



# 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      OLC PSF RP RR FF

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the Act") for: an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; an order that the landlord provide services or facilities required by law pursuant to section 65; an order that the landlord make repairs to the rental unit pursuant to section 33; an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; authorization to recover the filing fee for this application from the landlord pursuant to section 72

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord confirmed receipt of the tenants' Application for Dispute resolution and documentary evidence package. The tenant in attendance at this hearing confirmed receipt of the landlord's evidence package.

### Issue(s) to be Decided

Are the tenants entitled to an order requiring the landlord to comply with the *Act*?  
Are the tenants entitled to an order that the landlord provide services or facilities?  
Are the tenants entitled to an order that the landlord make repairs to the rental unit?  
Are the tenants entitled to an order to allow the tenant(s) to reduce rent for repairs?  
Are the tenants entitled to authorization to recover the filing fee for this application?

### Background and Evidence

This tenancy began on August 1, 2016 as a one year fixed term tenancy to continue on a month to month basis after the completion of the one year term. The current rental amount of \$1415.00 is paid on the first of each month as is a parking amount. The

landlord continues to hold the tenants' \$707.50 security deposit paid prior to the outset of this tenancy (June 14, 2016). The tenants sought compensation by way of a reduction for the ongoing, incomplete repairs to the residential premises including the swimming pool on the premises.

The tenant testified that the interior common areas of the residential premises do not meet the RTB (Residential Tenancy Branch) standards in a variety of ways. He testified that the hallway carpets were torn up in November 2016 and, since that date (to the date of this hearing), they have remained without carpeting. He testified that there has been no timeline provided by the landlord to indicate when the carpets might be installed. He testified that, as a result of the lack of carpets in the hallways, there is an echo and noises from the hallways are magnified. The tenant submitted photographs of the hallways with only stained cement in front of their doorway and down the apartment hall.

The tenant also testified that the swimming pool in the residential premises was being repaired in November 2016 but the pool is still is not functional as of the date of this hearing. He submitted photographs of the pool area to show the state of disrepair: an empty pool with a large brown mark. The tenant testified that he had used the pool once or twice a week when he moved in in August 2016. However, it has now been out of service for 7 months now.

The landlord did not dispute that the halls are without carpets. He testified that there is a massive renovation occurring at two locations both affecting the interior and the exterior of each building owned by the landlord. The landlord testified that there have been delays in completing certain aspects of the project but that the tenants were advised on move-in that the building would be under construction for an extensive period of time.

The landlord also did not dispute that the swimming pool has been out of order. He testified that they are currently having the pool examined but he believes the landlord may have to replace the pool or otherwise compensate for the current damage to that particular area. He testified that, while he can understand some discomfort by the tenants of the ongoing reservations, they were made aware of the renovations prior to moving into the unit and the tenant could purchase a swimming pool certificate for a public pool down the street.

The tenant testified that, from December 2016 to the date of this hearing, the landlords have not cleaned the common areas. The landlord testified that the landlords are cutting back on certain work in the building to ensure they have a full budget for their renovations.

### Analysis

Residential Tenancy Policy Guideline No. 1 provides that a landlord must continue to provide a service or facility that is essential to the tenants' use of the rental unit as living accommodation.

[if] a tenant can purchase a reasonable substitute for the service or facility, a landlord may terminate or restrict a service or facility by giving 30 days' written notice, in the approved form, of the termination or restriction. The landlord must reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

The landlord argues that a swimming pool does not impact the tenants in a manner that requires compensation. He argued that it does not affect their daily living and the pool is not material or essential to the tenant's accommodation. The tenant argues that the landlord has reduced their services that were agreed upon at the outset of the tenancy and therefore must compensate them by reducing the rent. Policy Guideline No. 16 provides that loss can be *less tangible* than loss of use of a certain facility – loss can also be mental loss. It is also incumbent on the tenants to ensure they mitigate or minimize any loss that they suffer.

I find that, while the tenants were advised that the building would undergo construction during their occupancy, the tenants decided to move into the rental unit and pay their rental amount based on the amenities that were available at that time. Further, I find that the tenants have provided evidence of conditions in the hallways and common areas that are sub-par and have been sub-par for approximately 7 months.

The tenant provided candid testimony that the tenants used the swimming pool once or twice a week. The landlord argued that, if the tenants are entitled to a rent reduction for the lack of swimming pool, the reduction should be equivalent to the cost of public swimming pool entrance. The tenant testified that going downstairs for the pool and going down the block to the pool are not equitable. After consideration of both party's positions with respect to the amount of any rent reduction for the swimming pool, I find that the tenants are entitled to reduce their rent **by \$30.00 a month** for the loss of use of the swimming pool as originally offered as part of the tenancy.

When a landlord does not meet his obligations under the *Residential Tenancy Act*, the landlord *may* be required to compensate the tenant, regardless of the landlord's intent.

A landlord, particularly in an apartment setting, is generally responsible for common areas of residential properties. The landlord has acknowledged that cleaning and care of the common areas is the responsibility of the landlord. However, he indicates that this situation is unique because of the prior agreement between parties with respect to ongoing renovations.

While I accept the landlord's mainly undisputed evidence that the tenants were aware of the construction that would take place during their tenancy, I also accept the submission of the tenant that the landlord has not replaced the carpets in a reasonable amount of time. I accept the tenant's submission that the landlord must clean and ensure acceptable conditions that comply with the Act. I accept the tenant's submission that, in these circumstances, there has been little that they can do to reduce the effect of the loud hallways and lack of cleanliness beyond take matters into their own hands. Therefore, I find that the tenants are entitled to a rent reduction in the amount of **\$120.00 a month** for both the landlord's extra loud hallways and the lack of recent regular cleaning of the common areas.

I will order the landlord pay the tenant an amount equivalent to 7 months of rent reduction from December 1, 2016 to June 30, 2017. I will order that the 2 rental reduction amounts continue until conditions are restored. I will also order that the landlord re-commence regular cleaning services.

As the tenants were successful in his application, I find that the tenants are entitled to recover the \$100.00 filing fee for this application.

### Conclusion

I order that the landlord re-commence cleaning services.

I order that, from July 1, 2017 until the swimming pool is restored to working order, the tenants are entitled to reduce their rent by \$30.00 per month. The rent reduction will cease when the swimming pool is again available to the tenants.

I order that, from July 1, 2017 until the hallway carpet is laid. The tenants are entitled to reduce their rent by a further \$120.00 per month. The rent reduction will cease when the hallway is re-carpeted.

I grant the tenants a monetary order in the following amount,

<b>Item</b>	<b>Amount</b>
Hallway carpet and cleaning (\$120.00 x 7 months)	\$840.00
Loss of swimming pool (\$30.00 x 7 months)	210.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$1150.00</b>

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: June 14, 2017

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Residential Tenancy Branch