



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding W & S Bernard Investments and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **RR, RP, OLC, FFT**

Introduction

This hearing dealt with applications from the tenants of two rental units pursuant to the *Residential Tenancy Act* (the “*Act*”) for:

- An order for repairs pursuant to section 33;
- An order to reduce rent pursuant to section 65;
- An order that the landlord comply with the *Act*, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

All parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The personal respondent confirmed that they are also the agent for the named corporate respondent.

The landlord confirmed receipt of the applications and materials from both applicants. The landlord testified that they only served their evidentiary materials on one of the applicants and neglected to serve the other. The tenants confirmed that one was served but the other was not served by the landlord with the evidentiary materials. As I find that at least one of the tenants was served with the evidence, that there was an opportunity for the tenants to share and review the materials and that there is no unreasonable prejudice or breach of the principles of natural justice, while the landlord did not serve all of the tenants in accordance with the *Act* and Rules of Procedure I find all of the tenants sufficiently served pursuant to section 71 of the *Act*.

Issue(s) to be Decided

Should the landlord be ordered to make repairs to the rental units?
Are the tenants entitled to an order to reduce rent?
Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?
Are the tenants entitled to recover their filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. The rental units are in a multi-unit building with 24 total units. The tenancy in Unit 404 105 began in 2015 and the current monthly rent is \$965.00 payable on the last day of each preceding month. The tenancy in Unit 306 began in or about 2005 and the current monthly rent is \$945.00 payable on the first of each month.

The tenants in Unit 105 noticed ant infestation in their rental unit and alerted the landlord in July 2020. The parties submit that the landlord made some attempts at resolving the issue including providing the tenants with pesticide, advising residents of the property against leaving food out and calling a third-party pest control company. The tenants in Unit 105 testified that despite the steps taken the problem is ongoing with a steady stream of ants entering their suite. The tenants submit that while they continue to have use of the suite, they feel uncomfortable due to the presence of the pests and limit their time in the areas of the suite where the infestation is most concentrated.

The tenants in Unit 306 testified that they noted the ant infestation in December 2020 and informed the landlord of the issue. The tenants testified that while the steps taken by the landlord has had some effect the issue continues and the ants remain a problem in the building.

The tenants also testified that the overall condition of the building is poor with little cleaning done of the common areas, lights that have been out and not replaced for several months, mould, dust and lint in the common laundry area, and exterior windows not having been washed for many years. The tenants provided in their documentary

evidence some photographs of the rental property. The tenants of Unit 306 also submit that they are unable to use their patio due to smoke from other units in the building. The landlord testified that they believe the tenants are partially responsible for some of the debris left in the common areas and disputed the characterization of the building's condition.

The landlord gave some evidence regarding the work being performed in response to the reports of the ant infestation. The landlord said that the pest control agency is scheduled to make weekly visits and there is ongoing work. The landlord also testified that the tenants have denied access to the rental unit preventing them from performing some of the work. In their written submissions the landlord submits that they disbelieve the tenants' claims, dismiss the various complaints and characterize them as being greedy.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. This provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

Section 32 (1) of the *Act* states that:

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.

Residential Tenancy Act Regulations Schedule 8, in relevant part, states:

8 (1) Landlord's obligations:

(a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.

I am satisfied with the evidence of the tenants that the rental building has a number of ongoing deficiencies, most notably the pest infestation, but also including poor cleaning and upkeep of the common areas, malfunctioning lights and general debris found throughout the property. I find the tenants provided cogent, consistent testimony that was supported in the documentary materials. I do not find the landlord's position that the tenants are merely motivated by the prospect of financial gain to be supported in the materials or to have an air of reality.

While I accept the testimony of the parties that the landlord has taken some measures in response to the complaints of the tenants I find these steps to be insufficient and not reasonable given the nature and degree of the problems cited. I find the continued infestation of ants in Unit 105 since July 2020, nearly 8 months since the first complaint to be patently unreasonable and attributable to the landlord's lack of a reasonable and proportional response. I find the landlord's submissions blaming the occupants of the building for leaving food out in the common areas and water from faucets attracting pests to be an unreasonable position not supported in the evidence.

I find that the landlord has not maintained the rental property in a state of decoration and repair that meets the reasonable standard for a property of its age, character and location. I accept that the landlord is performing some pest control but find that an indefinite schedule is not reasonable. I am not satisfied the landlord has done what is reasonable to address the ant infestation in the rental property. Therefore,

1). I Order the landlord to address the management of ants in the rental building as reasonable in the discretion of a pest control professional including as to when the management is done, and how it is done.

If the landlord does not comply with the Order it is available for the tenants to apply for additional compensation as a result.

While I accept the evidence of the tenants that there are a number of deficiencies lowering the value of the tenancy, I am not satisfied on a balance of probabilities that all of the issues raised exist or that the total value of the issues that have been established have the value suggested by the tenants.

I find little evidence in support of the submission of the tenants of Unit 306 that other occupants of the rental building smoke that it has been reported or that it causes a loss in the value of the tenancy. Similarly, I find the testimony of the tenants of Unit 105 regarding the loss of the use of their bathroom to be hyperbolic.

I find the suggestion of the tenants that the loss in the value of the tenancy is 25% of the monthly rent to be excessive. The evidence is that the tenants continue to reside in their respective units, have full use of all of the facilities and have made little alterations in their daily routines based on the deficiencies. While the presence of ants within the unit and lack of upkeep in the common areas is noticeable and unavoidable, I find the effect is not so great as to have a significant impact on the daily lives of the tenants. I find that the cumulative effect of the deficiencies is properly characterized as bothersome or a nuisance rather than a significant loss of the value of the tenancy or on their right to quiet enjoyment of the suites.

Under the circumstances I find that a reduction of 2% of the monthly rent to be appropriate. I issue a one-time monetary award for a retroactive reduction of rent to each of the applicants as follows:

Unit 105: Monthly Rent \$965.00 x 2% = \$19.30 x 8 months (July 2020 to February 2021) = \$154.40

Unit ~~206~~ **306**: Monthly Rent \$945.00 x 2% = \$18.90 x 3 months (December 2020 to February 2021) = \$56.70

In addition the tenants are each authorized to reduce their monthly rent by the amounts of \$19.30 and \$18.90 respectively, until the ant infestation has been deemed resolved by a pest control professional as set out above.

As the tenants were successful in their application they are each entitled to recover their respective filing fee from the landlord.

In satisfaction of the monetary awards in the tenant's favour the tenants may make a one-time deduction of \$254.40 and \$156.70 respectively from their next scheduled rent payment.

Conclusion

The landlord is ordered to address the managements of ants in the rental property as set out above.

The tenants of Unit 105 may make a one-time deduction of \$254.40 from their next scheduled rent payment. In addition the tenants may make a deduction of \$19.30 from their next scheduled rent payment and the monthly rent is reduced by that amount from \$965.00 to \$945.70 until such time as the landlord completes addressing the pest control issue.

The tenants of Unit 306 may make a one-time deduction of \$56.70 from their next scheduled rent payment. In addition the tenants may make a deduction of \$18.90 from their next scheduled rent payment and the monthly rent is reduced by that amount from \$945.00 to \$926.10 until such time as the landlord completes addressing the pest control issue.

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: February 18, 2021

Residential Tenancy Branch

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(C)
OF THE RESIDENTIAL TENANCY ACT ON February 23, 2021 AT
THE PLACES INDICATED IN BOLD ON PAGE 2 and 5.