



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding STARLIGHT INVESTMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: O MNDC RR FF

### **Introduction**

Both parties attended the hearing and gave sworn testimony. The tenant said they served the Application for Dispute Resolution hearing package and amendments by registered mail and the landlord confirmed receipt. I find the documents were served pursuant to section 89 of the Act. The tenant requests pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A rent reduction for facilities or services agreed upon and not provided and for loss of her privacy and reasonable enjoyment pursuant to section 28;
- b) Compensation for other losses suffered due to construction; and
- c) To recover the filing fee

### **Preliminary Issue:**

The landlord requested that their name be changed in the style of cause to their current business name. The tenant consented and the amendment was granted.

### **Issue(s) to be Decided:**

Has the tenant proved on the balance of probabilities that the landlord has withdrawn facilities without compensation contrary to section 27 of the Act and has failed to protect her right to peaceful enjoyment contrary to section 28? Is she entitled to compensation or a rent rebate for this neglect and to recover her filing fee?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. The basic facts were not in dispute:

- The tenant has a one bedroom apartment with current rent of \$1039.29 and space of approximately 600 sq. including balcony. Her balcony is 72.5 sq. ft.
- She first rented in September 2014 and paid a security deposit of \$497.50 and her rent at that time was \$995 a month.
- In or about June 2016, the landlord got a notice saying the building needed major renovation to preserve it. He started renovation in June 2016.
- The renovation required the balconies to be vacant and unusable. The tenant did not have use of her balcony from June 2016 until May 20, 2017.
- The swimming pool and hot tub have been closed indefinitely
- The resident's lounge was used for storage of building materials so not available.
- The owner on their own initiative got a WorkSafeBC BC Stop Work Order for about 7 weeks from December 21, 2016 to February 9, 2017 for various safety inspections of materials.

- Mail delivery to the building was suspended for two weeks due to the order and the nearest post office pick up was 1.3 kms away.

The tenant states this renovation has significantly impacted her. She had an interior decorator calculate her space and lay out her furniture carefully so she could accommodate her grandchildren overnight from time to time. She had to remove her balcony furniture and store it inside because of the renovation and it took up 21 sq. ft. of her living space which meant she could no longer entertain her grandchildren overnight and it also significantly affected her living space. She had to remove her balcony garden pots in which she grew herbs and edible flowers and impose upon a friend to store them for her.

The loss of building amenities has also impacted her. She liked to use the residents' lounge to enjoy the sense of community, talk to some neighbours and read the books. It was a pleasant daily break from work and company for her as she is alone. She liked to swim in the pool with a grandchild from May to September and it has been closed indefinitely. This has also impacted her view from her unit and she cannot use the deck to visit during the year. The sense of community from seeing her neighbours swim and talking with them was lost too. The fact she had to pick up mail was very difficult as the post office hours conflicted with her work schedule so she was only able to get mail three times in the two weeks the postal worker was unable to access the building due to the Work Safe order. The enter phone was also out of service and no maintenance was done in the building during the Work Safe closure. The views from her unit were of a construction zone as the balconies were being redone and it took a very long time.

She said she chose this building in 2014 because of its amenities and view from her suite and these were all removed as the landlord renovated for an unreasonably long time. She asks for a reduction of rent from June 1, 2016 to May 2017 as follows:

15.6% for the loss of use of her balcony  
4.4% for the loss of other amenities

She further asks that the 2.9% rent increase levied in September 2016 be reversed. She also states that her lease anniversary date is October and the landlord has imposed the two past increases in September (a month early). She requests a refund of the increase paid in each of September 2015 and September 2016 and that the landlord be ordered to observe her anniversary date for rent increases.

The tenant provided a chart showing the rent reductions she is requesting with the loss of the balcony and suite area at 24%, other amenities ranging from 1% to 3%, loss of the carpeting and finish on the hallway at 5%, loss of mail service at 3% and 10% for loss of interior maintenance for 3 months. She claims in total \$4144 refund/rebate on her application but lists \$4414 on the monetary order attachment to her amended claim.

Counsel for the landlord said the landlord had been observing section 32 of the Act to keep the building in a good state or repair and decoration. She said the policy as explained in the Policy Guidelines for landlords and tenants is that they had a duty to accommodate each other and it was incumbent on the tenant to prove tangible loss. She states the claim is excessive and notes the balcony is not a covered living space and should not be calculated as such. Also, she notes the tenant could have asked for some storage space but did not so did not mitigate her losses. (The tenant said she had asked before this project began for a bigger locker and was told there were none so she thought it was pointless to ask again).

Counsel submitted that a 'balcony' would not fall into the definition of a service or facility in section 27 or the Act and that section 28 on the covenant of quiet enjoyment would not be applicable. She said the stoppage of mail service was an inconvenience only and just a change of location for a short time not an actual stoppage

Both parties referred to previous arbitrations on similar issues although Counsel noted correctly that I am not bound by them. In evidence are photographs showing limitations on views and amenities, the locked access to the resident lounge and the closed pool and hot tub. In evidence are also supporting letters for the tenant and the Work Safe BC Order.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis:**

Section 27(2) of the Act provides that a landlord may terminate or restrict a service or facility, other than essential services as set out in s. 27(1), if they give 30 days written notice to the tenant and reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement. Counsel for the landlord submitted that a balcony could not be described as a facility. However, I find dictionary definitions describe a facility as "such as a place, especially including buildings, where a particular activity happens" or "a place, amenity, or piece of equipment provided for a particular purpose. Synonyms:

provision, space," I find these definitions sufficiently broad to cover a balcony on a building.

Also section 1 of the Act defines a service or facility in part as "storage areas, "parking spaces and related facilities" and I also find this definition broad enough to encompass a balcony. Residential Policy Guideline 22 discusses termination of a service or facility and notes if there has been a substantial reduction of a service or facility, an arbitrator may order that past or future rent be reduced to compensate the tenant. I find the tenant's balcony was an important facility for her as she grew a balcony garden and enjoyed sitting on it on her balcony furniture. I find the withdrawal of the use of this facility was for a prolonged period and I find the tenant entitled to a reduction of rent from June 2016 to May 2017, which is 12 months. I decline to award total percentages as claimed by the tenant for I find different sections and considerations apply to the various items claimed.

I find the tenant's calculation of the balcony as 15.6% of her total space is accurate. However, I find as counsel submitted that it is an outdoor space so not as valuable in terms of rent as the indoor space. I take note that balconies in winter do not usually provide uses such as gardening and sitting outside. I find it reasonable that the rental amount for the balcony would be half that of indoor living space. I find the tenant entitled to a rent reduction of 7.8% for the loss of use of her balcony. This means a rent reduction of \$78.78 a month from June 2016 to August 2016 (3 months x \$78.78= \$236.34) and \$81.06 a month from September 2016 to May 2017 (9 months x 81.06= \$729.58). I also find her rent was illegally increased in September 2016 as her anniversary date according to her lease was October. I grant her a refund of her overpayment for one month in the amount of \$29.29.

I also find that section 1 of the Act defines service or facility as including cleaning and maintenance services and use of common recreational facilities. I find the tenant's building had cleaning and maintenance services withdrawn during the WorkSafeBC BC order for approximately two months and the recreational facility of the resident's lounge withdrawn as it was used as a builder's storage area from March 2016 to the present and ongoing. I find it reasonable to award \$60 a month for the two months lack of maintenance (\$120 total) and \$60 a month for the 12 months loss of the facility of a resident lounge which the tenant testified she enjoyed daily (total \$720 to date) and an ongoing \$60 a month rent

rebate until the resident lounge is able to be used again. In respect to the indefinite closure of the pool and hot tub, I find this was an important amenity to the tenant to share with her grandchildren and friends as well as to enjoy the view of it. I find it reasonable to award her a rebate of \$60 a month for the loss of this facility during the months of May to September 2016 for a total of \$360 (6 x \$60) and a further order of a rent reduction of \$60 a month from May 2017 until September 2017 or until the pool and hot tub are made functional again.

I find section 28 of the Act sets out the tenant's right to quiet enjoyment.

*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.*

As Residential Policy Guideline # 6 states, every tenancy agreement contains a covenant of quiet enjoyment. It states that temporary discomfort or inconvenience does not constitute a breach of the covenant and it is necessary to balance the tenant's right with the landlord's right and responsibility to maintain the premises. However, it is noted that a tenant may be entitled to reimbursement for a loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant during renovations. The Guideline states further that to determine the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed. Although Counsel for the landlord submitted that section 28 did not apply to the situation, I find that in this case, there was a situation where the tenant was unable to use her balcony for a prolonged time and also lost use of a portion of her living room calculated at .4% of her living space (21 sq. ft.) or a value of approximately \$41.57 per month. Although the tenant did not mitigate her damages by enquiring about storage, I find it reasonable that she did not based on the weight of the evidence that it was not available in a previous enquiry and furthermore the landlord was even using the resident lounge for storage of builder materials. I find her entitled to reimbursement of the rental cost of the living space she lost or \$41.57 a month for 12 months for a total of \$498.84.

I find the disruption of postal service and other items such as loss of view, unsightly construction around the building and unfinished carpeting in some hallways are temporary inconveniences which I find must be balanced with the landlord's responsibility to maintain the premises. On balance, I find the tenant will benefit from the improvements and there is some duty to accommodate these inconveniences.

I dismiss the remainder of her claims without leave to reapply.

### **Conclusion:**

I find the tenant entitled to a monetary order as calculated below and to recover her filing fee for this application. The tenant and landlord may choose to arrange to take this amount as a reduction in rent if they both agree. I dismiss the balance of the tenant's claims without leave to reapply.

Loss of use of balcony June to Aug. 2016	<b>236.34</b>
Loss of use of balcony Sept/16. To May/17	<b>729.58</b>
Refund of rent for premature increase Sept. 2016	<b>29.29</b>
Lack of maintenance for 2 months	<b>120.00</b>
Loss of use of resident lounge \$60 month to May 2017 (and ongoing if necessary)	<b>720.00</b>

Pool and hot tub closure May to Sept. 2016 (and ongoing from June 2017 to September 2017 if necessary)	<b>360.00</b>
Loss of living space in unit	<b>498.84</b>
Filing fee	<b>100.00</b>
Total Monetary Order to Tenant	<b>2794.05</b>

**Pursuant to the above noted Decision and in addition to the monetary order, I HEREBY ORDER THAT THE TENANT may reduce her rent by \$60 a month until the resident lounge is open again for use by the residents.**

**I ALSO ORDER that the tenant may reduce her rent by a further \$60 a month from June 2017 to September 2017 or until the pool and hot tub are open for use again.**

**I ORDER THE LANDLORD to obey the Act and only issue rent increases once per year for the tenant's anniversary month of October.**

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: May 31, 2017

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**Residential Tenancy Branch**