



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

### **Dispute Codes:**

MNDCT, FFT

### **INTRODUCTION:**

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on August 30, 2018 the Application for Dispute Resolution, the Notice of Hearing, and evidence submitted to the Residential Tenancy Branch on August 26, 2018 were delivered to the Landlords business office. Legal Counsel acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

In December of 2018 the Tenant submitted an Amendment to the Application for Dispute Resolution, in which the Tenant increased the amount of his claim to \$22,467.00 and additional evidence, much of which was a duplicate of the original evidence submission. The Tenant stated that this evidence was served to the Landlord on December 05, 2018. Legal Counsel for the Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

### **PRELIMINARY MATTER #1:**

Section 74(2) of the *Residential Tenancy Act (Act)* stipulates that the director may hold a hearing in person, in writing, by telephone, video conference or other electronic means, or by any combination of the these methods.

At the outset of these proceedings the parties were advised that I was willing to proceed by way of written submission, given that both parties had submitted lengthy, articulate written submissions. Both parties indicated they were prepared to rely on their written submissions, providing they were given the opportunity to submit additional written submissions.

I asked some clarifying questions prior to concluding this hearing, but otherwise this decision was based on the written submissions provided by the parties.

The parties were advised that they may submit additional written submissions by December 28, 2018, a copy of which must also be served to the other party, via email, by that date.

The parties were advised that the written submissions cannot contain any new evidence, with the exception of:

- the Tenant may provide a written submission from the witness he intended to call to the hearing on December 20, 2018; and
- the Landlord may provide a written submission in regards to the clarifying questions asked at the hearing on December 20, 2018, as the property manager who could have answered those questions was unable to attend the hearing due to an emergency in another building.

On December 28, 2018 the Tenant submitted a large amount of evidence to the Residential Tenancy Branch, some of which appears to be new evidence and some of which appears to be previously submitted evidence. As the Tenant was not authorized to submit new evidence, with the exception of evidence from the witness he intended to call, none of this evidence was considered unless it was previously submitted. The Tenant submitted documentary evidence from the expert he intended to call as a witness, and that evidence has been considered.

On December 28, 2018 the Tenant submitted another lengthy written submission, much of which appears highly repetitive, related to new evidence that is not being considered, or is not particularly relevant. For the most part, this submission does not add anything particularly substantive to the original written submission.

On December 21, 2018 the Landlord submitted a three page written submission. This written submission also appears to be highly repetitive and does not add anything particularly substantive to the original written submission.

PRELIMINARY MATTER #2:

With the consent of both parties the Landlord's name on the Application for Dispute Resolution was amended to reflect the legal name of the Landlord.

ISSUE(S) TO BE DECIDED:

Is the Tenant entitled to compensation as a result of construction work in the residential complex?

BACKGROUND AND EVIDENCE:

The evidence shows that this tenancy began on November 01, 2014. At the hearing the Tenant stated that he vacated the rental unit on November 04, 2017. Legal Counsel for the Landlord stated that she understood the rental unit was vacated on October 31, 2017.

The Tenant submitted a lengthy written submission. This submission was created on behalf of a group of tenants; however the Tenant has added comments (in blue ink) that reflect his personal experience.

Rent Refund 1

The Tenant is seeking a 50% rent reduction for the period between December 01, 2015 and May 31, 2016, which is a rent reduction of \$532.50 for 6 months. The collective submission for this claim is that:

- conditions in the building deteriorated significantly and immediately under the new management;
- the building was practically unmanaged and unmaintained during the this period; and
- the presence of unprofessional and disrespectful work crews.

The Tenant added the following comments to this claim:

When the ownership of 435 Michigan changed hands and renovations began, the building quickly became an embarrassment for me. There was the loss of my balcony, the loss of the pool, the hallways became raw concrete because the ceilings and wall and floor treatments were all torn out and remained that way for well over a year.

Garbage and construction materials were everywhere in and around the building, and the windows were blocked of any views. Even after the tradespeople left the site every day, the noises still continued with ropes and harnesses slapping against the exterior scaffolding. The tarps that covered the scaffolding on the building were constantly shredded by even modest winds and flapped in the wind like giant sails - for month after month.

### Rent Refund 2

The Tenant is seeking a 100% rent reduction for the period between June 01, 2016 and October 31, 2016, which is a rent reduction of \$1,065.00 for 5 months. The Tenant is seeking a 100% rent reduction for the period between November 01, 2016 and January 31, 2017, which is a rent reduction of \$1,095.16 for 3 months. The collective submission for this claim is that:

- the period was marked by heavy renovations, which appeared to be made with complete disregard for tenant comfort, safety, and well-being;
- the Work safe reports support tenant observations that hazardous material handling was chronically mismanaged;
- contractor statements support tenant observations of a toxic work environment, incompetence, negligence, and illegal activity;
- quality of life in the building was severely impacted and, as evidence by the evacuation, was not safe to inhabit;
- in December a three-week work stoppage began, which resulted in reduced services and maintenance and a full evacuation.
- there was a complete disregard for tenant safety; that the building was evacuated by VIHA; and there was a three month work stoppage in December of 2016, which resulted in reduced services and maintenance.

The Tenant added the following comments to this claim:

Not only was I ashamed of my surroundings, I began to have serious concerns about the health risks for my son, my new partner, and any guests I might have over to my apartment. We where evacuated from our building because the local health authority - Island Health / VIHA - deemed the building unsafe to occupy. As a result of the extreme amount of construction debris that entered my suite I was one of the earliest evacuees from (address redacted).

Over the course of nearly 2 months I was moved on 6 different occasions:

- 1) from my apartment 1206 @ 435 Michigan to room 801 @ 500 Oswego St. on Jan 14, 2017
- 2) from room (address redacted)
- 3) from room (address redacted)
- 4) from room (address redacted).
- 5) from room (address redacted)
- 6) from room (address redacted) on March 11 2017

At the very time I was attempting to establish a stable living environment in which my son could see me, my living situation became a horror show. When we were allowed to re-enter our building after it's complete evacuation as required by Island Health, we were informed by Island Health that we should consult our doctor to test for the effects of asbestos exposure. I scheduled an appointment with my physician, who then scheduled an appointment for a visit to Victoria General Hospital on Feb 28, 2017 at 11:30 a.m. for a CT scan of my lungs for analysis. This process required a dye to be injected into my veins prior to the CT scan, a particularly unpleasant feeling and experience. After the CT procedure, I was referred onto an appointment at Royal Jubilee Hospital - Respiratory unit on the 10th of April at 7 p.m. Every step of this process was incredibly frightening, and the wait over those 3 months was very unsettling.

### Rent Refund 3

The Tenant is seeking a 50% rent reduction for the period between February 01, 2017 and November 30, 2017, which is a rent reduction of \$547.58 for 10 months.

The collective submission for this claim is that there was a six month delay in renewal of work, with no improvement of the conditions of the building and no transparency about upcoming work schedules. Tarps and shrouds were left up and were deteriorating. The tarps blocked views and created noise when they flapped in the wind. The collective submission is also that when major renovations commenced in mid-September of 2017 there was a loss of quiet enjoyment as a result of jack hammering, drilling noise, and other persisting issues.

The Tenant added the following comments to this claim:

It became clear to me that after our re-occupancy of the building that the building managers, (name redacted), and the building owners, (name redacted) were offering no more insight into how their renovations plans would continue than they had in the past. They did not answer any of my/our questions with regards to dealing with hazardous materials, no explanations about their construction schedule or hard completion dates, and no explanations as to how our suites had been dealt with or cleaned. They property was still deeply immersed in unfinished work, the grounds were littered with unused building materials, and the interior common areas were still not complete. The hallways

outside my suite were completely dismantled for over two years with raw concrete floors and unfinished ceilings. The reckless disregard on the part of (name redacted) and (name redacted) for the safety, comfort, and respect of tenants was the final straw for me and the very reason I decided to submit my end of tenancy and move to a building where the owners actually gave a damn about the tenants rather than their ROI.

The written submission raises several issues in support of these rent refunds.

Issue #1:

This collective submission relating to the period between December 01, 2015 and the present is that:

- prior to the current landlord hiring a new management company the property managers were friendly and hard-working;
- when the current landlord purchased the building competent resident managers were not retained and for several months the building had no manager;
- it was difficult or impossible for tenants to get a reply or attention to issues in the building, which were quickly accruing in the absence of regular maintenance and cleaning;
- a seemingly inexperienced manager was eventually hired, who does not reside in the building and can rarely be found in the office;
- the new manager does not notice or is unable to attend to things that should be dealt with, like dead bulbs in lobby lamps, tape left on entrance window from courier notices, fresh stains in lobby carpet that will become permanent if not cleaned quickly, missing supplies in laundry room bathroom, etc.;
- construction messes may not be cleaned up for days or weeks and requests for service must often be made repeatedly;
- the new manager does not reside in the building and doesn't know that leaving the pool lights off at night will result in people from the neighborhood sneaking in "quietly" to use it in the middle of the night or that not locking up the recycle bins in the available storage beside the bike shed will result in other midnight noise as people search the bins;
- the building has historically been managed by a couple, one often available in the office, the other doing maintenance;
- keeping the building clean and well maintained really is a two person job;
- the manager in the office would often accept packages from couriers, saving tenants a trip or effort to arrange additional delivery attempts;
- friendly managers who live in the building become part of the community - create the sense of community with the personal touch to notices, their consistent

availability, social gatherings in the lobby, maintenance of a free-stuff table in the laundry room;

- beyond the lack of friendly, competent resident managers, the tenants have felt very poorly serviced by the management companies in general, as one group was almost entirely unresponsive to requests and the second provided a bare minimum of service.

In his personal comments regarding this issue the Tenant declared that:

- the loss of resident managers caused a significant change to the culture within the building;
- almost every day one of the two resident managers was in the office and would question strangers in the building;
- when someone was moving in/out of the building the resident managers would maintain building security and assist with the move, by locking elevators and keeping the driveway clear;
- the resident managers would respond to requests for assistance, even outside of office hours; and
- the resident managers decorated for holidays.

The author of the collective submission indicates they have been awoken on several occasions because people have been using the pool after hours because the new management company did not turn the pool lights off after hours. The Tenant does not indicate that he has been disturbed by these activities.

The author of the collective submission indicates they have observed people sorting through building supplies and recycle bins because the new management company did not lock up the recycle bins at night. The Tenant does not indicate that he has been disturbed by these activities.

The collective submission includes photographs in support of this issue that were taken after the Tenant vacated the rental unit on October 31, 2017, which will, therefore, not be considered during this adjudication.

In his final written submission the Tenant declared that;

- the building was previously maintained by two resident managers and is too much work for one manager;
- the situation was even worse when the building was being maintained by the manager of the neighbouring building; and

- simply providing a cleaning schedule does not establish that cleaning was completed.

Issue #2:

The collective submission relating to the period between December 01, 2015 and the present is that:

- for extended periods during and after the WorkSafeBC stoppages, and at various other times, resident managers have failed to keep hallways and common areas reasonably clean;
- workers tracked renovation dust through halls and elevators which may not be cleaned for days or weeks;
- dust built up quickly in the hallways and may not be vacuumed for days or weeks (months in 2016 and early 2017);
- lobby windows are almost always a mess with leftover tape from notices and delivery notices not cleaned for months;
- toilet paper and paper towel often missing from laundry room washroom;
- the move-in protective blanket in one elevator was left hanging for months, with what looked like a large amount of phlegm on it; and
- garbage at the bin has overflowed several times and not been cleaned up for days.

In his personal comments regarding this issue the Tenant declared that:

- because of the varied forms of construction going on in and outside the building there where constant disturbances on every floor;
- if a tenant moved out of the building, renovation would start and stop for any number of reasons, sometimes it was as a result of the multiple WorkSafeBC BC Stop Work Orders and sometimes because materials necessary to complete the suite we're not in place such as windows which were stored in our pool area for months on end;
- sometimes it was because kitchen cabinets were not delivered, or electrical or plumbing work where not complete;
- sometimes it is because the empty units were used for the contract immigrant labourers who were living in the empty suites.
- in all of these instances dirt and debris would be generated from a single units renovation and the entire process would be repeated whenever another suite on my floor became empty so renovation could begin or whenever a suite became empty and available for renovations on the floors above or below me and debris



from the gutting of an entire suite would be carted down the halls, into the elevators and out the front door of the building via our lobby.

The collective submission includes photographs in support of this issue that were taken after the Tenant vacated the rental unit on October 31, 2017, which will, therefore, not be considered during this adjudication.

It also includes photographs of 4 photographs of the condition of the elevator, taken on different dates between August 10, 2016 and November 25, 2017, which indicate the elevator needs to be cleaned. It also includes photographs of a dumpster full of construction debris, taken in October of 2017, which allegedly was outside of the residential complex for many months.

Issue #3:

The collective submission relating to the period between April 01, 2015 and April 01, 2018 is that windows were not cleaned and that visibility was obstructed by construction dirt, tape, and residue.

In his personal comments regarding this issue the Tenant declared that:

- there were numerous types of exterior repair and finishing been performed on the exterior of the building;
- on occasion the windows were taped and the red wide tape was never removed;
- on another occasion the area directly outside his unit was completely contained so that hazardous materials could be sand blasted off the exterior and that material became a film on our windows;
- on other occasion white plastic film was applied to the entire window area and left on for months before it was removed and the resin that attached it remained;
- during the construction period windows were not cleaned;
- the rental unit was south facing which in and of itself is a huge generator of salt buildup on the exterior windows.

The collective submission includes photographs in support of this issue that were taken after the Tenant vacated the rental unit on October 31, 2017, which will, therefore, not be considered during this adjudication. It also includes two photographs of windows that were taken in April of 2017, which have tape on them and appear to be in need of cleaning.

Issue #4:

The collective submission relating to the period between January 01, 2016 and the present is that:

- hazardous abatement work was undertaken by unqualified tradespeople;
- hazardous materials were identified in the residential complex;
- WorkSafeBC issues stop work orders on January 13, 2017, May 06, 2016, July 18, 2016, and December 16, 2016; and
- after the stop work order in December of 2016 the tenants were evacuated for air testing and remediation.

In his personal comments regarding this issue the Tenant declared that:

- this has been one of the most significant impacts for him;
- for weeks on end he would look out at hazardous asbestos material bags full of asbestos in front of his living room and dining room that were unsecured and left open sitting on the scaffolding;
- the vacuum and hoses that were used on the exterior purportedly to contain asbestos fibres were left unattended for months on end outside my suite because WorkSafeBC BC stopped any trades from working inside or outside the building;
- the original 1960's single pane aluminum windows were no longer tight sealing and dust and debris would enter my entire suite requiring constant vigilance to contain and or remove the dust.

Images of construction debris were submitted in support of this issue.

The Tenant submitted documentary evidence from an individual with the initials RM, who appears to be an expert, in which he declares, in part, that:

- on March 01, 2016 he inspected the building next to this residential complex, (which is owned by and being renovated by the same Landlord), at which time he confirmed that asbestos-containing materials were on-site;
- he visited the site again on December 16, 2016 after his colleague had issued a stop work order in regards to installation of bulkheads;
- when it was determined that the workers who performed the bulkhead work at this complex also performed work on the Tenant's residential complex, the Landlord stopped work at that complex;
- various employees entered the building in spite of the stop work order;

- the person qualified to coordinate activities was wilfully contravening the requirements of the Workers Compensation Act and Occupational Health and Safety Regulation;
- tenants expressed concern regarding occupying the complex during the stop work order;
- these tenants were advised of the work procedures and controls required to protect workers and indirectly other persons when work was being conducted inside the building;
- due to the absence of exposure monitoring, by the owner or prime contractor, to substantiate spaces adjacent to active work areas were not being impacted by hazardous materials such as asbestos, lead and respirable crystalline silica we could neither confirm nor deny that exposures may have occurred;
- an Asbestos Inventory Survey Report, dated February 16, 2016 , identified asbestos-containing materials in various locations, which are not considered hazardous in their current state;
- on January 4, 2017 WorkSafeBC issues an order requiring the Landlord to have required abatement conducted by qualified contractors;
- elevated levels of asbestos were located in various samples taken in January of 2017;
- the company taking those samples recommended that suites at risk of exposure should be evacuated;
- the company taking those samples recommended various ways to address the asbestos in the complex;
- asbestos entering rental units create a potential risk to occupants;
- he anticipates that some tenants may have been exposed to concentrations of asbestos far in excess of the recommended exposures;
- based upon normal risk ratios for developing occupational disease and the number of individuals involved there is potential for some individuals to develop asbestos or silica related disease particularly if they are smokers;
- it is possible that concentrations of respirable crystalline silica particles inside suites could be between 250 and 350 times the long term exposure limit recommended for environmental conditions;
- he does not believe the containment efforts used by the Landlord were effective;
- he believes the VIHA letter suggesting the asbestos levels had not been elevated is problematic, for a variety of reasons;
- he believes there was inadequate coordination and supervision of this renovation; and
- there was an absence of ongoing monitoring to evaluate high risk activities to ensure the entire building and tenant possessions did not get contaminated.

Issue #5:

The collective submission relating to the period between December 01, 2015 and the present is that building security was compromised because exterior doors were propped open for extended period and sometimes overnight.

In his personal comments regarding this issue the Tenant declared that:

- on February 18, 2015 an occupant of the residential complex was murdered;
- every tenant in the building was interviewed by police;
- he had encountered the murder victim in the building on several occasions;
- the murder remains unsolved and the police have stated there was no forced entry into the victim's suite;
- the murder affected him considerably;
- as a result of the murder he was always extra diligent with building security;
- during the prolonged renovation process the front door was often left open with no trades in sight and no building manager watching the front door;
- on an almost daily basis he would secure the front door only to find it propped open shortly thereafter and get looks of scorn from the tradesperson who he inconvenienced by closing the door on them; and
- on numerous occasions, the exterior lighting for the building would be off and only the lobby lights remained on, which he believes is a safety and security issue.

Numerous images were submitted in support of these allegations. Declarations accompanying these images indicate that:

- a laptop was stolen from a rental unit in December of 2015;
- in 2016 a fire exit was sealed and was unsealed at the request of the fire department;
- the following day the exit was blocked from the exterior;
- on a third occasion the exit was blocked by high voltage power lines; and
- the lock on the front door often would not work, which would require tenants to use the wheelchair access.

Issue #6:

The collective submission relating to the period between May 01, 2016 and August 01, 2018 is that there was insufficient security as a result of scaffolding that provided access to rental units.

In his personal comments regarding this issue the Tenant declared that:

- the specifics of the unsecured scaffolding are identical to his concerns pertaining to the front door being left open;
- in July of 2016 he spoke with two police officers who had just arrested two individuals who were attempting to break into a suite and had gained access through the scaffolding which was almost always easily accessible
- at the time the arresting officer noted that he had tried to contact building management but did not receive any replies;
- the police officer suggested that because the scaffolding was not secure that management should maintain 24 hr. security on the building; and
- he reiterated the information regarding the murder that occurred prior to the start of construction.

The collective submission includes photographs in support of this issue that were taken after the Tenant vacated the rental unit on October 31, 2017, which will, therefore, not be considered during this adjudication. It also includes several photographs of the scaffolding that were taken while the Tenant occupied the rental unit.

#### Issue #7:

The collective submission relating to the period between January 01, 2016 and the present is that the grounds of the residential complex were unsightly and some areas were not accessible.

In his personal comments regarding this issue the Tenant declared that there was not a single side of the building that was unaffected by construction and that areas outside of the building envelope contained construction material and debris for the entirety of the renovation process.

The collective submission includes photographs in support of this issue that were taken after the Tenant vacated the rental unit on October 31, 2017, which will, therefore, not be considered during this adjudication. It also includes several photographs of the grounds that were taken while the Tenant occupied the rental unit.

Issue #8:

The collective submission relating to the period between December 01, 2015 and the present is that the entry and lobby of the residential complex were unsightly and poorly maintained.

In his personal comments regarding this issue the Tenant declared that:

- it was never a pleasant experience to come home to my apartment building and find the front door open, no manager in the office watch over people entering the building and dust and debris from suite renovations throughout the lobby;
- the lobby was the primary entrance and exit point for all the trades in all the suites, whether electrical, plumbing, drywall, carpets, etc;
- all this was occurring at the same time people were trying to move their own items into or out of the building which was pure chaos on a regular basis; and
- when the evacuation was required by Island health the lobby became a laboratory for people in Hazmat suits.

The collective submission includes photographs in support of this issue that were taken after the Tenant vacated the rental unit on October 31, 2017, which will, therefore, not be considered during this adjudication. Images of the lobby that were taken while the Tenant occupied the rental unit were also submitted.

Issue #9:

The collective submission relating to the period between August 01, 2016 and the present is that the hallways were in a state of disrepair, as carpets were removed, repairs to walls were started but not completed; and new light fixtures were not properly installed. The collective submission is that this disrepair contributed to noise and dust levels and embarrassment/ of living in a construction zone.

In his personal comments regarding this issue the Tenant declared that:

- for over a year the entire hallway on my floor was nothing but raw concrete on the floors and a fully exposed ceiling with raw cables and wires, which was the condition of the hallways when he vacated the rental unit; and
- there was a significant period where my once attractive rich dark wood front door was left with streaks of white primer on it, the original brass suite numbers were removed, and green painters tape with the unit number in felt pen replaced it.

The collective submission includes photographs in support of this issue that were taken after the Tenant vacated the rental unit on October 31, 2017, which will, therefore, not be considered during this adjudication. Images of the hallway that were taken while the Tenant occupied the rental unit were also submitted.

Issue 10:

No submission.

Issue 11:

The collective submission relating to the period between January 01, 2016 and the present is that:

- insufficient effort was made to limit entry of dust from exterior abatement into suites through poorly sealed old balcony doors & windows;
- suites were filled with large amounts of fine silica/lead/asbestos dust;
- this type of dust is extremely difficult to clean, gets into everything, and is very concerning for health implications;
- in spite of tenants having major incidents of dust exposure and bringing them to management's attention, work continued without further precaution, ultimately leading to the evacuation of the building for air testing and remediation when tenants were able to get VIHA involved;
- silica is one of the most common hazards on a work-site in the construction industry;
- silica can be found in asphalt, brick, cement, concrete, drywall, grout, mortar, stone, sand, and tile;
- cutting, breaking, crushing, drilling, grinding, or blasting concrete or stone releases the dust;
- it only takes a very small amount of the very fine respirable silica dust to create a health hazard;
- inhaling crystalline silica can lead to serious, sometimes fatal illnesses including silicosis, lung cancer, tuberculosis (in those with silicosis), and chronic obstructive pulmonary disease (COPD);
- silicosis is a disabling, irreversible, and sometimes fatal lung disease;
- silica exposure has been linked to other illnesses including renal disease and other cancers;
- silicosis and other silica-related illnesses may not show up for many years after exposure;
- preventing the dust from becoming airborne is a good way to reduce exposures;
- there are various ways to reduce exposure to the dust in the workplace, including showering after work, parking away from the worksite, and using breathing protection;

- asbestos is made up of microscopic fibers that can easily become airborne and inhaled;
- because of their shape, the asbestos particles cling to tissues of the lungs and other areas of the respiratory system;
- over time asbestos fibers can cause inflammation and a number of serious health problems, including cancer and Asbestosis, a degenerative respiratory condition;
- lead dust can lead to reproductive problems, high blood pressure and hypertension, nerve disorders, memory and concentration problems, and muscle and joint pain;
- lead dust is the leading cause of lead poisoning in the three most at-risk groups - children, pregnant women and pets;
- lead poisoning is most often caused by lead dust, which results when lead-based paint is sanded or chipped, usually during a renovation;
- silica, asbestos and I were released during the renovations and flowed into the suite for at least two years;
- tenants requested disclosure of testing for lead dust and silica from VIHA and the Landlord, which was not provided;
- testing was apparently limited to asbestos;
- few of the tenants were aware they were being exposed and needed to take precautions when cleaning the dust;
- few of the tenants were aware they were being exposed so they continued to live in the complex during this period of exposure;
- the health implications of the exposure may take decades to unfold;
- the exposure was stressful and emotional; and
- cleaning the dust was inconvenient.

In his personal comments regarding this issue the Tenant declared that:

- when we were allowed to re-enter our building after it's complete evacuation as required by Island Health, we were informed by Island Health that we should consult our doctors to test for the effects of asbestos exposure;
- he scheduled an appointment with his physician, who scheduled a CT scan of his my lungs;
- a CT scan involves injecting a dye into his veins which was a particularly unpleasant feeling and experience
- he was subsequently referred to a respiratory unit, although he does not indicate that he received a diagnosis;
- the process was frightening; and
- the wait over those 3 months was very unsettling.



The collective submission includes photographs in support of this issue, one of which shows a significant amount of dust on the floor.

Issue 12:

No submission.

Issue 13:

The collective submission relating to the period between December 01, 2015 and the present is that the tenants were exposed to an ongoing increase of dust and debris as a result of the lack of carpets in the hallways; heavy worker traffic; irregular cleaning; and poorly fitting doors.

In his personal comments regarding this issue the Tenant declared that:

- when the concrete finish on the exterior of the building was been replaced, an opaque skin was put on the outside of his windows to prevent dust and debris from entering the suites;
- wind and weather constantly destroyed the taping and seals to the point where he found it necessary to put up sheets of plastic inside his windows to prevent dust and debris from entering;
- due to the nature of the ventilation in our building, each suite had a single square vent in the kitchen and a single square vent in the bathroom;
- during high winds which occurred often throughout the fall, winter and into the spring, there was a constant flow of dust from all the exterior construction work;
- when the hallway carpets were removed he never saw the hallway cleaned on his floor; and
- there was a constant flow of dust under the gap between the sill and the bottom of my front door, enough that I had to place a towel inside the door to keep dust from entering from the doorway.

The collective submission includes photographs in support of this issue that were taken after the Tenant vacated the rental unit on October 31, 2017, which will, therefore, not be considered during this adjudication. Images in support of this issue, which were taken while the Tenant occupied the rental unit, were also submitted.

Issue 14:

The collective submission relating to the period between December 01, 2015 and April

01, 2018 is that the windows leaked.

In his personal comments regarding this issue the Tenant declared that the windows in his dining room and living room leaked.

The Tenant submitted images in support of this claim.

Issue 15:

The collective submission relating to the period between December 01, 2015 and the present is that some items were not ready at move in and were not provided within a reasonable time.

In his personal comments regarding this issue the Tenant declared that:

- When he returned to his unit after being evacuated he had to completely empty all his closets and cupboards and clean their contents of dust;
- his sink was backed up and he had to clear it of a substance that appeared to be fecal matter.

The Tenant submitted images in support of this claim.

Issue 16:

The collective submission relating to the period between January 01, 2016 and the present is that the new management allowed pets.

In his personal comments regarding this issue the Tenant declared that:

- construction noises created a great deal of stress for his pet;
- because of the unpredictable timing and nature of the varying noises he did not leave his dog in the suite;
- other dogs would howl or bark to the point where management required those pets to be muzzled so they could not make any noise.

The collective submission includes recordings of dogs barking. One of these recordings was made while the Tenant occupied the rental unit.

Issue 17:

The collective submission relating to the period between December 01, 2015 to present

is that:

- a partially demolished wall fell approximately 60 feet on July 13, 2016 because it was improperly braced;
- other unsafe work practices were observed, which have been addressed in other areas of concern;
- some tenants believe the construction workers were unskilled and unsafe; and
- the construction workers were loud.

In his personal comments regarding this issue the Tenant declared that:

- it became clear very early on after the first WorkSafeBC BC Stop Work Order that the contractors were either untrained or unqualified to protect the tenants' living environment;
- due to the mishandling of asbestos he informed the Landlord that he would not permit access to his suite until he could be assured that the techniques used when removing drywall met with WorkSafeBC BC standards;
- he posted a notice barring contractors and management from entering his suite; and
- he never received such assurances.

The collective submission includes photographs in support of this issue that were taken after the Tenant vacated the rental unit on October 31, 2017, which will, therefore, not be considered during this adjudication. Numerous other Images, which were taken while the Tenant occupied the rental unit, although the vast majority of them are not directly related to unsafe work practices.

#### Issue 18:

The collective submission relating to the period between January 01, 2015 and the present is that the formerly attractive front lawn was used for a construction staging area.

In his personal comments regarding this issue the Tenant declared that:

- before construction began he could look out his bedroom or living room window and see a well-groomed plush green lawn;
- during pool season he would often see people using the pool area;
- once construction began, almost the entire front lawn was fenced in for the storage of building materials and heavy equipment;
- the pool became a storage area for windows and doors;
- and the lawn became a muddy field because of all the equipment and personnel using it.

The collective submission includes photographs in support of this issue that were taken after the Tenant vacated the rental unit on October 31, 2017, which will, therefore, not be considered during this adjudication. Images in support of this issue, which were taken while the Tenant occupied the rental unit, were also submitted.

Issue 19:

The collective submission relating to the period between January 01, 2016 and present is that noise from interior renovations occurred six to seven days per week, which included demolition with sledgehammers, grinding, sanding, sawing, drilling, hammering, yelling, swearing, and music. The submission is that the noise reverberates through the common building shell and it is often difficult to tell the difference between work that's happening in the suite above you vs the suite five levels above. The submission is that the noise is intense at times and sometimes non-stop for hours.

In his personal comments regarding this issue the Tenant declared that:

- the effects of a concussion presented a significant obstacle for him;
- his need for a quiet living or working environment was not present;
- his unit was a health hazard for him;
- if he chose to come home during his 2 hr. splits from work, it was very difficult to relax or unwind or eat his lunch in silence; and
- at the end of the day, after the trades had left, the building was still very noisy because of unsecured materials on the scaffolding slapping against the girders, or torn and flapping tarps which covered the entire exterior of the building.

Audio recordings of the construction noise were submitted, most of which appear to have been recorded while the Tenant was occupying the rental unit.

In his final written submission that Tenant contends that the interior renovations included removing walls and cabinets within suites.

Issue 20:

The collective submission relating to the period between January 01, 2016 and December 16, 2016 is that:

- construction work has continued after regular working hours, including late at night and on the weekend, including electric saws, hammering, sanding, and

drilling;

- the workers may have considered this to be “quiet” work as it includes lighter renovation tasks.

In his personal comments regarding this issue the Tenant declared that it was clear during the period of renovations, that suites that were unoccupied became occupied by trades people.

Audio recordings of the construction noise were submitted, one of which appears to have been recorded while the Tenant was occupying the rental unit. There is no indication that the Tenant was particularly disturbed by construction noise after hours.

#### Issue 21:

The collective submission relating to the period between June 01, 2016 and April 30, 2018 is that:

- there was intense jack hammering and grinding noise from exterior abatement;
- the noise reverberated throughout the building;
- the noise is intense and insufferable;
- when it was not happening in one building it was happening in the next building;
- at times it is impossible to speak to someone on the phone or in the room next to you;
- residents frequently left the building or wore ear protection to escape the noise;
- workers would appear on the scaffolding outside the units without prior notice;
- workers communicated with each other loudly, used profanity, and/or played loud music;
- this occurred throughout 2016, usually commencing at 8:00 a.m.;
- noise from workers congregating in the yard usually began at 7:00 a.m.;
- sometimes the intense noise would last for only a short period before there was an extended break in the noise;;
- when work commenced again in 2017 the workers were more respectful, but the noise was just as intense; and
- the intensely loud work continued into 2018.

In his personal comments regarding this issue the Tenant reiterated the comments he made in regards to issue #19.

Audio recordings of the construction noise were submitted, many of which appears to have been recorded while the Tenant was occupying the rental unit.

The Tenant submitted documentary evidence from an individual with the initials RM, who appears to be an expert, in which he declares that the vibrational frequency of the jack hammers likely used on the project will be on the lower frequency end of the noise spectrum and will transmit noise over long distances unlike high frequency noises and that . Low frequency noises such as those transmitted through a structure are generally not tolerated by most people.

Issue 22:

No submission.

Issue 23:

The collective submission relating to the period between June 01, 2016 and April 01, 2018 is that:

- there has been a loss of light and view due to extended covering of windows with scaffolding and/or building curtain or tyvek, view has been lost and light has been dramatically reduced in suites;
- the initial construction curtain was opaque heavy white plastic, which was replaced with semi-translucent blue fabric;
- inside the blue fabric there have often been additional layers of tarps or tyvek, hanging refuse, bags of asbestos materials or other garbage, tools, debris, and of course, filthy windows;
- even in 2018 it is necessary to keep curtains closed most times to avoid being compromised by workers.

In his personal comments regarding this issue the Tenant declared that:

- he rented his unit specifically for the views of the sea, the mountains and the shipping traffic;
- when construction began, the scaffolding quickly went up obstructing his views,
- this was followed by tarps over the scaffolding which remained in place up until the time he left the building;
- during this period the windows in his dining room, and living room were completely covered in a white plastic eliminating his view.

Images of partially and completed blocked views were submitted.

Issue 24:

The collective submission relating to the period between June 01, 2016 and April 01, 2018 is that:

- scaffolding and a lack of useful information about construction has resulted in a lack of privacy, as tenants cannot predict when workers will appear outside their windows or on their balconies; and
- tenants have to keep their curtains closed to protect their privacy.

In his personal comments regarding this issue the Tenant declared that:

- the scaffolding around our building was the access area for all the work been performed on the exterior of the building;
- he was never informed when tradespeople were to be working outside his unit; and
- because he was concerned about security he drew his curtains to prevent tradespeople and prowlers from seeing into the unit.

The collective submission includes images in support of this issue that were taken after the Tenant vacated the rental unit on October 31, 2017, which will, therefore, not be considered during this adjudication. Images in support of this issue, which were taken while the Tenant occupied the rental unit, were also submitted.

Issue 25:

No submission.

Issue 26:

No submission.

Issue 27:

No submission.

Issue 28:

The collective submission relating to the period between January 01, 2016 and the present is that:

- water was frequently shut off with short or no notice; and
- more recently notices of water being shut off have been provided, although they are often outdated and difficult to discern from other notices.

In his personal comments regarding this issue the Tenant declared that:

- 5 examples of posted water shutoffs have been provided;
- there were many other interruptions;
- he cannot catalogue every single occasion as many happened without notices been posted ahead of time;
- the shutoffs impacted his ability to shower, go to the toilet, wash dishes, and cook.

5 notices were submitted.

Issue 29:

The collective submission relating to the period between December 16, 2016 and March 16, 2016 is that:

- while work in the building was shut down due to asbestos, Canada Post did not deliver mail to the building; and
- tenants had to retrieve their mail off-site during this period.

In his personal comments regarding this issue the Tenant declared that:

- this was an exceptionally disruptive from 7:30 p.m. to 5:30 p.m., although I presume he means 7:30 a.m. to 5:30 p.m.;
- the post office closed at 5:30 p.m.;
- the post office was not open on Saturday or Sunday when he was off work; and
- Canada Post would not allow anyone else to pick up his mail.

Documents were submitted in support of this issue.

Issue 30:

The collective submission relating to the period between June 01, 2016 and November 01, 2017 is that:

- scaffolding, an outer seal, and blocked windows/doors prevented tenants from using their balconies; and



- some tenants discarded personal items normally used on balconies.

In his personal comments regarding this issue the Tenant declared that:

- this was one of the most significant losses after the loss of the view;
- it was exceptionally important and enriching for him to sit or stand out on the balcony and watch the ocean traffic;
- he had two deck chairs, a side table, and various plants on his deck; and
- the balcony door provided fresh air and cool breezes.

Images were submitted that show how views were blocked and the balcony was covered with construction materials. Photograph of the Tenant's view prior to construction were also submitted.

#### Issue 31:

The collective submission relating to the period between June 01, 2016 to April 01, 2018 is that with either scaffolding, fencing, construction refuse bin, or contractor vehicles, the loading zone has been unavailable almost 100% of the time.

In his personal comments regarding this issue the Tenant declared that:

- it was a common occurrence to have a trades vehicle parked directly in front of the building in the location tenants used to unload their groceries, pick up cabs, or unload/load their household possessions; and
- if there wasn't a trades vehicle in front of the building, it was a dumpster.

Two Images taken while the Tenant occupied the rental unit were submitted, which appear to show the loading zone is in use.

#### Issue 32:

The collective submission relating to the period between April 01, 2016 and April 01, 2018 is that access to the bike shed was restricted for days/weeks at a time.

In his personal comments regarding this issue the Tenant declared that:

- when access to the bike shed at his residential complex was about to be restricted as a result of the construction, tenants were asked to move bicycles to a shed approximately 300' away;
- the alternate shed was in very poor shape and there had clearly been numerous

attempts to break into it

- during this time he was riding his bicycle back and forth to work to a neighbouring community.

Images of the alternate storage area were submitted.

Issue 33:

The collective submission relating to the period between July 01, 2016 and May 01, 2018 is that:

- the pool was neglected and grew unsightly over the winter;
- former management kept it visually attractive in the winter;
- it became usable weeks after the usual season opening date in 2017;
- beyond that the area was used for storing building supplies; and
- the pool is surrounded by a construction site on both sides.

In his personal comments regarding this issue the Tenant declared that:

- he works as a bus driver;
- the ability to come home and float in a cool pool and relax after spending an entire shift in the scorching sun was powerful; and
- after construction began the pool was not only a visual impairment but it also prevented him from unwinding amongst the rest of the construction chaos.

An image of the pool/construction area was submitted.

At the hearing the Tenant stated that the pool was typically open between late April and the end of September. He does not know when the pool was closed as a result of construction. Legal Counsel for the Landlord state that she does not know that the pool was ever closed as a result of construction.

Issue 34:

No submission

Issue 35:

The collective submission relating to the period between December 01, 2015 and February 15, 2018 is that:

- the large number of workers on site made it difficult to find street parking and

guest parking sites; and

- after a community meeting in early 2018 guest and street parking have become more available.

In his personal comments regarding this issue the Tenant declared that:

- he has two vehicles, a van which he parks on the street and a motorcycle which he parks in an on-site (paid) space;
- the large number of tradespeople made it exceptionally difficult to find street parking, which was only available to residents of the block;
- the City of Victoria was not diligent about ticketing the vehicles of those individuals that did not reside on the block;
- tradespeople working on a different site also impacted parking on the block;
- he regularly had to park well down the block only to have to move his vehicle closer to the building after the tradespeople left for the day;
- the City of Victoria also restricted parking for various reasons.

Images were submitted to support the submission that the City of Victoria posted parking restrictions.

#### Issue 36:

The collective submission relating to the period between January 27, 2017 and March 09, 2017 is that:

- the building was evacuated for air testing and remediation;
- on January 27, 2017 tenants were relocated on short notice to hotels, which lacked proper kitchens;
- tenants were told to expect to be in the hotel for an unrealistically short period of time, which was extended weekly for a total of more than six weeks;
- the management/owners had been ignoring tenant complaints/concerns regarding asbestos throughout the year;
- the tenants believe the evacuation was required by VIHA once tenant concerns were reported to them;
- the tenants do not believe the Landlord voluntarily evacuated the building;
- in a letter from VIHA, dated January 30, 2017, VIHA said the findings suggest that asbestos fibers may have been released into the building and that further sampling is required;
- a work stoppage occurred on December 16, 2016 as a result of concerns expressed to VIHA;

- it took 42 days before tenants were evacuated from a site that was deemed unsafe for employees;
- the dust had time to settle since work was stopped on December 16, 2016;
- the Landlord received air testing results with sufficient elevated asbestos levels to require an evacuation on January 24<sup>th</sup>;
- on January 25<sup>th</sup>, at midnight, a company was brought into the building to collect air samples;
- tenants awoke to loud air compressors running in the hallways, vibrating against the concrete;
- a conversation with a senior employee conducting the midnight testing, indicated that there was no practical need to test at midnight;
- that the midnight testing had been specifically requested by the client;
- the tenants believe the midnight testing was conducted when it wouldn't be noticed or when air would be most settled;
- enquiries about silica and lead remain unanswered;
- tenants were not informed of how to mitigate risks of exposure to hazardous materials; and
- a bedroom with a mini fridge, a microwave, and a couple changes of clothes is not a home.

In his personal comments regarding this issue the Tenant declared that:

- he was one of the early evacuees from 435 Michigan;
- over the course of nearly 2 months he was moved on 6 different occasions and occupied 5 different rooms;
- during that time he was attempting to establish a stable living environment for his son but his living situation became a “horror show”
- his photographs show that he had to move his entire life, his dog and his important items into numerous hotel rooms;
- he knows of no other tenant who was required to move 6 times during the course of the evacuation and thinks the Landlord was applying pressure to him because he was advocating for other tenants;
- the weekly packing and moving process and the unstable living environment that existed for my visiting son and my dog were untenable;
- he had a motor vehicle accident with an injury that was complicated by the ongoing renovations.

At the hearing the Tenant stated that he was evacuated from the building on January 14, 2017 and that he returned on March 11, 2017. Legal Counsel for the Landlord

stated that she does not know when the Tenant was evacuated or when he was returned to the building.

At the hearing the Tenant and the Landlord agreed that the Tenant paid no rent for the period between February 01, 2017 and March 10, 2017 and that he received a rent rebate for January of 2017, in the amount of \$635.90. In the final written submission the Landlord clarified that rent for March of 2017 was reduced by \$353.28.

At the hearing the Tenant stated that he received approximately \$1,000.00 in gift cards as a result of being evacuated from the building. Legal Counsel for the Landlord did not know the value of the gift cards the Tenant received.

Issue 37:

No submission

Issue 38:

No submission

Issue 39:

The Tenant contends that between August 14, 2017 and November 04, 2017 he:

- made repeated requests to repair a leaking kitchen faucet; leaking windows; and flooring damaged by water;
- the floor and the faucet were not repaired;
- he could not use a portion of his bedroom due to the damaged flooring;
- he had to lay towels on the floor to catch the water;
- for months he used a bucket to catch water dripping from the faucet, which was tedious, smelly, and took up space.

Images were submitted in support of this issue.

In his final written submission the Tenant declared that it was difficult to report deficiencies as the voicemail was often full and the manager did not respond to reports made.

The Landlord submitted a written submission in response to the claims made by the Tenant. In the written submission Legal Counsel for the Landlord declared:

### Loss of Resident Managers

- the Landlord is not obligated to provide a resident manager;
- any inconvenience arising from the lack of a resident manager should be considered an inconvenience;
- contact information for a property manager was provided;
- a building manager was available since the start of the renovation;
- the Landlord responded appropriately to issues with people in the pool at night or people on the scaffolding;
- there has been no thefts or tangible loss as a result of the absence of a resident manager; and
- there is no proof that the problems in the building would not have occurred even if there was a resident manager.

### Failure to Maintain Cleanliness

- sufficient cleaning protocols were in place;
- dust is to be expected during a renovation;
- when tenants complained about dust in their suites cleaning was provided by the contractor;
- tenants have a responsibility to report any emergency cleaning needs;
- the Landlord is not obligated to provide cleaning that meets a standard of perfection;
- the photographs submitted by the Tenant show very minor issues that should be considered a temporary discomfort or inconvenience; and
- when the stop work order was issued in December of 2016 no cleaning occurred, however there was no construction during that time so dust and debris would also be minimized.

### Exterior Window Cleaning

- the Landlord is aware that Residential Tenancy Policy guidelines requires the Landlord to clean exterior windows at reasonable intervals;
- it would not be reasonable for the Landlord to clean the windows during the construction;
- the photographs do not support the Tenant's submission that tape, residue, dirt, etc. obscure visibility; and

- the Landlord intends to clean the windows, if it has not yet been done.

#### Exposure to Hazardous Materials/Evacuation

- the Landlord has been working in conjunction with a private company, VIHA and WorkSafeBC to determine proper methods of handling/removing asbestos, especially since the stop-work order;
- the Asbestos Inventory Survey Report submitted by the Tenant is for a different building;
- on, or about, January 27, 2018 the Landlord informed the Tenants that elevated asbestos levels were detected in samples taken of settled dust;
- it is common to find asbestos in older buildings;
- no evidence was submitted to establish that the Tenant has experienced a health problem related to asbestos;
- on, or about, January 27, 2018 the Landlord informed the tenants that a decision was made with the support of VIHA to temporarily relocate residents in order to complete additional testing and clean-up;
- the building was fully vacated on January 29, 2017;
- tenants were permitted to return to the residential complex on March 09, 2017;
- shuttle services were provided to tenants to assist with their relocation to/from the residential complex;
- rent was waived for the period between February 01, 2017 and March 10, 2017;
- free internet, parking, breakfast, and gift cards were provided during the evacuation;
- the Landlord offered to replace vacuums if tenants were concerned their vacuums had been contaminated;
- on or about February 02, 2017, February 06, 2017, February 09, 2017, February 17, 2017, March 07, 2017, and March 08, 2017 the Landlord provided tenants with information about the evacuation, including information regarding asbestos, clean-up efforts, and re-occupancy plans;
- in March of 2017 core services, such as building management and cleaning services were restored (p. 11);
- building construction began again in September of 2017; and
- tenants have been fully compensated for the evacuation.

#### Security Concerns

- there have been no thefts or break-ins related to this tenancy;

- there is no evidence that the homicide was related to building security;
- the Landlord has provided appropriate locking devices;
- the Landlord has dealt with unauthorized people using the scaffolding; and
- the unauthorized people using the scaffolding were residents of the complex.

#### Lobby/Entrance

- this area was also being renovated;
- materials in the lobby were used for construction on that day or shortly thereafter;
- the photos show these materials are neatly stacked and do not restrict access; and
- these materials in the lobby are a temporary inconvenience.

#### Hallways

- an unfinished hallway does not substantially interfere with the lawful enjoyment of the premises;
- if the Landlord was not aware that dust was entering the Tenant's rental unit from the hallway, the Landlord could not assist with the cleaning or take measures to prevent dust from entering;
- the contractor did clean units when requested to do so by a tenant;
- there is a photograph of a vacuum in the hallway, which indicates the area was being cleaned; and
- the Tenant did not inform the Landlord that dust was entering his unit from the hallway.

#### Increase in Dust and Debris

- if the Landlord was not aware that dust was entering the Tenant's rental, the Landlord could not assist with the cleaning or secure windows to prevent dust from entering;
- the contractor did clean units when requested to do so by a tenant;
- the Tenant did not inform the Landlord that dust was entering his unit; and
- if any amount should be awarded to the Tenant it should be 2% rent reduction for the period of the construction.

#### Items Not Ready Upon Move-In

- the Tenant did not inform the Landlord of this issue and the Landlord could not, therefore, assist with clean up.



### Pets

- videos of the barking dogs do not establish that the dogs are barking as a result of construction;
- the Landlord was not aware of the barking dogs and could not, therefore, take steps to address the issue; and
- this is a multi-tenanted building and messes will occur from time to time.

### Contractor Conduct

- the Landlord retains reputable contractors;
- there is no evidence that the workers were the people yelling in the morning;
- there is no evidence the work was not competently managed or that asbestos was carted through hallways inappropriately;
- the Landlord addressed the issues identified in the stop work order;
- it is unclear how the stop work order impacted the Tenant;
- the Tenant is not qualified to assess the competency of the contractors; and
- the Tenant's submission of incompetence is based on speculation and opinion.

### Noise from Interior Renovations

- interior renovations of units occurred when units became vacant;
- interior renovations of units in the complex included painting, kitchen/bathroom upgrades, and new flooring;
- no demolition occurred within the units;
- most of these units were renovated within a short period of time and caused little disruption to the Tenant;
- the Tenant does not disclose what days these interior renovations of the units occurred nor the extent of the disruption on those days;
- the interior renovations were not loud;
- the Landlord received no complaints regarding noise associated to suite renovations;
- the interior noise could have been unassociated to the interior renovations;
- the hallway renovations began on August 26, 2016.

### Renovation Noise during Quiet Hours

- any construction occurred within City bylaws.

#### Noise from Exterior Renovations

- the Landlord has a legal obligation to repair and maintain the building and the exterior renovations were necessary;
- the balcony repairs began on or about June 27, 2016;
- prior to this time there was no jackhammering or major noise;
- construction occurred within established by City bylaws;
- no exterior construction occurred between December 12, 2016 and September of 2017, as a result of a stop work order issued by WorkSafeBC BC;
- the Tenant has not submitted any proof the noise impacted his health;
- no evidence was submitted that shows the noise exceeded laws or standards; and
- if compensation is awarded it should be limited to a rent reduction of 10% during applicable times.

#### Loss of Access to Balcony, Light, and Privacy

- a fair rent reduction for the period between June of 2016 and October of 2017 would be 5%;
- the Tenant had light and a view from his balcony for much of the time.

#### Water Shut-Offs

- water shut-offs constitute a temporary inconvenience;
- the Landlord notified tenants of planned shut-offs; and
- the Tenant does not provide the number of times or frequency of the shut offs that would amount to a breach of quiet enjoyment.

#### Mail Disruption

- as noted in the Canada Post letter, Canada Post offered to make individual accommodations if requested; and
- the Landlord could not have mitigated this inconvenience.

#### Loss of Use of the Loading Zone

- this is not a service or facility essential to the use of the rental unit nor is it a term

of the tenancy agreement.

#### Bike Shed

- this is not a service or facility essential to the use of the rental unit nor is it a term of the tenancy agreement; and
- access was not restricted as an alternate storage area was provided.

#### Swimming Pool

- pool was usable for most of the time; and
- if compensation is awarded it should be the cost of a monthly pool membership, which is \$10.00.

#### Reduced Parking

- the Landlord is not at fault for issues related to street parking;
- street parking this is not a service or facility essential to the use of the rental unit nor is it a term of the tenancy agreement; and
- the Landlord provided parking to tradespeople.

#### Failure to Respond to Repair Requests

- in August of 2017 the Landlord repaired a bathtub spout in the Tenant's unit.

The Landlord submitted an affidavit from an individual who declared:

- she and her husband are the building managers of a building that neighbours the Tenant's complex, both of which are owned and managed by the same companies;
- her employment began in January of 2017;
- in this capacity she sometimes covers for the manager of the Tenant's complex, when that person is not working;
- she has been in the Tenant's complex during the renovations that are the subject of these proceedings;
- construction work involving excessive noise occurred between 8:00 a.m. and 3:30 p.m.;
- in December of 2016 a stop work order was imposed for both buildings;
- on or before January 31, 2017 building management and cleaning services were

restored in both buildings;

- there are cleaning protocols in place;
- the pool generally closes at the end of October and opens in May; and
- in or around September of 2017 work commended on the exterior of the building and repairs to the balconies continued.

The Landlord submitted an affidavit from an individual who declared:

- she was the building manager of this residential complex between October 01, 2016 and January 01, 2017;
- she has been on site during the renovations that are the subject of these proceedings;
- interior renovations began in or around February/March of 2016;
- she did not receive numerous complaints from residents regarding noise between January and June of 2016;
- her normal procedure is to provide notice when water is being shut off;
- construction work involving excessive noise occurred between 8:00 a.m. and 3:30 p.m.;
- in December of 2016 a stop work order was imposed for both buildings;
- on or before March of 2017 building management and cleaning services were restored in both buildings;
- there are cleaning protocols in place;
- the pool closes at the end of October and opens in May;
- in or around September of 2017 work commended on the exterior of the building and repairs to the balconies continued; and
- repairs to some balconies were completed in February of 2018.

The Landlord submitted a list of daily, weekly, and monthly management and cleaning tasks.

The Landlord submitted various notices to tenants, including one in which a tenant is cautioned regarding guests on the exterior scaffolding.

#### ANALYSIS:

Section 27(2) of the *Residential Tenancy Act (Act)* authorizes a landlord to terminate or restrict a non-essential service or facility if the landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and reduces 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.

On the basis of the undisputed evidence I find that for a period of time the Tenant was unable to use the bike shed that had been provided to him as a part of this tenancy. On the basis of the undisputed evidence that the Tenant was provided with alternate on-site bicycle storage, I find that this facility was not restricted and I find that he is not entitled to any compensation related to bicycle storage.

In considering the claim for bike storage, I have placed no weight on the submission that the alternate shed was in poor condition and there had been previous attempts to break into the shed. As there is no evidence that the alternate shed did not provide adequate storage, I cannot conclude that there was any significant reduction in the facility provided.

I find that the Tenant has failed to establish that his ability to use the pool during its normal operating period was restricted for any significant period of time. In reaching this conclusion I was heavily influenced by the Tenant's inability to recall when the pool was not available for use during its normal operating period and by Legal Counsel's testimony that she does not know if the pool was ever closed as a result of construction. As there is no evidence that the pool was closed during its normal operating period for any significant period of time, I cannot conclude that the Tenant is entitled to any compensation as a result of a pool closure.

While I accept that the Tenant chose not to use the pool because of the construction items being stored in the area; that does not constitute a reduction in service. Any compensation the Tenant is entitled to as a result of the appearance of the pool will be considered in conjunction with the general appearance of the residential complex.

I find that providing parking on the street is not a facility or service provided by the Landlord as a term of this tenancy. I therefore find that the Tenant would not be entitled to any compensation even if the actions of the Landlord reduced his access to street parking.

I find that the Tenant was provided with shared use of a loading zone as a term of this tenancy agreement and that his ability to use that loading zone was restricted, at times, by contractors using the zone or by construction material blocking access to the zone. I find that this is a relatively minor inconvenience, given that use of the loading zone was shared and therefore dependent on other people using the space, and the fact there appears to still be space near the lobby to park temporarily, as depicted by the image showing a contractor parked in front of the building. Given the relatively minor

inconvenience of any restrictions to this temporary parking area, I do not find that the Tenant is entitled to compensation for reduction in this level of service.

Although the Tenant contends that the building had no manager for several months, I find that the Tenants were provided with several contact telephone numbers, presumably to be used when assistance was required. This is evidenced by the Notice to Residents, dated December 03, 2015.

Although these contact numbers were provided to tenants, the Landlord has submitted no evidence to refute the Tenant's submission that a management company, responsible for regular maintenance, was not provided. As the Landlord has submitted evidence that a management company took over management duties, such as cleaning, of the complex on October 01, 2016 and there is no evidence that a management company was providing such services prior to that date, I find it reasonable to conclude that regular building maintenance was not being provided for the period between December 03, 2015 and September 31, 2016. I find that this is a reduction in service, which reduced the value of the tenancy by \$100.00 for approximately 10 months.

On the basis of the undisputed evidence I find that a new management company was eventually hired. While the previous resident managers were, by all accounts, friendly and highly effective, I find that the Tenant has submitted insufficient evidence to establish that the new non-resident management was incompetent. While I accept the anecdotal evidence submitted that the new management company was less friendly and less attentive and, perhaps less efficient, I find it does not establish that it was incompetent.

In reaching this conclusion I was influenced, in part, by the fact that a new management company should have the right to do things differently, such as leaving the pool lights on during the night and not locking up recycling bins. Simply changing management practices does not render the management company incompetent, even if the tenants do not agree with the changes.

In reaching this conclusion I was influenced, in part, by the Landlord's evidence that the management company responded to issues in the building, such as people in the pool at night or people on the scaffolding.

In reaching this conclusion I was influenced, in part, by the affidavits from two building managers and a list of their duties, which were submitted in evidence by the Landlord. Although this new management company may not be as competent as the previous

resident managers, I find that there is insufficient evidence to conclude the service they provided was so inferior that the Tenant is entitled to compensation pursuant to section 27 of the *Act*.

I do find, however, that the Tenant is entitled to compensation of \$10.00 for the period between December 12, 2016, when the stop work order was imposed, and January 14, 2017, when the rental unit was temporarily vacated. This award is in recognition of the fact the management company was unable to perform routine maintenance in the building.

On the basis of the undisputed evidence I find that between December 16, 2016 and March 16, 2016 the Tenant had to pick up his mail offsite, due to the stop work order and the building evacuation. As this was not a service provided by the Landlord, I cannot conclude that the Landlord withdrew this service from the Tenant.

While I accept that the actions of the Landlord prevented mail from being delivered to the residential complex for approximately 3 months, I find that this was a mere inconvenience and that the Tenant is not, therefore, entitled to compensation for that inconvenience.

In concluding that picking up mail offsite was a minor inconvenience, I was influenced by the fact that many Canadians do not have mail delivered directly to their residences. Although the Tenant has declared that his work starts at 7:30 a.m. and ends at 5:30 p.m., he has also declared that he works split shifts and I therefore find that he could have picked up his mail with minimal inconvenience.

On the basis of the undisputed evidence I find that after this tenancy began the Landlord changed the pet policy on January 01, 2016 to allow pets in the building. As the Tenant had a pet and, therefore, directly benefited from this policy change, and he presumably acquired this pet after the policy was changed and building construction began, I can find no reason why he should be entitled to compensation because of this change in policy.

Section 28 of the *Act* grants tenants the right to quiet enjoyment including, but not limited to reasonable privacy; freedom from unreasonable disturbance; 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*]; and use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline #6, with which I concur, reads, in part:

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.

On the basis of the undisputed evidence I find that the Tenant was required to vacate the rental unit for the period between January 14, 2017 and March 11, 2017 to facilitate testing and cleaning of asbestos. On the basis of the undisputed evidence I find that the Tenant was provided with housing, albeit in five different hotel rooms, and that the hotel rooms had a small fridge and microwave.

I find that the Tenant's right to the quiet enjoyment of the rental unit was breached between January 14, 2017 and March 11, 2017 when he was required to vacate the rental unit, as he was denied exclusive possession of the unit for that period. I find, however, that the Tenant has already been fully compensated for this breach as he was not required to pay rent for the period between February 01, 2017 and March 10, 2017; he was given a rent rebate for a portion of rent paid for January 14, 2017 to January 31, 2017; and he received \$1,000.00 in gift cards, which in my view amply compensated him for the inconvenience of the temporary relocation.

On the basis of the undisputed evidence I find that the balconies in the residential complex were being renovated, which required a significant amount of periodic jack hammering and grinding; that the disturbances occurred at various times between 7:30 or 8:00 a.m. and 3:30 p.m. on Monday to Saturday; that this type of construction



occurred between June 27, 2016 and December 12, 2016; that it resumed in September of 2017; and that it ended on April 30, 2018.

I find that the Landlord had a right and obligation to upgrade the balconies in the rental unit. On the basis of the evidence submitted by the Tenant, however, I find that the noise associated to this type of renovation was excessive and that it breached the Tenant's right to the quiet enjoyment of his rental unit. I find that this noise reduced the value of this tenancy by approximately 15% for approximately 5.5 months between June 27, 2016 and December 12, 2016 and for September and October of 2017, which is the last period for which the Tenant paid rent.

Compensation for this period is calculated as follows:

- 15% rent reduction for 4 months when rent was \$1,065.00 =  $4 \times \$159.75 = \$639.00$
- 15% rent reduction for 3.5 months when rent was \$1,095.16 =  $3.5 \times \$164.27 = \$574.95$

This award is somewhat more than I would have awarded in typical circumstances, as this Tenant has submitted a letter from his physician which indicates the Tenant had a concussion in 2016 and, as a result, is sensitive to noise.

On the basis of the undisputed evidence I find that between June 01, 2016 and October 31, 2017, which is when the Tenant stopped paying rent for the unit, the Tenant was unable to use his balcony as a result of scaffolding and tarping that had been placed in front of his balcony; his view was obstructed as a result of the tarps and scaffolding, and the light entering his unit was obstructed as a result of the tarps and scaffolding.

I find that these obstructions breached the Tenant's right to the quiet enjoyment of his rental unit and that it reduced the value of his tenancy by 10%. Compensation for this period is calculated as follows:

- 10% rent reduction for the period between June 01, 2016 and October 31, 2016 when rent was \$1,065.00 =  $5 \times \$106.05 = \$530.25$
- 10% rent reduction for the period between November 01, 2016 and January 14, 2017 when rent was \$1,095.16 =  $2.5 \times \$109.51 = \$273.28$
- No rent reduction between January 14, 2017 and March 11, 2017 as the unit was not occupied
- 10% rent reduction for the period between March 11, 2017 and October 31, 2017 when rent was \$1,095.16 =  $7.65 \times \$109.51 = \$837.75$

This award is somewhat more than I would award in typical circumstances, as the views from the Tenant's balcony are very nice, and it includes compensation for lack of privacy related to the presence of the scaffolding.

On the basis of the undisputed evidence I find that between August of 2016 and October 31, 2017, which is when the Tenant stopped paying rent for the unit the residential complex was undergoing renovations in addition to the repairs to the balcony, which included refurbishing and upgrading common areas, painting the exterior of the building, replacing windows and doors, upgrading mechanical equipment, and upgrading suites as they became available.

On the basis of the undisputed evidence I find that the Tenant's right to the quiet enjoyment of the rental unit was breached as a result of disturbances and inconveniences that are typically associated to renovations of this nature, including:

- noise typically associated to interior renovations and exterior painting;
- dirt and construction debris around the site;
- windows not being cleaned during construction;
- construction materials stored on site;
- the appearance of the residential property during construction;
- delay in completing repairs to common areas;
- periodic water outages;
- any reduction in a sense of security as a result of the renovations; and
- the fear of being exposed to hazardous materials.

I find that these disturbances and inconveniences breached the Tenant's right to the quiet enjoyment of his rental unit and that it reduced the value of his tenancy by 10% for the period between August of 2016 and October 31, 2017. Compensation for this period is calculated as follows:

- 10% rent reduction for the period between August and October of 2016 when rent was \$1,065.00 =  $3 \times \$106.50 = \$319.50$
- 10% rent reduction for the period between November 01, 2016 and January 14, 2017 when rent was \$1,095.16 =  $2.5 \times \$109.52 = \$273.80$
- No rent reduction between January 14, 2017 and March 11, 2017 as the unit was not occupied
- 10% rent reduction for the period between March 11, 2017 and October 31, 2017 when rent was \$1,095.16 =  $7.65 \times \$109.52 = \$837.83$

I have limited the rent reduction for disturbances typically associated to renovations to 10%, in an attempt to balance the Tenant's right to quiet enjoyment with the Landlord's

right and obligation to maintain and upgrade the residential property. In determining that the Tenant is not entitled to greater compensation I was guided by my conclusion that:

- the photographs, when considered in their entirety, do not establish that the residential complex was particularly untidy or cluttered, given that it was under construction;
- the photographs do not corroborate the Tenant's submission that the complex was not cleaned for all of 2016;
- the Landlord was unable to clean or remove construction debris during a stop work order;
- the evidence suggests that tenants were notified of planned water outages;
- the absence of evidence that establishes the Tenant was victimized as a result of any of the security concerns related to the renovations;
- the absence of evidence that the Tenant was endangered by any of the alleged unsafe work practices, with the exception of hazardous materials; and
- in spite of all of the problems associated with this tenancy, the Tenant still enjoyed the benefits of living in the rental unit, which included the ability to sleep, cook, store personal property, and use the bathroom.

On the basis of the evidence I find that elevated levels of asbestos were detected in the residential complex as a result of the on-going renovations and that the Landlord began working with various agencies to determine proper methods of handling and removing asbestos. The previously discussed 10% rent reduction is larger than I would typically award for inconveniences associated to renovations to reflect the concerns the Tenant had about those hazardous materials.

This award would have been significantly greater if the evidence had established that the hazardous materials had a direct impact on the physical health of the Tenant, which it does not. Although I recognize the potential impact of asbestos, I find it would be inappropriate to award compensation on the basis of this potential.

On the basis of the undisputed evidence I find that the windows leaked in the rental unit; that the leak was repaired; that the floors in the unit sustained some damage as a result of the water egress; and that the floors were never repaired. Given that the windows were being replaced and the building was being renovated, I find that the Landlord was taking reasonable steps to remedy this situation. Although I recognize that this was an inconvenience, I find the Tenant has been suitable compensated by the previous awards for that inconvenience.

On the basis of the undisputed evidence I find that the Tenant reported a leaking kitchen faucet and that the faucet was not repaired for months, which resulted in him using a bucket to catch water, which was tedious and smelly. I note that the Landlord declares that a bathroom faucet was repaired, but the Landlord did not respond to this particular allegation. As this was a repair that was not impacted by the renovation I find that the failure to respond to this issue reduced the value of the tenancy by \$50.00.

On the basis of the undisputed evidence I find that when the Tenant returned to his unit after being evacuated he had to completely empty all his closets and cupboards and clean their contents of dust and that his sink was backed up. There is no evidence to suggest that the Tenant requested assistance from the Landlord in regard to this cleanup. Rather, there is evidence that shows the Tenant informed the Landlord that he would not permit access to his suite until he could be assured that the techniques used when removing drywall met with WorkSafeBC BC standards and that he posted a notice barring contractors and management from entering his suite. As the Tenant did not request assistance with this cleaning, he can have no reasonable expectation that the cleaning be done on his behalf. I therefore find that he is not entitled to compensation for this cleaning.

I note that the Tenant has repeatedly alleged that the renovations have been mismanaged by the Landlord. I have intentionally not addressed this concern, as that is beyond my jurisdiction. My focus has been on how the nature and timing of the renovation has impacted this tenancy. As compensation has been awarded to the Tenant by way of a rent reduction, any mismanagement that resulted in evacuations or delays in the renovation would be reflected in the extended duration of the rent reduction.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

### CONCLUSION:

The Tenant has established a monetary claim of \$4,546.36, which includes:

- \$1,213.95 in compensation for construction noise related to the balconies;
- \$1,641.28 in compensation for blocked views and loss of use of the balconies;
- \$1,431.13 in compensation for disturbances and inconveniences typically associated with large renovations;
- \$110.00 for being without regular building management services for a period of

time;

- \$50.00 for a leaking kitchen faucet;
- \$100.00 as compensation for the cost of filing this Application for Dispute Resolution.

I grant the Tenant a monetary Order for \$4,546.36. In the event the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims 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: January 10, 2019

---

Residential Tenancy Branch