the presence of cockroaches in the rental unit has been emotionally upsetting and generally unsettling. They stated they feel they cannot relax in their own home with the knowledge of cockroaches and poison bait about. The tenant described how they are constantly cleaning as advised but still encountering multiple generations of cockroaches and their feces. They avoid having guests in the unit for fear they too will encounter cockroaches and the resulting embarrassment. The tenants described having cockroaches has affected their appetite and that their sleep is affected as well. Both parties agreed the tenants have been inconvenienced by the duration of the pest problem despite understanding that eradication efforts are ongoing. The landlord testified that they are committed to continuing the work addressing the pest control measures toward eradication of the cockroaches for as long as required.

The landlord presented testimony from their evidence of the responsible pest control contractor intimating the tenant may be frustrating their efforts by refusing use of pest bait traps atop their kitchen counter(s). The tenant explained their conversation with the pest control technician expressed a reluctance to accept further intrusion on their living space but in no way was it an expression to thwart the eradication efforts.

Analysis

On preponderance of the relevant evidence and on balance of probabilities I find as follows.

I find that the tenant's expectations of a pest-free rental unit at and from the outset of the tenancy are not unreasonable. I also find that the landlord cannot be faulted for an early and ongoing response to the problem once notified by the tenant of a cockroach infestation. I find that under **Section 28** of the Act the tenant is entitled to freedom from unreasonable disturbance. I accept the tenant's list of complaints respecting the ongoing presence of cockroaches and baited traps as reasonable reaction to living with a pervasive pest problem. I place little to no weight on the tenant's expressed frustration to a pest control technician over the ongoing pest problem. None the less it is worth stating that the tenant may need to accept more onerous efforts to achieve full eradication of the cockroaches.

I find the agreed facts of this matter and the tenant's list of complaints amounts to an unreasonable intrusion into the tenant's right to quiet enjoyment of the unit, in exchange for the agreed rent. I find that the circumstances of this matter representative of a devalued tenancy agreement and therefore a reduction in the originally agreed rent is appropriate.

As a result of the above I find the tenant entitled to compensation for a loss of quiet enjoyment which I set at **\$750.00** for the first month of the tenant's occupancy of the unit: June 2018. Thereafter, as the cockroach problem reportedly has slowly improved, I find the tenant entitled to a decreasing reduction in the value of the tenancy agreement in the amount of **\$500.00** for July 2018, **\$250.00** for August 2018, **150.00** for September 2018.

I further find it appropriate to allow the tenant a **\$100.00** reduction of the payable agreed rent each month starting October 01, 2018 until the cockroach problem is deemed resolved by a pest control professional, in writing. At which time, the rent for the month following is to return to the originally agreed amount stated in the tenancy agreement. If the parties are unable to co-operatively navigate this regime, it is available to either party to seek dispute resolution through the Branch.

Therefore, I find that **to the date of this decision** the tenant is entitled to rent abatement in the sum of the above fractional amounts totalling \$1650.00 (\$750.00 + \$500.00 + \$250.00 + \$150.00). As the tenant has in part been successful in their application they are also entitled to recover their filing fee of \$100.00 for a sum award of **\$1750.00**.

Conclusion

The tenant's application for a rent reduction is effectively granted and the balance of claims on application is dismissed without leave to reapply.

I grant the tenant an Order under **Section 67** of the Act for the amount of **\$1750.00**. This Order may be filed in the Small Claims Court and enforced as an Order of that Court. **The tenant can choose to collect on the monetary Order through the Small Claims Court process or through reducing this amount from future rent payments.**

I Order that future payable rent as of October 2018 is reduced by \$100.00 from \$1995.00 to **\$1895.00** until such time the parties both receive confirmation **in writing, from the same pest control professional**, that the cockroach problem in the unit is to their satisfaction resolved, and only then will the rent return to the amount stipulated in the tenancy agreement the following month.

This Decision is final and binding.

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 19, 2018

Residential Tenancy Branch