



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

Dispute Codes      FF, MNDC, O

## Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$6000
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing and the amended Application for Dispute Resolution was served on the landlord by mailing, by registered mail to where the landlord carries on business.

## Preliminary Matter:

The solicitor for the respondent provided the name of the registered owner of the rental property and requested the name of the respondent be changed to delete the respondents identified in the Application for Dispute Resolution and naming the owners. The tenants consented to this amendment. As a result I ordered the Application for Dispute Resolution be amended to delete the name of the named respondents and adding the name of the registered owner.

## Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order for the reduced value of the tenancy and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a one year fixed term tenancy agreement that provided that the tenancy would commence on July 1, 2016, end on June 30, 2017 and become month to month after that. The rent was \$1785 plus \$40 for parking per month payable in advance on the first day of each month. The tenants paid a security deposit of \$992.50 at the start of the tenancy.

In late May the tenants gave the landlord notice to end the tenancy on June 30, 2017. They will be vacating the rental unit at that time.

The tenants seek reimbursement of ½ of the monthly rent for the 12 month tenancy for breach of the covenant of quiet enjoyment and the reduced value of the tenancy.

The tenants gave the following testimony:

- The rental property has undergone a major renovation. Their enjoyment of the rental property has been compromised by the plastic covering of all windows, restricted ventilation, security and safety issues, toxic dust and contamination fears, prolonged work stoppages and a lack of communication from the landlord.
- They have not been able to look out any of their windows without viewing plastic covering and scaffolding.
- The door to the balcony has been locked and they have not have the use of their balcony since moving in and this continues to this day..
- Flapping plastic and rattling scaffolding frequently affect their sleep at night.
- The tenants produced photos of asbestos labelled bags left on their balcony.
- There is a large hole in their bathroom ceiling (as a result of a leak from the upper floor) that has not been repaired since the damage occurred on March 12, 2017.
- The hallway outside the apartment was stripped of surface and left as bare cement and filthy for the last 6 months.
- As of December 22, 2016 Canada Post refused to deliver mail because of the condition of the rental property.
- Dirt and dust from renovations cake all apartment windows and window sills which restrict our view and causes health concerns.
- The tenants referred to a previous RTB decision of January 30, 2017 where the arbitrator granted the applicants in that hearing a 50% rent reduction for past and future rent against the same landlord dealing with a rental unit in the same building..

- Extensive dust from outside renovation work has entered out suite covering multiple surfaces on at least three occasions (November 2016, December 2016 and Jan. 11, 2017).
- They reported the problems to management on many occasions but the landlord failed to rectify the problem.
- On January 11, 2017 when received a phone call from the landlord advising that we must vacate out home for a few day so testing for possible toxic dust contamination could be completed. We were relocated to a hotel. We were finally able to return to our residence on March 8, 2017 almost two months later. The inconvenience and disruption to our lives was extensive and difficult. At the end of January 2017 the entire building was evacuated because of this problem. With the exception on one day we were not able to return to use our belongings.
- The landlord paid for out stay in the hotel. Further, we did not have to pay rent for the approximate 2 months we were in the hotel.
- The tenants testified the noise, vibration became progressively worse after moving in to the end of October and became intolerable after that. They were subject an invasion of privacy with workers on their balcony.
- In December Work Safe imposed a stop work order. Limited work was done between the middle of December and January 11, 2017 when they were forced to leave. No work has been done since they returned on March 11, 2017.
- The tenants testified that at the time they signed the tenancy agreement it was represented to them that the restoration work would take 2 to 3 months.

The landlord gave the following evidence:

- The rental property includes 80 units over 13 floors.
- The renovation undertaken by the landlord was necessary for the maintenance and preservation of the rental property.
- The tenants were aware prior to renting the rental that renovations would be carried.
- On December 12, 2016 a stop work order was served on the landlord. There has been no further renovation work after that date.
- The landlord has worked with Work Safe BC, Vancouver Health and other agencies dealing with the remediation of the problem.
- The tenants were relocated to a hotel on January 11, 2017. The other tenants in the rental property were relocated at the end of January after elevated levels of asbestos was discovered.
- The residents were permitted to return to the rental property on March 8, 2017.
- The construction occurred during normal work hours permitted under the Victoria bylaws from 7:30 a.m. to 7:00 p.m.

- The tenants failed to prove damages caused by a health hazard.
- The landlord produced a number of notices given to the Tenants disputing the allegation the landlord failed to communicate with the Tenants.
- The previous case decided in January 2017 involving different tenants had unique circumstances.
- The landlord incurred significant costs rehousing the tenants.
- The landlord submits the tenant was not home for periods of time as he worked as a Teacher on Call
- The amount claimed by the Tenants is excessive.

### Law

Section 28 of the Residential Tenancy Act provides as follows:

#### **Protection of 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.

Policy Guideline #6 includes the following

#### **B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT**

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 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 entitlement to 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.

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.

### **Compensation for Damage or Loss**

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). 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 or 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 or completing renovations.

### Analysis

I determined the tenants have proven on a balance of probabilities that they have been unreasonably disturbed by the renovations that occurred resulting in a significant loss of the use and enjoyment of the property. I find that the construction and renovation work was extensive and caused a significant disturbance. In particular the tenants have suffered an extensive loss of use and enjoyment as follows:

- The tenants have not had the use of their balcony in its entirety
- They have lost the view since moving in because of the window covers and scaffolding
- There was constant noise during the day hours to the middle of December.
- They have experienced stress as it is apparent the renovations work involves the removal of asbestos.
- For an approximate 2 month period they were re-housed in a hotel and did not have access to their belongings.

- The hallway continues to under construction.

I have considered the landlord's submission that the work was necessary for the maintenance and preservation of the rental property. However, I determined the tenants are entitled to compensation for the reduced value of the tenancy as the landlord was giving the tenant a rental unit of less value than was contracted for. I determined that the amount paid for parking should not be included in determining the reduction of rent as the tenants had use of the parking. .

In determining the amount of compensation I considered all of the evidence including the following:

- The previous decision which awarded a 50% reduction is not binding on me.
- However, I determined the tenants are entitled to a 50% reduction of rent for period July 1, 2016 to the end of December 2016. I am satisfied the noise and disruption was frequent and ongoing during this period. The value of the tenancy has been significantly reduced and the amount claimed is reasonable given the extent of the disruption.
- I determined the reduction in value was less for the two month period from January 11, 2017 to March 8, 2017. While the tenants were not subject to extensive construction noises, dust and vibrations they did not have access to their rental unit. While the landlord paid for re-housing them the tenant did not have the use of the rental unit they had paid for. I determined the tenants are entitled to a reduction of rent of 25% during this two month period. For simplicity sake I have determined the tenants are entitled to a 25% reduction of rent for January and February 2017.
- The tenants returned to the rental unit on March 8, 2017. While they were not subject to construction noises, dust and vibrations they did not have access to their balcony, their sleep continued to be disrupted by the plastic and scaffolding and their view was significantly restricted. I determined tenants are entitled to a 20% reduction of rent for the 4 month period from March 2017 to June 2017.
- In summary I determined the tenants are entitled to compensation as follows:
  - 50% reduction of rent for 6 months (July 2017 to December 2017) as follows:  
 $\$1785 \times 6 \text{ months} \times 50\% = \$5355$ .

- 25% reduction of rent for January 2017 and February 2017 ( $\$1785 \times 2 \text{ months} \times 25\% = \$892.50$ )
- 20% reduction for the period March 2017 to June 2017 as follows ( $\$1785 \times 4 \text{ months} \times 20\% = \$1785$ )

Monetary Order and Cost of Filing fee

**I ordered the landlord(s) to pay to the tenant the sum of \$8032.50 ( $\$5355 + \$892.50 + \$1785 = \$8032.50$ ) plus the sum of \$100 in respect of the filing fee for a total of \$8132.50.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

**This decision is final and binding on the parties.**

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 15, 2017

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Residential Tenancy Branch