



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding IMH 415/435 Michigan Street Apartments  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            O, FF

### Introduction

This hearing dealt with three related applications. Although none of the applications explicitly set out the nature of their claims they were for a rent reduction for repairs, services or facilities agreed upon but not provided, and for loss of quiet enjoyment.

The hearing commenced January 10, 2017. The parties were not able to complete their testimony within the time set aside for the hearing so it was continued on January 31, 2017, at 1:00 pm, a date and time convenient for all. The hearing was concluded on January 31.

On January 10 the landlord said they had not received the electronic evidence submitted by the tenants RS, VK and PT. In the Interim Decision dated January 10, 2017 the tenants were ordered to reserve the landlord with that evidence. On January 31 the landlord confirmed that they had received the evidence. No other issues regarding the exchange of evidence were identified.

### Issue(s) to be Decided

Are any of the tenants entitled to a monetary order and, if so, in what amount?

### Background and Evidence

#### *General*

All three tenants live in the same high rise apartment building. It is one of two towers on the same property.

New owners purchased this property in December 2015. In January 2016 they started on an ambitious renewal program for both towers; the first major upgrades to the buildings since they were built more than fifty years ago. The renewal program includes the replacement of the exterior balconies; remediation of the exterior concrete; exterior painting; exterior modernization; corridor, lobby and entrance refurbishment; and building system upgrades. In addition, the interiors of all units are being renovated as they become available.

The current property managers took over October 1, 2016. They are not able to provide any evidence about events prior to that date. There was no evidence tendered from the owners, other than the Baseline Property Condition Assessment Report and some initial notices to the tenants; or from the previous property managers.

In June 2016 the work of replacing the exterior balconies started. All witnesses stated that this involved continuous jackhammering, 8:00 am to 4:00 pm, Monday to Friday.

It is also common ground that the interior work includes demolition and the use of loud power tools.

A stop work order was imposed on the project by WorkSafe BC on December 14, 2016 because of concerns regarding the proper testing and disposal of building materials that were old enough to have possibly contained asbestos. The stop work orders were posted on the front door of the building.

The result of the stop work order was that no employee covered by WorkSafe BC could enter the building. This included construction workers, property management staff, tradesmen, and mail delivery people. The landlord could not make any repairs that were required in units or the building. Property management staff, which usually set up shop in the lobby with an Interac machine to collect rent, could not do so. Tenants had to go to the property managers to pay the rent. Some tenants described the difficulty this caused them. Canada Post could not deliver mail to the building so the tenants had to go to the main post office to collect their mail.

When the stop work order was imposed all interior work in the building stopped. Shortly after, the owner stopped all exterior work as well. The stop work order was lifted with regard to common areas on January 6, 2017. However, a stop work order remains in place for certain listed areas.

The property manager testified that the building owners have decided that no interior work will be done until the exterior work has been completed. A re-organization of the remaining work is being done. One of WorkSafe BC's requirements is that a single prime contractor for the whole project be named by the owner. The property manager was not able to say when this re-organization will be completed or when work will start again.

As of January 31 the tenants were still waiting for any official information about the stop work order; the test results; and the level of risk, if any, to which they may have been exposed.

All tenants testified that many of the construction workers are living on site. The property manager confirmed this but said they all have tenancy agreements for the units they are living in.

The two female tenants testified that these workers use the main lobby as a social gathering place; often until late at night. One tenant testified that because of her work schedule she often does her laundry after midnight. Going through the lobby, to and from the laundry area, past all these men is very uncomfortable. The other female tenant said her unit is directly about the

lobby and she can hear every word of their rude conversations and their loud music; often until 2:00 am.

The property manager testified that he has not seen workers congregating in the lobby but he also testified that from October 1 until very recently they did not have a resident manager at this property. They had property management staff at the site from 9:00 am to 5:00 pm, and emergency contact number for after office hours. Obviously, they did not have staff on site while the stop work order was in place.

All three tenants testified that the hallways are dirty. JC said that for the first eight months of this project his hallway was not cleaned once. Both female tenants talked about how dirty everything is. The property manager testified that when they took over cleaning was a priority and that hallways are cleaned daily. Although all three tenants testified that they have seen more cleaning since this property manager took over they did not agree that their hallways were cleaned every day.

All three tenants described the noise they experienced. Particulars of their testimony are set out in the following sections. The property manager testified that when they took over management of this property they imposed rules which are identical to the municipal bylaw: work is allowed between 7:00 am and 7:00 pm, Monday to Friday; and 10:00 am to 7:00 am on Saturday, not including statutory holidays. No work is permitted on Sunday.

All three tenants testified that prior to October 1 all complaints, requests, or other communications to the landlord were never responded to.

#### *Tenant JC*

This tenancy commenced October 1, 2011. In December 2015 the monthly rent, which includes heat, hot water and parking; was \$960.00. At some point in 2016, the tenant said sometime on or before September, the rent was increased to \$1034.00.

The unit is a one bedroom apartment on the seventh floor. The tenant testified that he loves his apartment and he loves his view.

The tenant has worked in construction for forty years. Before these renovations his work day usually started just before 9:00 am. The tenant made a point of saying that most of his work is done in apartments and they try to be respectful of the residents of those units.

The tenant testified that construction goes on day and night. In addition to the exterior jackhammering all day workmen have to jackhammer the bathroom floors for the new pipes. He

said workmen are installing carpet at 1:00 am; kitchens at 4:00 am. He testified that as recently as the week of January 16 work in the suite above him was still going on after midnight.

JC testified that for the first eight months there was construction material everywhere, including combustible materials. The lights and the emergency exit lights were burned out throughout the building. His complaints to the landlord were not answered so finally he went to the City Bylaw Office. Two days later the lights had been replaced and some cleaning had been done.

At the hearing on January 10 JC testified that workers were in his unit and scraped off texture around the windows of his unit. He knew from his work experience that the texture probably contained asbestos. When he came back to his unit, nothing had been cleaned. He went to WorkSafe BC and asked about the situation in his unit. He was told that there was probably asbestos in that material.

Shortly after, a stop work order was posted on the front door of the building. JC said the person who issued the stop work order was the same person he had spoken to. In addition to other things the order said that no worker was allowed in certain units. His unit was one of the units listed.

On January 31 the tenant testified that his unit was still listed on the stop work order. The property manager challenged that statement, saying that only unoccupied units that were in the process of being renovated were affected by the stop work order. However, when during the course of his testimony the property manager looked at the follow-up notice from WorkSafe BC he acknowledged that JC's unit was included in the list set out on the stop work order. He also acknowledged that there had been no follow-up on this unit since the stop work order was initially put in place.

The tenant gave different accounts of how much time he was spending in his unit.

On January 10 he testified that:

- The work and his subsequent visit to WorkSafe BC had been a couple of weeks before the hearing.
- He had been living in his unit until the asbestos issue arose.
- He completely abandoned the place in the summer. His son was away so he stayed at his son's place.
- He was spending most of his time at his son's place, at his girlfriend's place, or in his van.
- He was going to the unit once a week or so to water the plants and see his friends.

On January 31 the tenant testified that:

- The texture had been scraped in his unit in early to mid-November.
- Two or three days after he went to WorkSafe BC he spoke to one of the property management employees who promised to have his unit cleaned. However, once the

stop work order was imposed that cleaning could not be done by the property management staff or contractors.

- In early December he paid his friend, who does industrial cleaning at the shipyard and knows how to clean up asbestos, to clean his unit.
- From mid-November to mid-December he stayed at his girlfriend's. He only came back to the unit once a week.
- In the first week of January his girlfriend's daughter came back and he has been living in the unit ever since.
- On cross-examination he said he had made a mistake and his friend did not clean the unit until January.

### *Tenant RS*

This tenancy commenced in 2014. The monthly rent, which includes heat and hot water, started at \$1200.00 and on September 1, 2016 was increased to \$1234.00. The unit is on the second floor, directly above the lobby. It is two bedroom suite which RS shares with VK.

RS is a Ph.D. candidate in mechanical engineering. This will be RS's second Ph.D. as she already has a Ph.D. in materials engineering. VK is also a Ph.D. candidate.

RS described the unit and the building prior to the current renovation project as a "nice, cozy place".

The tenant said that prior to the start of this construction project she use to go to work at the university between 9:00 am and 10:00 am in the morning. She has an office at the university where she does her computer modelling. Before the start of the construction she was also able to work from home.

Often her computer modelling runs until after midnight. Before she would come home late and sleep a little later in the morning. Now she cannot sleep past 7:30 am or 8:00 am because of the construction noise. As a result she often sleeps in her office on nights when her computer modelling runs late. It is the only way she can get some sleep.

The jackhammering coincided with her preparations for her comprehensive exams, one of the most stressful and gruelling components of a doctoral program. Fortunately, she passed the exams but her preparation for them was made much more difficult by the noise at her home.

She said that for many months the interior work went on until late at night and started before 8:00 am. Now, nothing starts before 8:00 am.

The renovations to the unit beside her were very difficult. Her bedroom wall is the common wall with the adjacent unit. That project lasted for almost three months in the late summer and early fall. She said she asked the workers not to work so late but there was no cooperation. She

also testified that she has begged workers not to play loud music late at night but, again, no cooperation.

The tenant said that there always people coming and going in the hallways. She does not feel safe and is very careful about locking her doors.

The scaffolding for the exterior work is outside her windows and there is no privacy in the unit. Just recently she saw a doctor to obtain a prescription for tranquilizers. Before that she was using sleeping pills. RS said there is no place to go to get a break from the construction activity.

*Tenant PT*

This tenancy commenced May 4, 2015. At the start of the tenancy the rent was \$770.00. A year later the rent was increased to \$792.00. That was the rent as of the date of the hearing.

The rental unit is a bachelor apartment on the tenth floor. It has two large windows overlooking what the tenant described as a very nice view. The tenant testified that she pays a premium for her view. For the same rent she could have a much larger unit on campus but because her work is so stressful and the view from this unit was a good antidote to that stress, she rented this unit.

PT is a Ph.D. candidate in electrical engineering. To help support her studies she works as a teaching assistance at the university and a beauty consultant at a local department store. Most of her academic work is done at the university.

The tenant testified that because her work involves power electronics she must run her experiments after hours at the university. As a result, she is usually at the university until after midnight and does not get to bed until 2:00 am or later.

She testified that before the renovations began her routine was to sleep until 10:00 am; go to the university before noon; and stay at the university late. She works Monday to Friday at the university, as well as some weekends.

PT testified that scaffolding and a man lift were installed in front of her apartment sometime in the later spring and remained in place until a month ago. From the tenant's video it is apparent that the scaffolding blocks part of each of the only two windows in the unit. She testified that there are usually five or six men at a time on the lift and that it operated almost continuously. Whenever work was underway outside she had to keep her windows covered. She also said that the noise from the lift motor was really bad.

The unit next door was under construction for about two months, starting in September. She described one evening in particular when a workman was using a very loud power tool on Saturday night at 7:00 pm. She went to the unit to complain and was told by the workman that he had the right to work until 8:00 pm.

The tenant testified that she can hear the work of interior renovations being done on her floor, as well as the floors above and below. She said that in addition to weekdays sometimes the work was done on Saturdays and sometimes on Sundays as well.

The tenant described two occasions when construction debris was left in the hallway for several days. She provided photographs of both instances. On one occasion baseboards and other lengths of wood, still with the nails sticking out of them, were left in the hallway for four or five days. On another occasion construction materials partially blocked the emergency exit for about ten days.

The tenant said she borrowed some expensive noise blocking head phones but they were ineffective. PT testified that the lack of sleep has negatively affected her concentration and efficiency at school to the point that her supervisor has commented on it.

She has experienced several interruptions to water and electricity services. PT testified that in the past eight months there was no hot water on fifteen occasions, no water at all on six occasions, and no electricity on five occasions. Each interruption in service lasted several hours.

The tenant described a day when she was home very sick. She had received a notice the day before that workmen would be in her unit that day to work on the windows. When they arrived the workmen wanted her out. She asked their supervisor if the work could be done another day. They told her not and she was forced to leave the unit.

The tenant also testified about some problems with her refrigerator. She said she had given oral and written requests to the current property manager on several occasions. On the last occasion the property manager told her they could not do anything because of the stop work order. On cross-examination the tenant admitted that she had forgotten to include this item on her application for dispute resolution. The property manager stated that he made a note of her complaint.

### Analysis

On their applications for dispute resolution three of the four tenants asked for a retroactive rent reduction of 50%. The male tenant, JC, did not specify the relief he was requesting.

This is a claim in contract by the tenants against the landlord. As explained in *Residential Tenancy Policy Guideline 16: Claims in Damages*:

“Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even

where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.”

Section 65(1) allows an arbitrator who has found that a landlord has not complied with the Act, regulation or tenancy agreement to order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement.

There was no evidence led to contradict the tenants’ description of event prior to October 1, 2016. Accordingly, I accept their testimony about events between January 1, 2016 and September 30, 2016.

The two female tenants gave their testimony in a straightforward and careful manner. They were clearly careful, both in examination-in-chief and on cross-examination not to overstate anything. I accept their testimony in full.

JC’s testimony was more problematic. He was not able to provide a consistent or coherent timeline of events. Further, his description of the hours of work was not consistent with the testimony of the other two tenants.

However, the evidence is clear that his unit has been subject to a stop work order since December 14 and that this fact had been overlooked by the landlord even though the unit is specifically listed on the original order and the follow-up order; and the tenant testified about the stop work order and answered cross-examination about the order on January 10 in the presence of two senior managers from the property management firm.

I do not understand, nor was it adequately explained to me, how a space that is too unsafe for anyone to work in, is safe enough to live in. However, the tenant who testified about his experience in this area and his complaints to WorkSafe BC about the possible presence of asbestos in his unit went ahead and organized his own clean-up of the unit and moved back into the unit while the stop work order was in place.

I find that the value of all three of these tenancies has been significantly reduced by:

- The very loud jackhammering five days a week for months.
- The ongoing construction noise in the evenings and on the weekends.
- The lack of cleanliness in the building.
- The lack of any consideration for tenant’s requests for less noise, particularly in the evenings and on weekends. For example, the refusal to comply with the female tenant’s requests to workers that they turn down their music.
- The lack of consideration for any particular tenant’s needs on a particular day. For example, PT’s story about having to leave her unit when she was sick. There are over 500 units in this complex and the project has gone on for over a year. It is hard to



imagine that a delay of one day on the work in her unit would have a significant impact on the project as a whole, particularly if this was the only time she asked for a delay.

- The lack of property management services prior to October 1, 2016.
- The interruption in water and electrical services.
- The interruption in postal delivery services.
- The lack of information regarding the stop work order imposed by WorkSafe BC and the resulting anxiety experienced by the tenants.
- The disruption and unease caused by the workers using the front lobby as a social club, and a noisy one at that.
- The reduction in the sense of security caused by strangers, who might be workmen but might not, wandering in and out of the building at all hours of the day or night. It is true that none of these tenants had a bad experience but they all pay extra to live in a secure building.
- The reduction in privacy experienced by having workmen outside your windows every day.
- The reduction in the view from each unit. Again, all tenants pay extra for the lovely views from this building.

None of the factors listed above were exactly the same every day or were exactly the same for each tenant. For example, there has been minimal construction noise since December 14. However, that has been accompanied by an interruption in all services and anxiety about asbestos.

I have no difficulty in finding that overall impact of all these events over the past thirteen months has substantially reduced the value of these tenancies.

I award the tenants RS and VK, and PT, the rent reduction they requested, 50%.

I also award JC the same reduction as his experience was at least as bad as theirs. I might have awarded JC more based on the stop work order for his unit but his own actions do not display any concern that he may be incurring any health risk by living in his unit. This undermined his testimony that he moved out of the unit because of the asbestos. I do accept that he stayed away from his unit when he could because of the noise.

**I award JC the sum of \$6525.00.** This award represents one half of the rent paid for the period January 1, 2016 to August 31, 2016 at the rate of \$960.00 per month in the amount of \$3840.00 and one half of the rent paid for the period of September 1, 2016 to January 31, 2017 at the rate of \$1034.00 per month in the amount of \$2585.00 for a total of \$6425.00. It is an applicant's responsibility to prove elements of their claim, including the rent they pay when they are asking for a rent reduction. The tenant's evidence was that his rent increased at some point on or before September 1. Accordingly, I have used September 1 in these calculations. As the tenant was successful on his application he is also entitled to reimbursement from the landlord of the \$100.00 fee he paid to file it.

**I award the tenants, RS and VK, the sum of \$8021.00**, which represents 50% of the rent paid for the period January 1, 2016 to January 31, 2017. The tenants did not pay a fee to file their application so no further order is required.

**I award the tenant PT the sum of \$5104.00**. This represents one half of the rent paid for the period January 1, 2016 to April 30, 2016 at a rate of \$770.00 per month in the amount of \$1540.00 and one half of the rent paid from May 1, 2016 to January 31, 2017 at a rate of \$792.00 in the amount of \$3564.00 for a total of \$5104.00. The tenant did not pay a fee to file her application so no further order is required.

I am not making any award for the period February 1, 2017, onward. The evidence is that the situation at this building going forward should be quite different then the situation that has existed for the past year. However, in the future, any tenant may apply for another rent reduction for February 1 onward based upon the events of that time.

Pursuant to section 72(2), each award may be satisfied by each tenant withholding rent as it becomes due until their award is paid in full. Alternatively, the landlord may, at its option, pay a tenant the amount awarded in full satisfaction.

A monetary order is being granted to each tenant. In the event that any tenant moves out of their unit before their award has been satisfied in full they may file the monetary order with the Small Claims Court and enforce the balance of the order as an order of that Court.

### Conclusion

Monetary orders have been granted in favour of each tenant.

*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 10, 2017

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Residential Tenancy Branch