



# Dispute Resolution Services

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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, OLC, RR, MNDCT, FFT

### **Introduction:**

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for a rent reduction, for an Order requiring the Landlord to make repairs, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, and to recover the fee for filing this Application for Dispute Resolution.

At the hearing the Tenant stated that all the necessary repairs to his rental unit have been completed and he no longer requires an Order for the Landlord to make repairs. As such, the Application for Dispute Resolution has been amended to remove the application for an Order requiring the Landlord to make repairs.

The Tenant stated that on July 15, 2021 the Dispute Resolution Package and all evidence submitted to the Residential Tenancy Branch in June and July of 2021 was sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On October 05, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, on October 05, 2021. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that

they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided:

Is there a need to issue an Order requiring the Landlord to comply with the *Act*/tenancy agreement?

Is the Tenant entitled to a rent reduction and/or financial compensation arising out of construction at the residential complex?

Background and Evidence:

The Agent for the Landlord and the Tenant agree that:

- The tenancy began in 2017; and
- The rent was increased to \$1,845.00 on June 01, 2019.

The Tenant describes the rental unit as a two-bedroom unit, with approximately 62 square meters of interior floor space, and 18 square meters of private, exterior space.

The Agent for the Landlord describes the rental unit as a two-bedroom unit, with approximately 600 square feet (55.75 square meters) of interior floor space, and 150 square feet (13.94 square meters) of private, exterior space.

The Tenant and the Agent for the Landlord agree that the Landlord is restoring the exterior envelope of the residential complex; replacing windows and doors; removing asbestos; and restoring the courtyard. The Landlord stated that the restoration project began in January of 2021 and the Tenant stated that it began on March 01, 2021.

The Agent for the Landlord stated that the construction is scheduled to be complete in March or April of 2022, although he hopes the Tenant will be able to use his outdoor private space by the end of 2021.

The Tenant is seeking compensation of \$2,940.00 for being unable to use the patio space since the start of construction, which represents a monthly rent reduction of \$245.00 for 12 months.

The Tenant is seeking compensation of \$5,520.00 for disturbances associated to the construction, which represents a monthly rent reduction of \$460.00 for 12 months.

The Tenant stated that the disruptions he experienced as a result of the construction included:

- Construction noises such as drilling, jack hammering, heavy items being dropped;
- Loss of privacy due to construction workers in close proximity to his rental unit;
- Drywall repairs within his unit; and
- Being surrounded by scaffolding.

The Tenant submitted numerous photographs and videos of noise disturbances and general construction debris that is typically associated with renovations of this nature.

The Agent for the Landlord does not dispute that the Tenant has been disrupted by construction. He stated that the renovations have been planned for many years; that they were necessary because of water egress issues; and that the repairs were “vital” to maintain the integrity of the residential complex.

The Tenant and the Agent for the Landlord agree that the Landlord offered the Tenant a rent reduction of \$225.00 plus a free storage locker from March 01, 2021 until such time as the renovations is complete. The parties agree the Tenant declined this offer.

The Tenant is seeking compensation of \$7,380.00 for being unable to find a new roommate for 8 months, which represents a monthly rent reduction of \$922.50. The Tenant stated that he made this claim because his roommate, who paid half the rent, moved out at the end of July of 2021 and he anticipated the renovations would prevent him from locating a new roommate. He stated that he began advertising for a new roommate after the first week of July of 2021 and he was able to locate a new roommate for August 25, 2021. At the hearing he stated that he is now only seeking compensation for being without a roommate for 25 days in August.

When asked why he applied for an Order requiring the Landlord to comply with the Act/tenancy agreement, the Tenant stated that he would like the Landlord to provide better updates on the construction plans and/or changes in the construction schedule.

The Agent for the Landlord stated that the Landlord has attempted to inform occupants of construction plans and/or changes in the construction schedule, which is difficult as that information is not provided by contractors in a timely manner.

Analysis:

Section 28 of the *Residential Tenancy Act (Act)* stipulates that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, and free from significant interference.

On the basis of the undisputed evidence, I find that the Landlord is renovating the exterior of the residential complex; that the renovation project is significant; that the Tenant is being disturbed by noise and other inconveniences associated to a renovation of this size/nature; that the Tenant has been disturbed by repairs within his rental unit; and that the Tenant has been unable to use his private exterior area since March 01, 2021.

Residential Tenancy Branch Policy Guideline #6, with which I concur, reads, in part:

*A landlord is obligated to ensure that the 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.*

...

*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 RTA and section 60 of the MHPTA (see Policy Guideline 16). 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.*

On the basis of the undisputed evidence of the Landlord, I find that the renovations to the residential complex are necessary and that the Landlord is complying with the Landlord's obligation to maintain the residential property, pursuant to section 32(1) of the *Act*.

Although I have no reason to conclude that these renovations have been unusually loud or unusually long, given the size and nature of the renovations, I find that the Tenant is still entitled to compensation, pursuant to section 67 of the *Act*, for the loss of the use of his private exterior living space and for the inconvenience of living with noise and general construction disturbances typically associated to a construction project of this nature.

Determining the amount of compensation to award for loss of quiet enjoyment is highly subject, however in these circumstances I find it reasonable to award the Tenant a rent reduction of 20%. The amount of the award takes into consideration that the Tenant has been unable to use his private patio area; the interior of his home has been impacted; and he has worked from home. The award is not greater because I am aware that construction noise is not constant; the Tenant has had use of most of the interior of his rental unit during the construction; and the Tenant will presumably benefit from a newly renovated exterior space.

As the Tenant stated that the disruptions did not begin until March 01, 2021, I find that he is entitled to the 20% (\$369.00) monthly rent reduction beginning March 01, 2021. As the Agent for the Landlord estimates the Tenant will be able to use his exterior space by the end of the year and I find it likely that the most inconvenient phases of the renovation will be complete by the end of the year, I find that the 15% rent reduction will end on December 31, 2021. I therefore grant the Tenant a monetary Order of \$2,952.00, which represents this rent reduction for the period between March 01, 2021 and October 31, 2021. I further authorize the Tenant to reduce the rent by \$369.00 in November and December of 2021.

I find the Tenant's claim for a monthly rent reduction of \$705.00 is excessive, considering he was able to reside in the rental unit throughout the renovation.

In the event the construction disturbances extend past December 31, 2021 and the parties cannot mutually agree on reasonable compensation, the Tenant may file another Application for Dispute Resolution seeking compensation for any period after December 31, 2021.

On the basis of the undisputed evidence that the Tenant's roommate moved out at the end of July of 2021 and he was able to find a new roommate for August 25, 2021, I cannot conclude that any loss of income the Tenant experienced in August as a result of being without a roommate can be attributed to the construction. Given that the Tenant was able to find a new roommate within one month of his previous roommate vacating, I cannot conclude that the construction had any significant negative impact on the Tenant's ability to find a new roommate. I therefore dismiss the Tenant's application for compensation for being unable to find a roommate.

In an attempt to minimize the disruption these renovations have on the Tenant, I Order the Landlord to inform occupants of construction plans and/or changes in the construction schedule in a timely manner, to the extent that is reasonably possible.

I find that the Tenant's Application for Dispute Resolution has some merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of \$3,052.00, which includes a rent reduction of \$2,952.00 and \$100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

In the event the Tenant does not wish to enforce this monetary Order through the Province of British Columbia Small Claims Court, the Tenant has the right to withhold the amount of the monetary claim from any past or future rent that is due.

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 20, 2021

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Residential Tenancy Branch