



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNDC, RR, O, FF

Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution wherein the Tenant requested monetary compensation from the Landlord in the form of a retroactive and prospective/ongoing rent reduction pursuant to section 65(1) and 67 of the *Residential Tenancy Act* and to recover the filing fee.

The teleconference hearing was conducted by teleconference on May 16, 2017 and continued on August 10, 2017 and November 17, 2017. Both parties called into the hearings and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord in the form of a retroactive and ongoing rent reduction pursuant to section 65(1) and 67 of the *Residential Tenancy Act*?
2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified that the tenancy began May 2006.

The rental unit is located on the tenth floor of a 122 unit rental building which is undergoing extensive interior and exterior renovations and upgrades. In addition to the work to the common areas, as rental other tenants vacate their units and the units become available they are completely renovated and updated. The work began January 2016 and has continued since, only interrupted by stop work orders related to the possible presence of asbestos. Despite various projected completion times, the work continues nearly two years later.

The Tenant testified that the living conditions in the building have deteriorated to the extent that his right to quiet enjoyment has been significantly impacted. In the application before me, the Tenant sought a rent reduction of 50% from January 2016 to the present in the amount of \$9,342.55 as well as a 50% ongoing rent reduction until the construction is completed.

The Tenant stated that the construction has been “everywhere”, including the jackhammering and removal of the concrete balconies and renovations to the common areas including full scale remediation and shaving of the building’s concrete exterior. The Tenant further stated that as the material is jackhammered and shaved off the debris blows into the common areas of the building and the rental suites. Additionally, for a period of time the construction workers transported bags of materials (which were suspected to contain lead and asbestos) in regular bins from the apartments through the elevators and to the outside thereby exposing residents to hazardous materials.

The Tenant further testified that in addition to the exterior and common area renovations, the rental units are being completely gutted/renovated as they become available, which he says has been more frequent as people have been moving out due to the noise and disruption. The Tenant stated that he believes there are 10 units per floor and six on his floor alone have been completed gutted/renovated.

The Tenant also stated that it feels like the construction workers are “working all the time” and this is affecting his ability to sleep. He stated that he goes to bed 10:00 – 10:30 p.m. and sleeps until 6:30–7:00 a.m. He said they were “moonlighting” as they are living in the building. He stated that five of them were living in the unit next to him for the majority of the time the renovations have been going on.

The Tenant confirmed that he works from home as a consultant such that the noise is particularly disruptive. He also stated that his wife, R.E., has lupus such that she has joint pain and stiffness, and even though she works out of the building, she must navigate the construction materials when leaving or returning to the rental building.

The Tenant stated that despite bylaws regulating construction hours, the construction occurs from 8:00 a.m. into the evenings and the weekends. The Tenant further stated that some of the workers have moved into the empty units, such that the work continues late into the evening.

The Tenant stated that the most disruptive sound is the noise from the jack hammering as they remove the concrete and then remove the rebar, and to reduce the sound he has to wear earplugs in his rental unit. He stated that one day while he was working on a business call with a new client and he was not able to hear the call. (Notably, during the final day of the hearing on November 17, 2017 the sound from the jackhammering was so disruptive I could not hear the Tenant’s testimony at times.)

The Tenant also testified that his balcony is flat and there are no protective railings such that they have not been able to use the balcony since its removal some time in December 2016.

The Tenant stated that due to the age of the building there is asbestos in the building. As a result of mishandling of the asbestos, the construction has been shut down on two separate occasions. Introduced in evidence was a copy of a “Stop Work Order” issued on December 14, 2016 upon which was handwritten:

“The board has reasonable grounds for believing that the work tasks and or conditions described above represents a high risk of serious injury serious illness or death to a worker. This is in reference to disturbing the ceiling texture coat by the elevators.

The Tenant testified that this was the second stop work order. The copy which was introduced in evidence was not readable such that the above represents the Tenant's testimony as to what was written on the document. Counsel for the Landlord confirmed that her copy was also not readable.

The Tenant stated that they do not have blinds in the rental unit as the windows were supposed to be replaced. He confirmed that the window treatments are provided by the Landlord. The Tenant stated that that due to the workers being on both sides of the building he and his wife feel like they are living in a fish bowl. He also stated that he can't see his computer screen because of the sunlight and lack of blinds.

The Tenant stated he and his wife have raised their concerns with the property managers about the disruptions caused by the construction but this has had no measurable effect. He stated that he spoke to the previous property manager, D., who worked for the previous property manager, but did not reside in the subject rental building.

The Tenant stated that for a period of time there was no resident manager in the building due to the stop work orders. He stated that a resident property manager moved into the building at some point although he could not testify as to when that occurred. He stated that he believed that during all of 2016 and for the first part of 2017 there was no resident property manager. The Tenant stated that as a result of no property manager the property wasn't cleaned regularly, particularly the common areas such as the elevator, the lobby and laundry room, halls. He also stated that as construction was going on every day the building was particularly dirty.

The Tenant also testified that he also had security concerns as during emergencies there was no one to get in touch with. He reported that on one occasion another renter had a heart attack and the other occupants observed that papers were stacking up outside her door. The Tenant called D. and after a few hours D. called him back and said he could not do anything. The Tenant stated that he told D. he had no choice but to call the police. The Tenant submitted that in a 122 unit apartment there should be someone living in the building in the event of emergencies such as water breaks etc.

During the August 2017 hearing, the Tenant reported that the construction was stopped as a result of a further stop work order. He stated that although the construction has stopped the rental unit remains unfinished as of the August 10, 2017 hearing; including:

- His balcony remained unfinished and there is no access to the balcony; he reported that he is only able to open the balcony a “crack”. He stated that the balcony is approximately 8 feet deep and 20 feet long. He noted that he had patio furniture on the balcony before and that he and his wife enjoyed the outside space very much.
- The windows in the bedroom and the living room and kitchen still need to be replaced. The Landlord installed curtains two months ago, after no window treatments for six months. The Tenant stated that he believes this is temporary as the new windows have yet to be installed.
- The windows which have not been replaced are prepped for replacement and there are moisture issues and wind such that the rental unit is cold.

- The Tenant stated there are still a lot of repairs in his rental unit that have not been dealt with because the Landlord wishes to renovate each unit in the building and they are not that concerned with repairing the units where people wish to stay; he stated that his rental unit has the following issues:
 - the faucet leaks;
 - the ledges on the windows require repair; and
 - the shower water temperature does not regulate and is either too hot or not hot.

The Tenant also stated that despite a resident manager moving into the rental building in 2017, the common areas are still not being cleaned. He noted that hallways and laundry room are not cleaned regularly, and the front lawn is full of containers, and couches (which are used by the workers during their breaks). He also stated that there is scaffolding all over the building. He said the building looks “ghetto like on the outside” as a result of all the couches, containers and garbage.

The Tenant further testified that the noise does not just come from the 10th floor where his rental unit is located. He noted that the jackhammering from other floors vibrates the entire building. He stated that four jackhammers are operated at all times including two on each side.

The Tenant stated there are also “constant water breaks” during the renovations. He also stated that they actually shut down the water because they only have one shut off. He stated that this occurred once a week, and sometimes they were given no notice as to the water being shut off. He stated that the most problematic time with unannounced water shut offs was between December 2015 to the beginning of January 2017.

The Tenant also stated that the elevators were also impacted; although one elevator was dedicated for use by the construction workers they often they used both. Additionally, they use the elevators to bring down the materials and the elevators were not cleaned during the construction period.

The Tenant stated that his parking has also been impacted. He stated that he has a dedicated parking stall which he pays for in addition to his rent. He stated that his parking stall was constantly being used by the workers. He also stated that he brought this to the attention of the manager who refused to have the workers’ cars towed despite clear signage.

In response to the Tenant’s claims, the Landlord’s Counsel confirmed that the current Manager S.I. became involved in the construction in the fall of 2016.

Counsel submitted that the ownership wished to improve on the balconies, hallways, elevators and common areas. Counsel submitted that the Landlord is abiding by their obligation to repair and maintain the building pursuant to section 32 of the *Act*.

Introduced in evidence was an incomplete copy of a “Baseline Property Condition Assessment” dated October 13, 2015. This report recommended the work which is being done on the rental building.

Counsel also submitted that at the time of the August 2017, hearing, the Tenant’s monthly rent was \$1,121.03, although this amount included \$20.00 for parking.

G.S. also testified on behalf of the Landlord. He confirmed that he became involved with the building on March 27, 2017, such that he was not directly involved during any of the construction prior to that date. Counsel submitted that while G.S. was not specifically involved, he has had conversations with everyone who was there and is "apprised of the situation".

G.S. stated that to his knowledge the construction began January 2016. He confirmed that the renovations of the interior suites and the repairs to the exterior of the building began at the same time. G.S. stated that the jackhammering did not begin until June of 2016.

G.S. stated that to his knowledge the work begins at 8:30 a.m. and completes at 3:30 p.m. based on the standard working protocol which was to minimize disturbance to the tenants. G.S. further stated that the construction occurred Monday to Friday only. He confirmed that he was not present and therefore had no direct knowledge as to the actual construction.

G.S. also testified that to his knowledge the extent of the interior renovations to the individual units includes the following: the kitchen and bathroom cabinetry is removed and updated, the walls are painted and the appliances are replaced. He confirmed that all of the work is done after the unit is vacated. He further stated that he was informed that only quiet work was done later in the afternoon and on weekends such as painting.

In terms of the stop work orders, G.S. stated that the stop work order was issued in December 2016 or January 2017. He stated that everything in the building came to a screeching halt including maintenance of the building when the stop work order was issued. He stated that to his knowledge as of mid-January they were able to clean hallways and do basic janitorial work, etc.

G.S. stated that the full stop work order was lifted in early May 2017. At the August 2017 hearing, he stated that they began work on a different property and they intended to resume work on the subject rental building within a few weeks of the August hearing.

Counsel for the Landlord drew my attention to a letter dated December 23, 2016 from the Landlord to the Tenants wherein the Landlord informed the Tenants as to the reason for the stop work order and confirming no asbestos was found.

Counsel submitted that the stop work order was not lifted until May 2017 as the asbestos was not the only concern, but they were also waiting for a main contractor to take over the work to make sure it was done properly.

G.S. stated that the exterior work includes removing and replacing the balconies and railings and stripping and painting the building. During the August 2017 hearing, he stated that he hoped the work would be done by October 2017, but as they have been "consistently wrong" in terms of estimating the timeline he was hesitant to give a date.

G.S. confirmed that once the exterior work is done the interior work will recommence.

G.S. stated that the tenants were offered the opportunity to move from their current suite to a renovated suite, but most have not taken that option as they do not wish to pay higher rent. He stated that there is no real plan in terms of when the subject rental unit would be done and that they will simply do the work as quickly as they can.

G.S. stated that due to the stop work order they were not even able to address the drapes until May 2017.

Counsel submitted that in terms of the subject rental unit she noted that the Tenant failed to request the Landlord undertake any repairs to the water in his suite. G.S. stated that according to his records there was no such request by the Tenant.

When the hearing reconvened on November, 17, 2017, C.A. testified on behalf of the Landlord. She was not present when G.S. testified during the August hearing.

As noted, during the hearing on November 17, 2017 I could barely hear the Tenant due to the grinding and hammering which was occurring in the unit above his rental unit. Further, the noise from the construction during the hearing was so intrusive the Landlord's witness could not hear my questions at times.

The Tenant stated that to his knowledge the cause of the noise was the windows being replaced. As an effort to reduce noise, the tenant moved to the hallway in order to reduce the sound and this had no measurable effect. C.A. stated that the construction which occurred in November, involved the replacement of the windows which she stated started in September 2017. She confirmed that the sound we heard during the hearing was the sound of the windows being removed. She further confirmed that several hundred windows are being replaced as it is a 13 storey building. She further confirmed that she is not part of project and therefore had no direct knowledge but stated that they had done a "significant portion" and that her best guess was that this project would "take another month".

C.A. further testified the balconies are not being replaced the balconies are being "repaired". She stated that the former railings were breeze block concrete from the 1960's and 1970's and are being replaced with more modern aluminum frame with a glass insert. She confirmed that not only do the new railings improve the look of the building it brings it up to Code as in a lot of cases the breezeblock was too short. C.A. stated that she "imagined" that 3/5 of the balconies would require repair and all the decks had a new railing installed.

C.A. stated that some of the workers were brought in from another province and were able to reside in the building "just like everyone else" as renters with signed tenancy agreements.

C.A. further stated that construction went on periodically from 7:30 a.m. to 3:30-4:00 p.m. Monday through Friday, also on Saturday, but never on Sundays. C.A. confirmed that she did not live in the building such that she did not have any direct knowledge of this.

C.A. stated that there were managers on site from March 2017 onwards, as well as other managers who were not on site but at the building every day such that she would be informed of any problems with work occurring outside of acceptable hours. She confirmed that the resident manager, from March to the present, J.F. and D.F., would have received such complaints first as tenants typically call the building managers first and then her. She stated that she believed that her number was on a sign outside as well as on a sticker on the door, although she was not sure.

C.A. stated that to her knowledge the main concern of the Tenant was his lack of drapes. She stated that when they took over in October 2016, the window replacement preparation had begun but how much prior she was not sure. She confirmed that some of the drapes were able to be put back up, but

unfortunately not the Tenant's. She stated that the first email she received from him was November 7, 2016, although she did not know when they were taken out. She confirmed that his drapes were replaced in June of 2017. She stated that they would have been replaced in December of 2016 but the stop work order was issued the day before they were to be put up. She stated that although it was possible others could look into his unit, she felt it was unlikely they would see anything.

C.A. also testified as to the cleaning protocols. She stated that from December 14, 2016 to January 17, 2017, during the stop work order there was no cleaning of the building. She confirmed that after the stop work order was lifted there was regular cleaning.

During the November hearing, C.A. stated that to her knowledge the exterior renovations would be done in six weeks to two months. She stated that they are a lot more "organized this time around" as the foreman is new and has really "stepped up and got the workers in line". She stated that before that the project manager was not very effective.

The sound of the sawing and hammering continued throughout the hearing to such an extent it was difficult to hear either the Landlord or the Tenant's submissions during the November 17, 2017 hearing.

In reply to the Landlord's evidence the Tenant testified as follows. The Tenant noted that C.A. stated that the building was shut down from December 14 to January 17. He stated that this was only one stop work order, as during the second stop work order, which was for six months, there was also no cleaning. The Tenant also stated there are 122 units and *all* of the balcony surfaces were being grinded, not 3/5 as C.A. stated. He confirmed that all of the concrete balconies were jackhammered out, including hammering and sawing the rebar off the balconies. The Tenant stated that the work is still being done and that as of the November 2017 hearing, there were just finishing taking the balconies down. The Tenant also confirmed that his balcony is not finished, and as a result he hasn't had one for two years as there is no balcony and there is no railing. He stated that the balcony is approximately 20 feet by 10 feet and was a large reason why they rented the rental unit as the outdoor space is so enjoyable. He confirmed that the square footage of his rental unit is approximately 650 square feet and his balcony is 300 square feet such that it is 1/3 of the usable space.

The Tenant confirmed that he was without blinds or curtains for a total of six months. The Tenant stated that despite what the Landlord submitted, there is a building the exact same height as his to the left of him and as he has no balcony and no curtains anyone can see in. He further confirmed that he can see into his neighbour's windows, but as they have balconies he can't see into the bottom portion.

The Tenant further stated that Landlord's evidence regarding the hours of work is not accurate. He stated it was normal for the workers to be working on the building until 10:00 p.m. The Tenant stated that the floors have been sanded and at times they were sanding the floors late in the evening.

The Tenant further stated that the window replacement has been going on for a significant amount of time. He reported that all windows were prepped in the fall of 2016 and the balcony windows were replaced at the end of the fall of 2016. He stated that just prior to the November 2017 hearing, the windows in the bedroom and living room were replaced. He stated that the kitchen window have yet to be completed. He estimated that he has had workers were in his unit continuously for a total of 2 weeks related to the window repair over a year.

The Tenant further testified that there were six units done on his floor, not four as C.A. testified. The Tenant also stated that as of the November 2017 hearing they were currently renovating thirteen units.

The Tenant stated that to the best of his knowledge the work will not be done until all 122 of the units are renovated. He also estimated that the project will take another six months, contrary to the Landlord's submissions. The Tenant noted that during the August 2017 hearing, G.S. said the balcony work would be done by the end of September, yet in November the work was not done.

The Tenant stated that to his knowledge the person running the project, K., is the same person working with U.R. and has been the same person as throughout the project. He stated that the middle balconies are still not finished. He stated that there seems to be a tremendous amount of work still to be done.

In summation, the Tenant stated that when he moved into the building in May of 2006 the building was normal, quiet and well maintained by a local family. He stated that he has nothing against the work being done but feels the Landlord should not be able to charge full rent and subject the Tenants to daily disruptions and construction noise. He stated that it feels as though they have turned the building into a ghetto scape. He stated that the building is surrounded by materials, trailers and vehicles, and refuse, and he is embarrassed to tell friends where he lives. It has taken them two years to complete the work and it is still not completed.

The Tenant confirmed that on his Application for Dispute Resolution, filed April 10, 2017, he indicated that he seeks a \$9,342.55 which included a 50% reduction in his rent for 12 months of his rent in 2016, and five months for his rent in 2017 (up to and including May 2017). He confirmed he is also asking for an ongoing 50% rent reduction until the project is complete. He confirmed that he has been looking for alternate accommodation but hasn't found anything. He confirmed that his current rent is \$1,121.03 having been raised December 2016. He confirmed that he received a Notice of Rent Increase for December 2017.

Counsel for the Landlord provided the following closing submissions as follows.

She confirmed that his rent was \$1,121.03 for December 2016 to November 2017 and was raised again as of December 2017 to \$1,162.51. She noted this included a \$20.00 per month parking fee.

Counsel submitted that a 50% rent reduction was excessive. She did not suggest an alternate figure, only to argue that it should be less than 50%. She also stated that a previous Arbitrator found that a Landlord is not obligated to provide a Tenant with quiet enjoyment for the purposes of working from home as this is a residential tenancy, not a commercial tenancy.

Counsel also stated that the rent reduction should not be applied going forward because so much of the construction and timelines have changed, that it would be difficult and they agree he should be able to have leave to reapply.

Counsel said that the Tenant did not mitigate his loss by submitting complaints about the elevator or parking and the Landlord cannot be expected to respond to complaints if they are not aware of problems.

Counsel stated that the Tenant still had a view, access to light and airflow, even though he had no access to his balcony.

Counsel further submitted that all the work we have heard about has been done during the allowable hours as permitted by the municipality in which the rental unit is located.

Analysis

After consideration of the testimony and evidence before me and on a balance of probabilities I find as follows.

Section 7(1) of the Act provides that if a Landlord or Tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

A tenant's right to quiet enjoyment is protected under section 28 of the *Residential Tenancy Act*, which reads 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.

Residential Tenancy Policy Guideline 6—Right to Quiet Enjoyment provides in part as follows:

“ ...

Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.

...

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

...

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

...

In determining 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.

...

The Tenant alleges that his right to quiet enjoyment has been significantly interfered with as a result of the renovations and construction at the rental building. I agree. I find, that the Landlord's work, spanning more than two years, represents a major disruption to the Tenant's right to quiet enjoyment and has significantly devalued his tenancy.

The evidence indicates that significant construction work has been ongoing since as early as January 2016 including jackhammering of the concrete balconies, removal of the exterior of the building, removal and replacement of the carpeting and windows, and interior renovations to many of the 122 units.

The Tenant was without blinds to the rental unit for more than six months such that the rental unit lacked privacy. A Tenant's right to reasonable privacy is protected by section 28 and I find the Tenant's right in this regard was infringed. Additionally, I accept the Tenant's evidence that he was at times not able to see his computer screen as a result of the lack of blinds which impacted his ability to use the rental unit for his consulting work. While I agree with counsel that this is a residential tenancy, many tenants work from home either on a regular or infrequent basis, and should be able to use their rental units for this purpose.

Notably, during the November 2017 hearing, it was at times, impossible to hear over the penetrating sound of the construction noise from the unit above the rental unit. The Tenant moved into the hallway, and this had no measurable effect.

I accept the Tenant's evidence that the work commences early in the morning, continues into the early evenings as well as weekends. The Landlords' representatives did not have first-hand knowledge of the work as they are not present at the building. I therefore prefer the Tenant's first hand testimony in this regard. I accept the Tenant's evidence that he feels that the work is "going on all the time" as a result.

The Tenant testified that the workers have moved into the building such that they are working hours outside that which is permitted by municipal bylaws. I accept the Tenant's evidence in this regard.

I accept the Tenant's evidence that he has not been able to use his balcony, which represents nearly one third of the rentable space. He is on the 10th floor of the rental building and testified that the balcony was a significant feature in renting the unit. I accept that not being able to use the outside space has meaningfully affected his tenancy.

I also accept the Tenant's evidence that due to the various stop work orders there were times when the rental building lacked any management service. I also accept the Tenant's evidence that the lack of management has negatively impacted the cleanliness of the rental building as a whole, as the rental unit was not regularly cleaned for a period of time. I also accept the Tenant's evidence that this is particularly problematic for his wife, who suffers from lupus, and therefore finds navigating construction material difficult.

While the stop work orders have resulted in the construction halting for periods of time, this has only served to prolong the disruption caused by the renovation and repairs to the building. I agree with counsel that the Landlord has an obligation to repair and maintain the rental building, and I do not doubt that the exterior work is necessary, however I find that the current project, spanning two years, creates a significant and unreasonable disruption to the occupants right to quiet enjoyment, far exceeding what could be construed as normal repair and maintenance.

I further accept the Tenant's evidence that the stop work orders have created health and safety concerns for the occupants as the information they received was that the work was stopped due to concerns with improper asbestos handling. While the Landlord submitted that asbestos was not ultimately found the information provided to the Tenants initially created obvious and understandable concerns. Further, the Landlord's witnesses testified that the work did not recommence as they had difficulty securing a head contractor. These internal disputes were likely not known to the tenants and would have contributed to their concerns regarding the stop work orders and the possibility of asbestos.

I agree with the Tenant that an on-site manager is required in a building such as the subject rental building with 122 units. I accept the Tenants evidence that in addition to the lack of regular cleaning, this also affected the Tenant's sense of safety and security. It was clear, during the Tenant's testimony regarding his concern over another resident who suffered a heart attack, that the lack of an on-site manager was very concerning and upsetting for him.

In all the circumstances, I find that the Tenant is entitled to compensation for the reduced value of his tenancy.

Section 65(1) of the *Act* grants me authority to reduce past or future rent by an amount that is equivalent to a reduction in the value of the tenancy.

Residential tenancy Policy Guideline 16—Claim in Damages provides that a tenant is entitled to use of the rental unit; should they be deprived of such use, they may be entitled to damages. I find that the lack of balcony has had a significant effect on this tenancy. I further find that the common areas have been impacted by lack of maintenance and cleaning, creating both health and safety issues.

Despite the fact the scope of the construction has varied and was not actively ongoing during the entirety of the applicable time period (due to stop work orders and changes in management of the project), I find the overall impact of the construction on this tenancy to be consistent. I am persuaded by the Tenant that this has been a "nightmare" for him and his wife. I find due to the combined effect of the excessive noise, construction work throughout most of the day, lack of use of the balcony for two years (which I accept was a major factor in renting the unit), lack of blinds and privacy for more than six months, lack of onsite management and resulting impact on the cleanliness and security of the building that this tenancy has been significantly devalued. I accept the Tenant's evidence that this has devalued his tenancy to such an extent that while he very much likes the rental unit, he has been actively looking for alternate accommodation.

I therefore find the Tenant is entitled to a retroactive rent reduction in the amount of **\$13,597.44** representing a 50% reduction for the time period December 2015 to December 2017 calculated as follows:

monthly rent	50% reduction
December 2015 to November 2016 monthly rent of \$1,070.00 x 12 months = \$12,840.00	\$6,420.00
December 2016 to November 2017 monthly rent of \$1,101.03 x 12 months = \$13,212.36	\$6,606.18

December 2017 monthly rent of \$1,142.51	\$571.25
TOTAL retroactive award	\$13,597.44

I have not included any consideration for the Tenant's payment towards parking. While I accept that workers may have parked in his stall on occasion, I find this to be a minor disruption not warranting compensation. Accordingly, the above figures do not include the \$20.00 parking fee.

The above calculation also includes compensation for the ongoing interior renovations and updating, which I am advised have been nearly completed on the floor in which the rental unit is located.

Based on the Landlords' submissions that the major work is nearing completion, I grant the Tenant a 25% reduction in his ongoing rent, commencing January 2018 until the exterior and common area work is completed. I am hopeful, a view likely shared by all concerned, that the major work will be completed shortly.

I accept the Landlord's evidence that the Tenant has not made a formal request for repairs to the rental unit. The Tenant is at liberty to apply for further orders should a formal request not result in attention to the required repairs.

Conclusion

The Tenant is granted a Monetary Order in the amount of **\$13,697.44** including a 50% retroactive reduction in rent pursuant to section 65(1) of the *Act* for the time period December 2015 to December 2017, as well as recovery of the filing fee. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

The Tenant is entitled to a further 25% rent reduction commencing January 2018 until the exterior and common area work is completed.

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: December 15, 2017

Residential Tenancy Branch