



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFT MNDCT RP

### Introduction

This case involves a tenants' dispute against their landlord for compensation related primarily to a silverfish problem, for an order for repairs, and for compensatory recovery of the filing fee.

The tenants applied for dispute resolution under the *Residential Tenancy Act* (the "Act") on January 16, 2019, and I presided over a dispute resolution hearing on February 28, 2019. One of the tenants, the landlord, and the landlord's witness attended the hearing, and I gave them full opportunity to be heard, to present evidence, to make submissions, and to call witnesses. The parties did not raise any issue with the service of documents.

I have only reviewed and considered oral and documentary evidence that met the requirements of the Act's *Rules of Procedure*, to which I was referred, and that is relevant to the issues of the dispute.

This is my decision regarding the tenants' application.

### Issues

1. Are the tenants entitled to compensation related to the presence of silverfish?
2. Are the tenants entitled to an order that the landlord make regular repairs?
3. Are the tenants entitled to compensation for the filing fee?

### Background and Evidence

The tenancy began, uneventfully enough, on July 1, 2018. The rental unit—a two-bedroom condominium on the fourth floor of a nine-year-old building—is occupied by the tenant and his wife. Rent is \$2,000.00, and the tenants paid a security deposit of \$1,000.00. Submitted into evidence was a copy of the written tenancy agreement.

Within five days of moving in, however, the tenant noticed silverfish. He was unfamiliar with this creature, the *Lepisma saccharina*, and researched it. And killed it. As the month continued, silverfish continued to enter the rental unit. He kept killing them. He purchased bug killer. As July drew to a close, he had lost his patience with the ongoing silverfish problem and on July 31 sent a text message to the landlord for help. (The landlord resides on the same floor, down a few doors.)

The landlord, who rather impatiently replied that she wished he had told her earlier about the silverfish, provided the tenant with a powder for killing the silverfish. It would take time for the powder to work, the landlord explained. Two weeks passed, and the tenant's patience wore ever-thinner. His life deteriorated. He testified that the silverfish problem had “destroyed his life” and that he “couldn't sleep.” The tenant submitted a letter in which he described his experience, a portion of which reads as follows:

For the past four months I have been sleeping 3-4 hours per day. I am having nightmares about silverfish almost every night.

What pushed him over the edge was the result of

waking up one night to go to the washroom and when I turned the light on there were silverfish all over the ceiling and the floor. I killed what I was able to kill at the same time I was drenched with sweat so I took a shower but couldn't sleep. I was so shaken by this that when I went to work I left without combing my hair, looking bad and didn't know until people at the coffee shop started to stare at me.

And, because of the entire experience of the silverfish, the tenant wrote that “I am jumpy and paranoid and all I do is think how to kill silverfish.” The tenant testified that one must go through the experience as he did to truly understand the stress that these silverfish have caused. He suffers from headaches, short and disturbed sleep, and “feels like a [drug] addict” focused solely on killing silverfish.

On October 31, the tenant contacted the landlord because the silverfish were not going away. The powder was not working. He needed a professional to come in. And the landlord responded by bringing in a professional exterminator on November 10. When the exterminator came and inspected and treated the rental unit the tenants had to stay in a hotel for 24 hours; the tenants stayed in a hotel for 48 hours. The tenant testified that the silverfish problem has been significantly reduced, but that he still finds them on occasion.

The tenants seek compensation in the amount of \$19,270.82, comprised of the following amounts: \$2,000.00 for eating out; \$159.82 for hotel accommodation; \$200.00 for increased hydro use (he testified that hotter temperatures drive away silverfish); \$500.00 for cleaning products; \$8,200.00 for replacement furniture; \$51.00 for vacuuming expenses; and, \$7,000 for rent reimbursement related to loss of quiet enjoyment from the silverfish. The tenants also seek \$100.00 for the cost of the filing fee. Receipts for one meal at a Subway and for the hotel were submitted into evidence. No other receipts were submitted.

The landlord testified that she took possession of the property on June 17, 2018, and had it professionally cleaned before the tenants moved in. She submitted colour photographs of the rental unit before the tenancy began. July 31 was the first time that the tenant told her about the silverfish. She sees silverfish in her own condominium about 1-2 times a month, but according to the building's caretaker, silverfish are not a problem and there is no infestation in the building. During her final submission the landlord explained that insects and spiders are inevitable wherever one chooses to live.

The landlord brought over some powder on August 13 to help kill the insects. That was the last she heard anything from the tenant about the silverfish until October 31, more than two months later. She confirmed the tenant's testimony that a professional extermination company was brought in.

Submitted into evidence was a report by the company indicating that they had not seen any silverfish (but they also indicated that this does not mean that they are not hiding). The tenant had wanted the building's strata council to get involved, but according to the landlord and tenant the strata will not get involved unless there is an infestation.

The parties also testified about a dirty oven that the tenant had to clean upon move in (the landlord was unaware of this issue until today's hearing), about bad odors in the

bathroom (that may appear to soon be resolved by a thorough flushing and sanitization of the building), and about a burned light socket (which has since been replaced).

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Here, the tenants must prove that they are entitled to compensation under section 67 of the Act, and that they are entitled to an order for the landlord to make repairs, under sections 32 and 62(3) of the Act.

### **Order for Regular Repairs**

Section 32(1) of the Act outlines a landlord's legal obligations to repair and maintain a rental unit. To wit:

A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In this case, the tenant brought up two issues that may be subject to a repair order: (1) a burned out light socket/fixture, and (2) plumbing issues in the bathroom that have resulted in bad smells. However, he testified that the building is about to undergo an extensive flushing and sanitization, and thus the issue may likely resolve itself through the process. Second, the landlord and her father (the witness), testified that the issue of a burned out light socket, which rather alarmed the tenants, has been resolved through a full replacement of the fixture.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving that they are entitled to an order for the landlord to make repairs. The tenants provided no evidence that the current light fixture or the

smells from the bathroom breach any health, safety or housing standards required by law. Similarly, the current light fixture and occasional smells (the tenant did not elaborate on how frequently the smells occur) do not make it unsuitable for occupation by a tenant. The tenant explained that the bathroom smells. The landlord disputed this.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the tenant has failed to provide any evidence, over and above his testimony, that there are smells in the bathroom.

Given the above, I dismiss the tenants' claim for an order under sections 32 and 62(3) of the Act without leave to reapply.

### **Compensation for Silverfish**

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the *Residential Tenancy Regulation*, or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

When an applicant seeks compensation under the Act, the applicant must prove on a balance of probabilities each of the following four criteria, in order to be granted compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, the *Residential Tenancy Regulation*, or the tenancy agreement?
2. if yes, did loss or damage result from that non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize their damage or loss?

In this case, the tenants apply for compensation for various matters related to the presence of silverfish in the rental unit. The primary thrust of their claim is for loss of quiet enjoyment.

Section 28 of the Act speaks to quiet enjoyment and states that

A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

A landlord must ensure that a tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. (See *Residential Tenancy Policy Guideline 6 Entitlement to Quiet Enjoyment*)

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the Act. In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the

premises, and the length of time over which the situation has existed. A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

I empathize with the tenant. Silverfish are indeed disgusting, disturbing creatures, and I had the misfortune (while completing law school in the early 2000s) of having lived with them in my apartment for over two years. They could be seen running across the floor, mere inches from my futon. But as revolting they may be, they are as the scientific evidence establishes and the tenant submitted, not harmful to humans. They are mildly destructive to property if left to populate unchecked.

The tenant contacted the landlord on only a few occasions, and on each occasion the landlord responded in a timely manner. She provided killing powder, and eventually hired a professional exterminator. Given that even the tenant has the odd silverfish in her residence establishes that the building does have silverfish, but not to an extent that it might be called an infestation. And, while the tenant submitted some photographs of various silverfish, there is no evidence to suggest that the number of insects amounted to an infestation. The landlord, I find, has made all reasonable efforts to assist the tenants in dealing with the silverfish.

And, while I acknowledge that the tenant's submission that the silverfish have "destroyed his life," that he has experienced stress "beyond anything imaginable," and that he has arrived at the point of feeling like a drug addict focussed on nothing but the destruction of silverfish, it does not follow that the landlord ought to be liable for compensating the tenant for this. Quite simply, the landlord met her obligations under section 32 of the Act and has not, I find, breached the tenants' right to quiet enjoyment.

I further note that the tenant has not submitted any documentary medical evidence, such as a physician's or a psychiatrist's note or assessment, establishing that the tenant's current state of mind and health is a result of interacting with the silverfish.

Taking into consideration all the oral and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have not met the onus of proving that the landlord breached the Act, the *Residential Tenancy Regulation*, or the tenancy agreement. As such, I need not consider the remaining three criteria required for proving a claim and dismiss this aspect of their application without leave to reapply.

**Compensation for Filing Fee**

As the tenants are unsuccessful in their application I dismiss their claim for the filing fee.

Conclusion

I hereby dismiss the tenants' application 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 Act.

Dated: February 28, 2019

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Residential Tenancy Branch