



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FF MNDC O

### Introduction

This hearing was convened in response to applications by the tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The tenants requested:

- a Monetary Order pursuant to section 67 of the *Act* for money owed or compensation for damage or loss under the *Act*;
- authorization to recover the filing fee for this application from the landlords pursuant to section 72 of the *Act*; and
- a retroactive reduction in rent by 50% from May 2016.

The landlords and the tenants appeared at the hearing. The landlords were represented at the hearing by R.P., (the “landlord”) and their counsel K.H. The tenants were represented at the hearing by tenant, C.E. (the “tenant”).

The landlord confirmed receipt of the tenants’ application for dispute resolution and evidentiary packages. In accordance with sections 88 and 89 of the *Act*, I find that the landlords were duly served with these documents.

At the outset of the hearing, counsel for the landlords requested that the named landlord be changed to reflect a newly formed corporate entity. Pursuant to section 64(3)(c) I amend the tenants’ application to add the new entity named in the style of cause to the name cited by the tenants in their application.

### Issue(s) to be Decided

Are the tenants entitled to a reduction in rent?

Are the tenants entitled to a Monetary Order?

## Background and Evidence

Testimony was provided by the tenant that this tenancy began May 1, 2016. Rent is \$1,380.00 (including parking) and a security deposit of \$677.50 continues to be held by the landlords. The tenant explained that since the outset of this tenancy he and tenant C.R.E. have suffered from a diminished enjoyment of the rental property due to large scale, on-going construction in the building and on the surrounding property. The tenants are seeking a Monetary Order of \$6,775.00 in satisfaction for a 50% rent reduction from May 2016 continuing until the completion of the project.

The tenant testified that in early June of 2016 the building's former landlords began maintenance and upgrade work to the rental building. This included coverings of all of the exterior portions of the building as well as renovations such as kitchen, bathroom and lighting upgrades in the individual suites. The tenant explained that he and tenant C.R.E. benefited from these repairs by having the good fortune of moving into the first newly renovated suite.

On October 1, 2016 the named landlords bought the property and assumed ownership of it while the building was in the midst of its renovations.

The landlord explained that the repairs being undertaken were necessary for health and safety reasons. Specifically, the landlord stated that the balconies were dilapidated and needed replacing. In addition, all windows in the building were being replaced with energy efficient models, while the lobby, hallways, laundry and individual units were being modernized to better serve the residents of the building. The landlord did not diminish the scope of the work that was being undertaken. He did, however; explain that the work is not simply cosmetic but is being performed for the safety and benefit of the occupants.

The tenant testified that the construction has resulted in an inability to use the balcony of the rental unit since the Fall of 2016, and that he and tenant C.R.E. have suffered from a diminished enjoyment in the property because of the constant jackhammering and other noise being made as work continues. In addition, evidence was submitted to the hearing demonstrating that dust and drywall debris seep into the apartment under the main door to the apartment. The tenant stated that he works from home 2 days per week and that these distractions directly affect his ability to perform his work. He stated that he is unable to concentrate or make phone calls due to the noise. In addition, the tenant explained that tenant C.R.E. works at an offsite premises but often uses the apartment to speak with clients and confirm appointments.

As evidence of the issues they have faced due to construction, the tenants provided a large number of photos as part of their evidentiary package supplied to the landlord and to the hearing. These photos demonstrate evidence of construction dust in the apartment, and a glass that broke due to the vibrations from jackhammering in the building, as well as other depictions of the construction that they have been forced to live with.

The tenant testified the previous building owner never alerted them to the scope of the work being undertaken. They explained that if they had been informed of the large amount of work to be undertaken, they would not have rented the apartment. The current landlord could not comment on any previous actions of the last landlord but he noted that since he has taken control of the building, onsite managers have been hired and they began living on the property in January 2017 so that any issues the tenants face can be attended to immediately. In addition, during the hearing, the landlord stated that he has directed the contractors to perform their work between the hours of 8:30AM and 3:30PM.

Due to concerns around issues with the landlords' attempts to secure a prime contractor, a stop work order has been in place on the property since December 2016.

### Analysis – Loss of Enjoyment

The tenants submitted a claim for a monetary award in the amount of \$6,775.00 for loss of quiet enjoyment pursuant to section 28 of the *Act*. That section provides in part:

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;

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means a substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

The onus is on the party making the claim to show on a balance of probabilities that there has been a loss of quiet enjoyment as a result of the action or negligence of the landlords.

The parties have testified that the rental building has undergone some major renovations and repairs on both the interior and exterior of the building. The work has been ongoing since June 2016. The landlord provided testimony that the work is being conducted in a professional manner in accordance with local noise and construction bylaws. The tenant testified that the work is accompanied by noise and dust.

I find that there is sufficient evidence that the construction work has caused an unreasonable disturbance to the tenants. The tenants have provided evidence to the hearing of the specific complaints they have concerning the work and noted that they are affected by the constant noise and debris while they attempt to work from home. In undisputed testimony the tenant described the scope of the noise and dust that he and tenant C.R.E have encountered in their apartment. The tenants have also provided evidence to show that the construction has affected them beyond what a reasonable person would expect in the circumstances.

The tenants suggested a monetary award of \$6,775.00 representing a 50% reduction in rent from May 2016 and continuing until the completion of the project. I find this amount to be out of proportion to the loss suffered. Testimony was given that one tenant works from home two days per week, while the other tenant makes only work related phone calls from home. Testimony was presented that the new landlords have made concerted efforts to minimize the issues related to the construction advanced by the tenants during the hearing. In addition, following the completion of the project, the tenants will be able to enjoy a modern building with upgraded amenities. During the course of the hearing the landlords agreed to make immediate repairs to the bottom of the front door of the tenants' suite so that dust and debris would no longer be able to enter the unit under the door.

I find that the current landlord has taken significant steps to prevent the tenants from suffering significant disruptions to the lives of the tenants. Based on the testimony provided at the hearing, it is evident that the landlord takes the concerns of the tenants seriously. Evidence of this includes testimony from the building manager during the

hearing that she would contact the onsite building manager to ensure that alterations were made to the front door of the tenants' unit so that dust would not enter the suite from under the door.

I will therefore grant the tenants a Monetary Order of \$1,656.00. This amount represents a reduction in value of their apartment due to dust, noise and lack of balcony access, of 10% per month from May 2016 to April 2017. As the tenant E.C works from home 2 days per week (or 8 days per month) it is reasonable to conclude that he suffers from a 1.25% reduction in his ability to enjoy his apartment on each day he works from home while construction is performed. The landlord testified that steps have been taken to mitigate the noise after 3:30PM; thus I find it unreasonable for the tenants to maintain that tenant C.R.E.'s work is affected since she works off site and is not present in the home during the hours that work is being performed.

#### Analysis - Rent Reduction for the Loss in Value of the Tenancy

While the tenants did not indicate on their application for dispute resolution that they were seeking a reduction in rent pursuant to section 65 of the *Act*, they explained that their application for a Monetary Order under section 67 of the *Act* sought a "retroactive 50% reduction from May 2016 and continuing until the project completion."

The tenants presented testimony and photographic evidence during the hearing that they were seeking a reduction in rent due to the ongoing construction in the rental building. This work has left the tenants without a balcony, and ongoing work to their unit is scheduled to commence in the near future. Specifically, the landlords have plans to replace the existing windows with energy efficient models.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. This provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

I find that while the landlords have made sincere and concerted efforts to mitigate the loss of enjoyment suffered by the tenants during this period of construction, disruptions

to the tenants' comfort are scheduled to resume in the near future with the installation of new windows and the replacement of their balcony.

*Residential Tenancy Policy Guideline #16* provides guidance in determining the value of the damage or loss under such circumstances. This guideline notes, "the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due." Among the criteria listed under *Policy Guideline #16* include, "the party who suffered the damage or loss can prove the amount of or value of the damage or loss and the party who suffered the damage or loss has acted reasonably to minimize the damage or loss."

The tenants suggested a rental reduction of 50% for each month that construction work continues. The tenants provided little evidence regarding the loss of use of the balconies. The tenants gave evidence that the main source of their loss of enjoyment concerned the loud noise, the dust and the disruptions that resulted from the ongoing construction. I find the tenants have not shown on a balance of probabilities that the loss of use of the balcony and the continuation of construction has had a significant effect on their enjoyment of the rental unit. I find that the suggestion of a rental reduction of 50% per month to be excessive under the circumstances.

It is undisputed that the tenants lost the use of the balcony due to construction work and were not notified when they entered into this tenancy agreement that their access to the balcony would be missing for an extended period of time or that that work to replace the windows in the apartment were scheduled for the near future. Under the circumstances, I am issuing a reduction in rent which reflects the fact that the tenants continue to suffer loss in the value of the tenancy agreement. Based on the evidence before me I find that the loss was not significant but did have some impact on the tenants' daily routine. I find that the tenants are entitled to a rental reduction of 10% per month from May 1, 2017 to the end of construction as defined in the following paragraph. This reduction is equivalent to a reduction in rent of \$138.00 per month (when including parking).

Therefore, I order the landlords to reduce future rents starting May 1, 2017 by \$138.00 per month. This reduction in rent shall remain in effect until the balcony and the windows in the rental unit have been replaced.

As the tenants were partially successful in their application, the tenants are entitled to recovery of the \$100.00 filing fee for this application.

### Conclusion

I issue a monetary order in the tenants' favour in the amount of \$1,756.00 which includes the loss of the value of the tenancy to the date of the hearing and the filing fee for their application.

As this tenancy is continuing, I allow the tenants to reduce rent starting May 2017 by \$138.00. This reduction in rent shall remain in effect until construction is complete. For the purposes of this order, completion of construction is defined as the replacement of the balcony and the windows in the rental unit.

The tenants are provided with these Orders in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: April 26, 2017

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Residential Tenancy Branch