



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMH POOL XIV LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF MNDC OLC PSF RPRR

Introduction

This hearing dealt with an application by the tenants for the following orders:

- A monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement;
- An order that the landlord comply with the Act, regulation or tenancy agreement;
- An order that the landlord make repairs to the rental unit;
- An order that the landlord provide services or facilities required by law;
- An order allowing the tenant to reduce the rent for repairs, facilities agreed upon but not provided; and
- An order that the tenant recover the filing fee from the landlord for the cost of this application.

Although served with the tenants' Application for Dispute Resolution and Notice of Hearing sent by registered mail on September 30, 2016 to the address stated by the landlord on the tenancy agreement, the landlord failed to attend the conference call hearing. The tenant provided a Canada Post tracking number for the registered mail package. I am satisfied based on the tenant's testimony that the landlord was properly served under the Act.

Issue(s) to be Decided

Are the tenants entitled to the requested orders?

Background and Evidence

This tenancy began on April 1, 2016 pursuant to a written tenancy agreement which was executed on March 10, 2016. The rent is \$1600 per month. The term of the lease is one year ending on March 31, 2017. After that time the tenancy continues on a

month to month basis. The tenants paid a security deposit of \$800 at the start of the tenancy. The rental unit is on the ninth floor of a large concrete tower.

The tenants pre-viewed the rental unit in late February. At that time no mention was made to the tenants that the residential property would be undergoing a complete envelope reconstruction and interior hallway renovation as well as redevelopment of neighbouring units in the building. According to the tenants, they were never informed of any of this but rather found that one day at the beginning of June their balcony was completely covered in scaffolding and the door to the balcony locked shut but for seven inches of opening.

The male tenant testified that the entire building was covered in scaffolding and that when construction work began it was unbearably loud in the form of jack hammering, drilling, concrete cutting which started at 8:00 a.m. and continued until 3:00 or 4:00 p.m. Monday through Friday. According to the tenant, the work is still ongoing. The tenant submitted photos and video on a USB stick of the extent of the work.

The tenant testified that they have had no use of their balcony since early June and that they regularly have men working on scaffolding outside their unit when they normally expect privacy. The tenant testified that the noise is unbearably loud and that sleeping past 8:00 in the morning is impossible and spending time in the unit during the day is not possible either due to the extremely loud noises.

This is what the tenants wrote in their written submission:

Only after a couple of weeks into our lease we were informed by the management that there will commence a complete reconstruction of the building, and that instead of what we were promised we have instead be subject since June until now to:

- *Extreme noise due to constant drilling, cutting, yelling, scaffold setup;*
- *Inability to use property that was promised to us: Balcony, Pool, Recreational areas;*
- *Experience health problems both mental (extreme stress, tension anxiety, inability to rest and recuperate) and physical due to dust, filth, and debris;*
- *Practically no possibility for quiet enjoyment, recuperation;*
- *Invasion of privacy, safety concerns, theft of property.*

In the span of a couple of days from when the construction began, our balcony was screwed shut only leaving a 7 inch gap for air to come in, which was useless and counterproductive because huge amounts of dust and filth would swarm in with the slightest opening of the balcony and balcony facing window in the bedroom, causing allergic reactions, respiratory problems and eye irritation.

Constant complaints were filed from our side demanding explanation with very little result.

During this time since June, it is important to note that property was stolen from our balcony, shoes and tools, and on multiple occasions construction personnel working on one of the adjacent apartments entered our apartment by mistakenly opening the wrong door or on purpose making our privacy feel extremely violated.

It is my opinion this was all done in a deceitful manner and with minimal transparency and we were led on to sign the lease and tie down by contract that was known by the representative would be damaging to our mental and physical health. The landlord responsible made no effort for reparation of wrongful doing against us and for thus we seek legal action and maximum monetary reparation for services not provided and wrongful damage inflicted.

The tenant testified as well that when they told the landlord they wanted to break the lease and leave early, they were told they would lose their security deposit as liquidated damages for early termination of the lease. It was at that point that the tenants felt they had no choice but to file this claim.

Analysis

At the hearing, the tenant acknowledged that most of the requests made in their application for dispute resolution are not possible for the landlord to provide – like access to their balcony, the pool, the recreational areas etc. and that what they really desire at this point is a retroactive 50% rent reduction for the months of June, July, August, September, October and November and 50% rent reduction going forward until all of the construction that affects their unit and the recreational and common areas has been completed.

Based on my review of the materials submitted by the tenant, what looks to be a complete lack of appropriate, if any, response from the landlord and the testimony of the tenant at today's hearing, I find that the tenant has established a retroactive and current rent reduction in the amount requested of 50%.

To my mind, the tenant's legal right to quiet enjoyment of the rental unit has been seriously abrogated by the work being done on the residential property and as a result, a serious rent reduction is in order.

Conclusion

I hereby order that the tenants are entitled to a retroactive rent reduction of 50% for the months of June through November for a total of \$4800 and a rent reduction of 50% going forward until all construction affecting the tenants` unit and the recreational areas to which they were entitled are once again available for their use.

Accordingly, the tenants may deduct the retroactive rent reduction of \$4800.00 and current rent reductions off their rent payments as follows:

December 2016:	Tenants pay: \$0.00 rent comprised of \$800 retroactive rent reduction and \$800 current rent reduction.
January 2017:	Tenants pay \$0.00 rent comprised of \$800 retroactive rent reduction and \$800.00 current rent reduction.
February 2017:	Tenants pay \$0.00 rent comprised of \$800 retroactive rent reduction and \$800 current rent reduction
March 2017:	Tenants pay \$0.00 rent comprised of \$800 retroactive rent reduction and \$800 current rent reduction
April 2017:	Tenants pay \$0.00 rent comprised of \$800 retroactive rent reduction and \$800 current rent reduction
May 2017:	Tenants pay \$0.00 rent comprised of \$800 retroactive rent reduction and \$800 current rent reduction.

If the construction project is completed before May 2017 and current rent reductions are no longer applicable, the tenants may expedite the retroactive rent reduction so that it is extinguished earlier than May 2017. As it stands now I have apportioned the retroactive rent reduction over a period of six months at a rate of \$800 per month so as to be sure that the tenants properly received the current rent reduction over the same period.

If the construction continues past May 2017 the tenants may continue to deduct \$800 from their monthly rent until the construction that affects their rental unit and the amenities to which they were entitled is complete.

I further order that the landlord immediately reimburse the tenants for their \$100.00 filing fee for this application. If the landlord fails to make this payment immediately, the tenants may deduct this amount from a future rental payment.

The balance of the orders requested in the tenants' Application for Dispute Resolution are dismissed.

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: November 22, 2016

Residential Tenancy Branch