



# Dispute Resolution Services

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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      O, FF

### Introduction

This is an application brought by the tenant requesting a 50% rent reduction, and recovery of her \$100.00 filing fee.

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

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

All parties were affirmed.

### Preliminary Matter

The landlord stated that the actual legal name for the landlord is different than the name listed as the respondent on the application, and therefore they requested that the name be changed to the legal name. The tenant agreed to the change, and therefore that change is reflected in this decision.

### Issue(s) to be Decided

The issue is whether or not the applicant has established the right to a 50% rent reduction for loss of use and enjoyment of the rental unit/property.

### Background and Evidence

The tenant testified that this tenancy began in October 2014 and her present monthly rent is \$1218.79, due on the first of each month.

The tenant further testified that construction began on the rental property in December of 2015; however they were never informed of the extent of the construction project.

The tenant further testified that, at the end of May 2016, her apartment was wrapped in a tarp creating a suffocating environment due to the lack of airflow, and that in November of 2016 the Windows were also taped sealed, further restricting airflow and making the home extremely claustrophobic..

The tenant further testified that she gets dust in her apartment all the time and that there's been jackhammering going on since June 16, 2016, making it very difficult to enjoy the use of her apartment.

The tenant further testified that she has provided audio recordings of the loud jackhammering noise which were recorded in December of 2016.

The tenant has argued that, over the past year, the quality of her living space has diminished immensely, due to the constant noise, both during weekdays and on weekends.

The tenant has further argued that she has safety concerns over fumes from chemicals being used and the dangers from the removal of asbestos.

The tenant further argued that the scaffolding around the building also creates a safety hazard, as unwanted persons could use the scaffolding to access her rental unit and, although this has not happened, it does concern her.

Under questioning from the lawyer for the landlord's the tenant stated:

- She never asked for any special accommodation from the landlords.
- She works outside the home during normal working hours however twice a week she tries to study for a half the day at home, and of course she is usually home on weekends.

- She has never had anyone access her apartment off the scaffolding but it's still a concern.
- She has never gone to the doctor over any concerns about chemicals or asbestos, however since receiving the landlord's letter regarding asbestos; she is now considering doing so.
- She does not know how the dust gets into her apartment when all the windows are sealed, however, since the construction started, she has a constant layer of dust in the apartment.
- Whenever there's any painting, sealing, or sanding she also gets fumes in her apartment.
- The jackhammering has been completed on her balcony and it's just recently been sealed.
- Her parking spot is frequently taken by others since the construction started.
- The two-week delay in opening of the pool did affect her as she does use the pool.
- She uses both the elevator and the stairs in the rental property whichever is more convenient.

The landlords stated that the renovation is ongoing, on both the exterior and interior of the property because the property was near its end of life and a major upgrade was required.

The landlords further stated that they are doing major repairs, such as repairing balconies, installing new railings, and replacing single pane windows with double pane windows.

The landlords further testified that they had a professional assessment done of the property and immediate repairs were required for safety purposes, and therefore they are meeting their obligation pursuant to section 32 of the Residential Tenancy Act which 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.

The landlords further stated that in October of 2015, notice was given to the tenants about the upcoming repairs and renovations, and it stated that the tenants should contact them if they need any special accommodations.

The landlord further stated that this work is required for health and safety requirements, and although no work safe stop order was issued for this building, they put a voluntary stop work order in place at the same time as the stop work order was given in the adjoining building, just as a precaution to ensure the safety of their tenants.

When addressing the tenants claim for loss of use and enjoyment the landlord also pointed out that residential tenancy policy guideline # 6 states:

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 landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

The landlords argue that they're taking steps to ensure this property is safe and attempting to do it in a manner that causes the least amount of disruption.

Landlords also argued that the tenant is working on normal work days and therefore, since the construction takes place during normal work hours, they do not believe the tenant has had a 50% loss of use and enjoyment.

The landlords also argued that to reduce the rent all the way back to the beginning of the construction would be completely unreasonable as that was long before the majority the inconvenience started.

### Analysis

Section 28 of the Residential Tenancy Act speaks to the tenant's right to quiet enjoyment, and provides as follows:

**28** 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.

Further, under Residential Tenancy Policy Guideline # 6 it states:

*A breach of the entitlement to quiet enjoyment may form the basis for claim for compensation for damage or loss under section 67 of the RTA. 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 her 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 were completing renovations*

In this case it is my finding that the tenant has shown that there has been a loss of use and enjoyment of the rental property, however it is also my finding that the tenant has not shown that any significant loss goes right back to the commencement of the renovations on the rental property, nor has the tenant shown that she has had a 50% loss of use and enjoyment of the rental property.

From the testimony and information provided for this hearing I find that there was not a significant loss of use and enjoyment of the rental property until approximately the end of May 2016, when the rental property was wrapped in a white tarp. It would appear however that from June 2016 through to the present, the tenant has suffered a loss of use and enjoyment of the rental property.

It is my finding however that the tenant has not shown that there is a 50% loss of use and enjoyment of the rental property because the construction at the rental property takes place during normal working hours, and the tenant has testified that on many of those days she is working outside the home during normal working hours. Therefore the majority of the loss of use and enjoyment takes place on the weekends other than some inconveniences during the weekdays.

It is my decision therefore that I am only willing to allow a 25% reduction in the rent.

I also allow the tenants request for recovery of her \$100.00 filing fee.

Conclusion

I hereby Order that the tenant's rent be reduced by 25%, retroactive to June 1, 2016, and that the rent reduction continues until the renovations on this rental property are substantially completed, such that there is no longer any significant loss of use and enjoyment of the rental property.

I further Order that the tenant may deduct any overpayment of the rent, which resulted from this retroactive order, plus recovery of her \$100.00 filing fee, from future rent payable to the landlords.

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 14, 2017