



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RP, OLC, RR, FF, O

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "*Act*") for:

- an order for the landlord to comply with the *Act*, regulations or the tenancy agreement;
- an order for repairs to the unit;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided;
- unspecified other relief; and
- recovery of the filing fee paid for their application from the landlord.

The landlord's agent (the "Landlord") and the tenants appeared at the teleconference hearing and gave affirmed testimony. The landlord appeared with counsel. During the hearing the landlord and tenants were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

### Preliminary and Procedural Matters

The tenants did not specify what other relief they were seeking as part of their application. Therefore, I dismiss the tenants' claim for other relief.

### Issues to be Decided

- Are the tenants entitled to an order for the landlord to comply with the *Act*, regulations or the tenancy agreement?
- Are the tenants entitled to an order for repairs to the unit?
- Are the tenants entitled to an order to reduce the rent for repairs, services or facilities agreed upon but not provided?

- Are the tenants entitled to recovery of the filing fee paid for their application from the landlord?

### Background and Evidence

The undisputed evidence established that the tenants entered into a one year fixed term tenancy starting on November 8, 2016 and ending on October 31, 2017, with an option to continue the tenancy on a month to month basis. Rent in the amount of \$1,825.00 is due on the first day of each month. The tenants provided a damage deposit in the amount of \$912.50 and a pet damage deposit in the amount of \$912.50.

The undisputed evidence established that the exterior of the building has been under construction since June 2016 and the suites have been renovated as they have become vacant. The tenants were renting another unit from the landlord before moving into their current unit on the 14<sup>th</sup> floor which had been one of the suites that were renovated.

The tenants are seeking an order that the landlord comply with the tenancy agreement which requires the landlord to provide curtains. The tenants complained that as a result of not having curtains on any of the windows, they have no privacy. The tenants complained that the construction workers stare into the unit upsetting the female tenant who is extremely uncomfortable with the lack of privacy. The tenants complained that without curtains the sun and heat have killed plants and melted candles.

The landlord testified that the curtains are in the process of being made and should be available soon. The landlord also testified that due to a current order to suspend interior work, the landlord would not be able to provide the curtains until the stop work order was lifted.

The tenant is seeking a 50% reduction in rent retroactive to September 15, 2016 as compensation for the lack of curtains and the following list of complaints:

- i) Missing Handle for cupboard shelving in the kitchen;
- ii) No caulking around the kitchen sink, tile work, bathroom sink and tub;
- iii) Windows missing locking mechanisms and couldn't close or lock. These issues were fixed by the tenant within the first couple of days of moving into the unit. There is also one living room window glued shut.
- iv) The baseboard hasn't been completed in the entire apartment and the baseboards need painting. The baseboards collect dust and therefore are sticky.

- v) The hot water heaters are full of dust. The tenant wants the landlord to clean the hot water tanks to remove the drywall dust collected in them.
- vi) The tenants have no access to their sundeck since they have moved into their unit. The door to the deck is locked shut and there are no rails on the deck.
- vii) The tenants have not had access to the pool facilities which have windows stacked throughout the pool area.
- viii) The tenants have concerns about whether their building is safe from asbestos based upon a 3" hole in the hallway that has revealed dust. The tenants concerns arise from asbestos having being found in an adjacent building *triggering* a stop work order on the construction in December 2016.
- ix) The tenants complained about construction workers tracking mud into the lobby and the exterior doors being left unlocked allowing uninvited strangers access to the lobby. The unsecure access to the lobby made the tenants feel uncomfortable and unsafe.
- x) The tenants complained that their water was turned off without notice 3 times for several hours. The tenants testified that they couldn't brush their teeth or get ready for work without water.
- xi) The tenants complained about jack hammering noise starting at 7:30 a.m. to 8:00 a.m. stopping at noon for an hour before starting again at 1:00 p.m. to 4:00 p.m. or 5:00 p.m. between the months of September to December 2016. The tenant also complained that the noise was also happening as late as midnight.
- xii) The tenants complained that they were told that the building was non-smoking, however, their neighbors are smoking in their units. The tenants complained about the odour of cigarettes in their unit from the neighbors smoking.

The landlord argued that the tenant should not be entitled to a rent reduction starting in September 2016 as the tenant moved into this unit on November 8, 2016.

The landlord argued that the tenants should not be entitled to a rent reduction as a result of the construction. The landlord argued that the tenants were aware of the construction at the time they moved in and they signed a Schedule with their rental application acknowledging the construction which was expected to take up to 24 to 36 months to complete (the "Acknowledgement"). The Acknowledgement set out a list of the areas that would be affected including the balcony repairs/replacements. A copy of the Acknowledgement was submitted as evidence.

The landlord argued that the tenant should not be entitled to a rent reduction for complaints relating to smoking in the building. The landlord provided a copy of an Addendum that is signed by the tenants which states that the building is transitioning to a “no smoking” status and that there are other suites in the building where residents are allowed to smoke. The Addendum explains that the landlord cannot take away the right of these residents to smoke.

The landlord testified that the stop work order due to the asbestos discovered in the adjacent building has been lifted. The landlord testified that work is expected to start up in May 2017. The landlord testified that WorkSafe BC and VIHA have been involved in approving the safety of the building.

The landlord argued that the tenants have not suffered a tangible loss regarding their complaints about the unsecured doors.

The landlord argued that the tenants would not have had any construction workers peering into their unit since the stop work order was issued in December 2016. The tenants argued that there are hundreds of other windows from adjacent buildings that have a view into their unit.

The landlord argued that the jack hammering occurs within the limits set by the city by-laws.

The landlord argued that the tenants have suffered an inconvenience rather than an actual tangible loss and therefore their application should be dismissed.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

Section 7 of the *Act* states that a landlord or tenant who does not comply with the *Act*, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss.

Pursuant to section 67 of the *Act*, if an arbitrator determines that damage or loss has resulted from a party not complying with the *Act*, the regulations or a tenancy agreement, the arbitrator may:

- determine the amount of compensation that is due; and

- order that the responsible party pay compensation to the other party.

Pursuant to Residential Tenancy Policy Guideline #16 (the “Policy Guidelines”), damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- loss of access to any part of the residential property provided under a tenancy agreement;
- loss of a service or facility provided under a tenancy agreement;
- loss of quiet enjoyment;
- damage to a person, including both physical and mental.

Furthermore, in order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Where there has been damage or loss with respect to property, money, or services, the value of the damage or loss is established by the evidence provided. The amount arrived at must be for compensation only, and must not include any punitive element. A party seeking compensation should present compelling evidence of the value of the damage or loss in question.

Pursuant to Policy Guideline #16, an arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward. “Nominal damages” may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find that there is sufficient evidence to satisfy me that the landlord was to provide the tenants with curtains as part of the tenancy agreement. In making this finding I have taken into consideration the fact that the landlord acknowledged their obligation to provide curtains which weren't yet available. I accept the tenants' evidence that the lack of curtains have significantly undermined their privacy. I accept the tenants' evidence that the female tenant was emotionally distraught at times over instances where the constructions workers were peering in at her through the bare windows. I also accept the tenants' evidence that their unit is open to the view of occupants from other adjacent

buildings. I find that there is sufficient evidence to satisfy me that the lack of privacy undermined the tenants' peaceful and quiet enjoyment of the premises. Therefore, I find that the tenants are entitled to a rent reduction of 5% for each of the months they have been without curtains since November 8, 2016. I find that the tenants are entitled to the 5% rent reduction until such time as all the curtains have been provided to the tenants. I find that a 5% rent reduction is reasonable compensation for the value of the loss of privacy impacting the tenants' peaceful enjoyment. The rent reduction of 5% will be prorated to account for the start of the tenancy on November 8<sup>th</sup> and the end date which will be the date upon which all the curtains have been provided.

Although I find that there is sufficient evidence to satisfy me that the tenants have not had access to the balcony since they moved in due to the construction, I do not find that the tenants are entitled to compensation for that loss. In making this finding I have taken into consideration the signed Acknowledgement by the tenants that specifically gave the tenants advance notice at the time the tenants' submitted their rental application that the balconies were going to be part of the construction project which was expected to take 24 to 36 months to complete.

I find that there is insufficient evidence to satisfy me that the noise experienced by the tenants due to construction was not in accordance with the by-laws. In making this finding I have taken into consideration the fact that the landlord and tenants offered different accounts that were equally believable making it impossible to prefer one version over another. As the onus is on the tenants to prove their case on a balance of probabilities, I find that the tenants have not met their onus based upon the evidence before me. Therefore, I dismiss the tenants' claim for a rent reduction on the basis of noise complaints.

I find that there is insufficient evidence of actual loss or damage arising from the tenants' complaints set out at items i), ii), iii), iv), v) and ix) upon which to determine a value to award compensation. Therefore, I dismiss the tenants' claim for a rent reduction based upon this list of complaints.

I find, however, that there is sufficient evidence to satisfy me that the tenant is entitled to an order that the landlord complete the following repairs within a reasonable period of time:

- i) Fix the missing handle for the kitchen cupboard and address any other shelving issues in the kitchen;
- ii) Complete the caulking around the kitchen sink, tile work and bathroom sink and tub; and

- iii) Paint the baseboards throughout the unit.

In making this finding, I have taken into consideration the fact that the interior renovations to the unit that were supposed to be completed before the tenants moved in were not completed or not completed properly. I order that the repairs be completed within a reasonable time after receiving a copy of this decision and the work order is lifted.

I find that there is sufficient evidence to support a rent reduction in the amount of 5% for each of the months since November 8, 2016 that the pool facilities have not been available for use by the tenants. I find that the tenants are entitled to a 5% reduction in rent for each month that the pool facilities are not in use, which shall be prorated to the date on which the facilities become available. In making this finding I have taken into consideration the fact that the Acknowledgement signed by the tenants did not specifically mention the restrictions on the use of the pool facilities which form part of the tenancy agreement.

I find that there is insufficient evidence to satisfy me that there is an asbestos problem in the tenants' building. While I appreciate the cause for concern by the tenants, I accept the evidence of the landlord that the situation in the tenants' building has been deemed safe by VIHA and WorkSafe BC, the professionals who are involved in addressing the asbestos problem in an adjacent building. Therefore, I dismiss the tenants' claim in regards to the asbestos complaints.

I find that there is insufficient evidence to satisfy me that the landlord has failed to comply with the *Act*, regulation or tenancy agreement with respect to the tenants' complaints about smoking in the building. In making this finding I have taken into consideration the Addendum that was signed by the tenants at the time of their rental application. The signed Addendum indicates that the tenants were given advance notice that the building was transitioning into a non-smoking building; that some tenants were still allowed to smoke in their units; and that the landlord had no ability to stop these tenants from smoking. Therefore, I dismiss the tenants' claim for a reduction in rent on the basis of complaints about smoking.

I find that there is sufficient evidence to satisfy me that the tenants' access to water was stopped without notice on three occasions for several hours at a time. However, I find that there is insufficient evidence of a significant loss in order to determine a value of the damage or loss which is not as straightforward. Therefore, I find that the tenant is entitled to nominal damages in the amount of \$50.00 for the inconvenience suffered due to the lack of water.

As the tenants' application has been substantially successful, I find that the tenants are entitled to recover the \$100.00 filing fee for their application from the landlord.

Based upon the foregoing, I find that the tenants are entitled to a monetary order in the amount of \$1,384.92 as follows:

10% Rent Reduction for November 8 – 30 <sup>th</sup> , 2016 (\$1,825.00 / 30 x 23 days = \$1,399.17 x 10%)	\$ 139.92
10% Rent Reduction for each of the months from December 2016 to May 2017 (\$1,825.00 x 10% = \$182.50 x 6)	\$1,095.00
Nominal damages for water shut off	\$ 50.00
Filing Fee	\$ 100.00
Total Monetary Award	\$1,384.92

Pursuant to section 72(2)(a) of the *Act*, I permit the tenants to deduct the amount of \$1,384.92 owing from the landlord from any future rent due to the landlord. In the event that the tenants choose not to do so, a monetary order is granted that the tenants can enforce.

I order the landlord to provide the curtains to the tenants as soon as the landlord is lawfully permitted to do so after the curtains are available. Until such time as the tenants receive the curtains, the tenants are entitled to a rent reduction in the amount of 5% for each month the tenants are without curtains starting June 2017. The rent reduction is only available up to the date that the tenants receive all the curtains.

For the reasons stated above, I find that the tenants are also entitled to a rent reduction in the amount of 5% for each month the tenants are without the use of the pool facilities starting June 2017. The rent reduction is only available up until the date that the tenants are able to use the facilities.

### Conclusion

The tenants are granted a monetary Order in the amount of \$1,384.92, for compensation and the filing fee, which must be served on the landlord as soon as possible. The tenants are permitted to deduct the amount owing from the landlord against any future rent to be paid. However, if the tenants elect not to do so, the tenants have a monetary Order that they may enforce. Should the landlord fail to comply with



this monetary Order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenants are granted a rent reduction in the amount of 5% starting June 2017 and continuing for each month thereafter that the tenants are without all the curtains that the landlord must provide. The landlord must provide the curtains when they are lawfully permitted to do so after the curtains become available.

The tenants are granted a rent reduction in the amount of 5% starting June 2017 and continuing for each month thereafter that the tenants are without the use of the pool facilities.

As explained above, I order the landlord to carry out repairs to the kitchen cabinet and shelving, the caulking and baseboards within a reasonable time after receiving this Order and being lawfully permitted to do so.

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: June 02, 2017

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Residential Tenancy Branch