



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      RR, MNDC

### Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties and their witness the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witness.

All testimony was taken under affirmation.

### Issue(s) to be Decided

This is a request for a monetary order for \$3000.00, and a request for a rent reduction of 50%.

### Background and Evidence

The applicant testified that:

- On April 18, 2011 they got notice that there was work going to be done on the building.
- The notice stated that there was to be some concrete repairs, no building would be power washed, and there would be Painting etc.. It did not make any mention of jack-hammering.
- The work started on May 4, 2011, and the jack-hammering goes on most days.

- The problem is, you never know when the jack-hammering is going to start, or for how long the jack-hammering will continue each day.
- The jack-hammering usually starts somewhere after 9:00 a.m. and therefore when they hear the jack-hammering start they usually leave the building however since they do not know for how long it will be lasting, they do not know when they can return.
- As a result they lose the quiet use and enjoyment of the rental unit for a good portion of the day.
- When they were first notified of the repair work the memo stated that it would be approximately 14 weeks, however it's already been two months and there is no end in sight, as they have not even finished one half of the building.
- Had the landlords given them more notice that jack-hammering was going to be taking place, they may have had time to find a place to move to prior to the beginning of this work, however the short notice did not allow that option.

The applicants therefore request an order for the return of \$3000.00 of the rent, and request a rent reduction of 50% for the full term of the construction.

The respondent's testified that:

- This building has 110 rental units and is approximately 40 years old.
- They, as landlords, are committed to maintaining the building and ensure that proper upkeep is ongoing.
- They got an engineer's report that stated that this building required some concrete work as some of the concrete was delaminating and therefore had to be repaired to avoid the possibility of a falling hazard, and to maintain the structural integrity of the building.
- A memo was sent to the occupants of the building on April 15, 2011 informing the tenants that the project was scheduled to begin May 2, 2011 however no concrete work was started until May 18, 2011.
- A jackhammer is not being used to do the concrete work; they are using something called a chipper which chips away the delaminating concrete.

- Work with the chipper does not start until about 8:30 to 9:00 a.m., there is a one-hour break during the lunch hour, and the chipping is finished by 3:00 PM
- Further the chipping does not always go on from 8:30 a.m. to 3 p.m. and in fact the amount of chipping varies from as little as ½ hour per day to at most 4 hours per day.
- They not know how long this work will last, as it is dependent upon the weather however their original estimate was 14 weeks, but they did state in the memo that that was approximate.
- Further when the tenant asked him if he would be allowed to move because of the noise, they did tell him that they would not require the normal notice if they wished to vacate.

The respondents therefore believe that this application should be dismissed, because this work is required for safety reasons, and they are doing the work during reasonable hours of the day.

### Analysis

It is my decision that I will not order a rent reduction, nor will I order the return of any rent.

Section 32 of the Residential Tenancy Act states:

- 32** (1) 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.

Therefore, especially since the engineers report has stated that this is a possible safety hazard; it is my decision that the landlords were required to do these repairs to ensure the safety and structural integrity of the building.

The tenants were given approximately 2 weeks' notice before any work was started, and approximately 4 weeks before any of the chipping was started and it is my finding that was a reasonable amount of notice to the tenants prior to starting this repair work. As stated earlier this was a potential safety hazard and therefore it was incumbent upon the landlords to try and rectify the problem as soon as possible.

It is also my finding that the landlords are taking reasonable steps to ensure that this work is done at a reasonable time of day, so as to cause as little disruption as possible.

The tenants have argued that what was originally to be 14 weeks work, is now obviously going to be much longer, however since this work is somewhat weather dependent, it is my finding that the landlord has little control over the actual length of time that will be needed to complete these repairs and I accept the landlords testimony that the work will be completed as soon as possible.

Therefore, since the landlords are acting in a reasonable businesslike manner to facilitate repairs that they are required to do under the Residential Tenancy Act, I will not order any rent reduction or rent return.

### Conclusion

This application is dismissed in full 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 *Residential Tenancy Act*.

Dated: July 22, 2011.

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Residential Tenancy Branch