



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding IMH 415 & 435 MICHIGAN APARTMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC RR FF O

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on September 16, 2016, and amended on September 21, 2016 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss;
- an order allowing the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided;
- an order granting recovery of the filing fee; and
- other unspecified relief.

The Tenants were represented at the hearing by the Tenant C.V.M. The Landlord was represented at the hearing by legal counsel, G.H. A.C. and R.K., agents of the Landlord, provided oral testimony on the Landlord's behalf. All parties giving evidence provided a solemn affirmation.

The Tenant C.V.M. testified the Landlord was served with the Tenants' Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence by registered mail, although he could not recall the precise date. The Landlord's legal counsel confirmed receipt of the Tenants' Application package.

The Landlord submitted 10 pages of documentary evidence, which was received at the Residential Tenancy Branch on November 10, 2016. The Tenant C.V.M. acknowledged receipt on this date, and confirmed he had adequate opportunity to review and consider the evidence. No further issues were raised with respect to service of the parties' documentary evidence.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

During the hearing, G.H. confirmed the correct legal name of the Landlord. With the agreement of the parties, and pursuant to section 64 of the *Act*, I amend the Tenants' Application to reflect this information.

### Issues to be Decided

1. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Tenants entitled to an order allowing them to reduce rent for repairs, services or facilities agreed upon but not provided?
3. Are the Tenants entitled to an order granting recovery of the filing fee?

### Background and Evidence

The parties provided oral testimony concerning the terms of the tenancy, which began on or about November 1, 2004. Rent is currently \$1,110.74 per month; it is due on the first day of each month. The Tenants pay an additional \$25.00 per month for parking.

The Tenants claim a significant renovation project at the rental property has interfered with their right to quiet enjoyment of the rental unit. They seek compensation in the amount of \$5,553.70, which reflects a 50% rent reduction from December 3, 2015 to present.

The Tenant C.V.M. provided oral testimony in support of the Tenants' claim. He expressed concerns about security in the building, smoking and partying on the part of other tenants, and poor housekeeping in the common areas. In addition, C.V.M. testified the Tenants have a sense that their belongings are not safe. They are very stressed by the construction going on in and around the building, which C.V.M. stated is being completed in a "shoddy" manner and that looking out his window is "unsightly". C.V.M. also testified he is concerned about the possible presence of asbestos in the

building as he and his spouse have experienced itchy skin, and advised he has experienced headaches from the use of glue to secure carpets.

The Tenants also claim to have experienced significant disruption due to construction noise that he stated has been ongoing since December 2015. C.V.M. testified that the noise cannot be avoided because he has a spinal cord injury that left him physically disabled, although he works as a product demonstrator up to four days per week. He also stated that he has been less able to produce paintings, which he anticipates will be a future source of income. The Tenant C.V.M. also stated that his spouse was unable to enjoy vacation time at home in September 2016 due to the noise.

The Tenants provided little documentary evidence in support of their claim. Specifically, the Tenants provided a summarized list describing their complaints, and a letter to the Landlord dated August 12, 2016, in which they outlined their concerns and requested compensation.

In reply, and on behalf of the Landlord, A.C. described a fairly significant renovation and repair project. She confirmed the renovations include the necessary repair of balconies to improve safety, replacement of windows and supports, and noted that the interior is being carpeted and painted. A.C. noted that the Landlord is anticipating that the rental property will be vastly improved when the project is completed in late 2017.

Further, R.K. testified on behalf of the Landlord that notice was provided to all affected tenants, a copy of which, dated October 31, 2015, was provided with the Landlord's documentary evidence. R.K. also testified that some tenants sought and were provided with alternate accommodation, but that the Tenants never pursued this.

At the conclusion of the hearing, the Landlord's legal counsel made submission on behalf of the Landlord. Referring to the written list of concerns provided by the Tenants, he submitted there was a lack of documentary evidence to substantiate the claims regarding security, the presence or impact of asbestos, hazardous materials, chemical smells, and obstructions in the parking lot, etc.

However, the Landlord's legal counsel acknowledged the presence of dust in the hallways and jackhammer noise that commenced in June 2016 and is expected to end in January 2017.

## Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 28 of the Act, which protects a tenant's right to quiet enjoyment, states:

*A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

Policy Guideline 6 elaborates on the meaning of a tenant's right to quiet enjoyment. It states:

*The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:*

- entering the rental premises frequently, or without notice or permission;*
- unreasonable and ongoing noise;*
- persecution and intimidation;*
- refusing the tenant access to parts of the rental premises;*
- preventing the tenant from having guests without cause;*
- intentionally removing or restricting services, or failing to pay bills so that services are cut off;*
- forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or,*

- *allowing the property to fall into disrepair so the tenant cannot safely continue to live there.*

*Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.*

...

*Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.*

*A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment; however, it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour. A tenant may file a claim for damages if a landlord either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.*

Based on the oral testimony of the Tenant C.V.M. and the Landlord's representatives, I am satisfied that the Tenants have been unreasonably disturbed by noise produced during the renovation and repair project. However, I am not satisfied the Tenants are entitled to the amount claimed. In the circumstances, I find it is appropriate to award the Tenants \$1,200.00, which has been calculated based on a rent reduction of \$150.00 per month for each of the eight months jackhammering is expected to take place. I find the Tenants have provided insufficient evidence in support of the remainder of the relief sought. Having been partially successful, I find the Tenants are entitled to recover the filing fee paid to make the Application in the amount of \$100.00.

I find the Tenants are entitled to a total award of \$1,300.00, and order that the Tenants may deduct this amount from future rent payments.

Conclusion

The Tenants are entitled to an award of \$1,300.00, and I order that the Tenants may deduct this amount from future rent payments.

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 15, 2016

---

Residential Tenancy Branch