



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PATTONY INVESTMENT CO.
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, RR, FFT

Introduction

On August 12, 2019, the Tenants applied for a Dispute Resolution proceeding seeking a Repair Order pursuant to Section 32 of the *Residential Tenancy Act* (the “Act”), seeking a rent reduction pursuant to Section 65 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing, and A.C. and B.D. attended the hearing as agents for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package to the Landlord by hand on August 12, 2019 and the Landlord confirmed receipt of this package. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Landlord was served the Notice of Hearing package.

He also advised that he served their evidence to the Landlord by hand on or around August 15, 2019 and the Landlord confirmed that this package was received. As service of their evidence complies with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and considered it when rendering this decision.

The Landlord advised that they served their evidence to the Tenants by hand on September 23, 2019 and the Tenants confirmed that they received this package. As service of this evidence complies with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and considered it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a repair Order?
- Are the Tenants entitled to a rent reduction?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 1, 2017 and rent was established at \$1,620.00 per month, due on the first of each month. This includes \$35.00 per month for parking. A security deposit of \$750.00 was also paid.

The Tenants advised that on or around August 29, 2018, they noticed a residue coming down from the balcony above them and they initially thought that it was water. However, they soon realized that this liquid smelled of urine and that the tenant above them would use his balcony to allow his pet to relieve itself. They went upstairs to talk to the tenant, who apologized and stated that it would stop, although this continued to occur. They contacted the Landlord and put their concerns in writing multiple times, but this continued to happen. He stated that the smell was unbearable, that it affected his wife and kids emotionally, and that guests would confirm this substance was urine. They stated that they regularly used the balcony and had chairs outside but stopped using the balcony once this problem started. They advised that they put down a plastic sheet to more accurately determine what the residue was, and they submitted pictures as documentary evidence to support their position. They stated that the building manager attended the rental unit with his wife and confirmed that there was urine on the balcony.

The Landlord advised that the situation is not ideal, and they have had conversations with the tenant upstairs, but this tenant denies using the balcony as a place to allow his pet to relieve itself. When they investigate the upstairs tenant's balcony, they have found no evidence of liquid, of urine, or of a foul odour. They have had multiple conversations with this tenant and he has admitted to it happening once; however, not to the extent that the Tenants advise of. The Landlord has been more attentive to this situation after having been advised of it, they have cleaned the Tenants' balcony two or three times, and the cleaner "guesses" that the liquid was urine, but he is not sure. The cleaner also put paper towels down on a part of the upstairs tenant's balcony to prevent any liquids from dripping down. The Landlord has given a warning letter to the upstairs tenant to refrain from allowing his pet to relieve itself on the balcony, if that is what the tenant is doing. Apart from the steps they have already taken to address this issue,

there is not much more that the Landlord can do. It has gotten to the point where the Tenants make complaints about any issue of liquid on their balcony, including rain.

The Tenants stated that the last time the cleaner came to clean the balcony, he saw yellow liquid on the ceiling of the balcony and confirmed that it was “definitely pee”. They referenced several letters of complaint to the Landlord and stated that this issue has occurred at least 70 times over the last year; however, the Landlord advised them that they could not deal with the issue anymore.

The Landlord agreed that they had been notified by the Tenants about this issue, but their records show approximately eight instances of being contacted by the Tenants. Each time they were notified of a problem, they would investigate and take steps to address the concerns; however, sometimes the Tenants’ complaints were only of water on the balcony.

Analysis

Section 32 of the *Act* requires that the Landlord provide and maintain residential property in a stated of decoration and repair that “complies with the health, safety and housing standards required by law” and “having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.”

With respect to the Tenants’ claim for a rent reduction, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred, and that it is up to the party claiming compensation to provide evidence to establish that compensation is warranted. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenants prove the amount of or value of the damage or loss?
- Did the Tenants act reasonably to minimize that damage or loss?

When reviewing the totality of the evidence before me, I am satisfied that there has been an ongoing issue, that the Tenants have advised the Landlord that there is a problem, and that the Landlord has done as much as they can to address the issue. As such, I am satisfied that three of these points have been addressed. However, when assessing the evidence and the testimony of the Tenants, I do not find that the Tenants have submitted sufficient or compelling evidence to support that this has happened as frequently as they purport. Furthermore, I do not find that they have adequately substantiated the significance of the loss of use of the balcony that is commensurate to

their monetary claim. Finally, I do not find that there has been sufficient, direct evidence to prove that this issue is as a result of the upstairs tenant.

As the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, I am not satisfied from the Tenants' evidence and testimony that they have established a claim in the amount they are seeking. In addition, I do not find it appropriate to grant a repair Order as it has not been made entirely clear what the source of the problem is.

However, as I am satisfied that the Tenants have suffered a loss of use of their balcony, on occasion, likely due to urine coming from an unknown source, I am satisfied that their evidence has corroborated a loss equivalent to **\$100.00**, which encompasses a time period up until the date of this hearing. Should the issue continue into the future, the Tenants are at liberty to submit a separate Application.

As the Tenants were partially successful in their claims, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The Tenants are provided with a monetary award in the amount of **\$200.00** in satisfaction of their claims. Accordingly, the Tenants may deduct this amount from a future month's rent.

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: October 9, 2019

Residential Tenancy Branch