



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding IMH 415 & 435 MICHIGAN STREET APARTMENT  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RR FFT

### Introduction

This hearing dealt with the tenants' application pursuant to the Residential Tenancy Act (the "Act") seeking:

- a monetary award for rent reduction pursuant to section 65; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties were represented at the teleconference hearing. The tenant represented himself with the assistance of another occupant of the rental building. The corporate landlord was represented by its agent and counsel. Parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As both parties were present service of documents was confirmed. Each party confirmed receipt of the other's materials. Based on the testimonies I find that the landlord was served with the tenant's application and evidence and the tenants with the landlord's evidentiary materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the respondent stated that the actual legal name for the corporate landlord is different than the name listed as the respondent on the application and therefore they requested that the name be changed to the legal name. The tenants agreed to the change and that change is reflected in this decision.

Issue(s) to be Decided

Are the tenants entitled to a retroactive and future reduction of rent for rent reduction for loss of use of the rental property?

Are the tenants entitled to recover the filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. Both parties submitted substantial documentary evidence including written submissions, photographs, witness statements, affidavits, correspondence, and similar decisions issued by the Branch. The principal aspects of the tenants' claim and my findings around each are set out below.

The background facts are generally undisputed. This tenancy began in November 2013. The current monthly rent is \$1,278.82. The tenant also pays a \$25.00 fee for parking. The monthly rent amount from November 1, 2015 was \$1,180.00. The monthly rent amount from November 1, 2016 was \$1,200.00. The monthly rent amount from November 1, 2017 was \$1,234.08.

In the fall of 2015 the landlord undertook a project to perform major renovations to the rental building for the purposes of maintenance and repair. A non-exhaustive list of the work performed includes; work on the common area corridors, lobby and entrance, security system upgrades, elevator modernization, painting of the exterior envelope of the building, work on the exterior balconies, windows and doors, erecting scaffolding to make repairs to the building exterior, asbestos removal, and mechanical system upgrades.

The tenant submits that the work performed by the landlord has resulted in a significant disruption of their right to quiet enjoyment and reduction of the value of the tenancy. The tenant's complaints include the level and frequency of noise, dust in the air, lack of sunlight and access to their balconies during the time that scaffolding was erected to perform exterior work, general debris and signs of construction throughout the property, and limits on the use of some utilities.

The parties gave evidence that there was a period when the rental building was unable to be safely occupied and the landlord arranged for the tenants and all occupants to be temporarily housed in a hotel.

The tenants seek a monetary award in the amount of \$29,227.68 which includes \$5,000.00 for loss of quiet enjoyment and a retroactive reduction of rent for every month that work was being performed. The tenant submits calculations of the amount of the monthly rent paid to be reduced by a percentage based on the scope of the work that was performed. The tenant seeks a reduction of between 25% to 100% based on the disruption they incurred.

The tenant testified that they work nights and as a result the work performed during the days had a particularly significant impact on their lives. The tenant submits that while they continued to occupy the rental unit throughout the renovations they felt significant disruption to their life due to the work.

The landlord submits that work was done in a reasonable manner in accordance with professional standards. The landlord testified that due to the age of the rental building and the scope of work contemplated the project has been ongoing. The landlord said that they have made reasonable accommodations for the tenants to minimize disruption and while some aspects of the tenancy has been impacted it is no more than would be expected for the nature of the work.

### Analysis

The tenant seeks compensation for loss in the value of the tenancy due to the ongoing construction. Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. This provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

Section 28 of the Residential Tenancy Act speaks to a tenant's right to quiet enjoyment, and provides as follows:

**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.

Further section 7 of the Residential Tenancy Act states:

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

While I find that the ongoing work performed by the landlord has had some impact on the tenants I find that the evidence does not support the full amount of the monetary claim. I find that the tenant's suggestion of the reduction in rent to be wholly out of proportion with the evidence. I find that the tenant's complaints pertain to the expected impact of construction and repair work. I find that there is insufficient evidence that work was not conducted in a reasonable and timely manner. The multi-year duration of the work is to be expected from a project of this scope and the size of the rental building. I find that the landlord took reasonable measures to minimize the impact of the working including restricting the hours when work would occur, providing alternate accommodations when the rental building could not be occupied, giving notices and updates on the work and complying with standards required by the Health Authority.

I find the tenants' suggestion that a retroactive rent reduction in the amount between 25% to 100% for the impact of the work to be out of line with the evidence. The tenants continued to reside in the rental unit during the construction and there is little evidence that their use of their suite or common amenities were seriously impacted. The photographs submitted show the state of work being performed and I find that the conditions are to be expected for a project of this scale. During the period where the

rental building could not be occupied the landlord took reasonable measures to find alternate accommodations for the tenants and to minimize the duration of the relocation.

While the parties gave conflicting evidence on the hours and days that work was being performed, in both cases the parties agree that work is conducted during the day. The tenant gave evidence that because they work night shifts and sleep during the day, the ongoing work and attendants noises had a greater impact on their ability to rest and work efficiently. I do not find the tenant's submission to be persuasive. It is unreasonable to expect that the landlord would schedule their work to accommodate all tenants in a multi-unit building. I find that the evidence shows work was conducted during reasonable hours and any additional impact on the tenants' cannot be attributed to the landlord.

While I accept the evidence of the parties that the ongoing construction is accompanied by noise and dust, based on the evidence submitted I find that the level of disturbance is the reasonable level as to be expected from a renovation project. I find that there is insufficient evidence that the nature, duration or level of the disturbance has been at a level that is not reasonable.

Based on the evidence submitted I do find that there was some impact on the tenancy due to the ongoing work performed by the landlord. I find that there were some amenities and common areas that became temporarily inaccessible due to the work. Residential Tenancy Policy Guideline 16 provides guidance in determining the value of the damage or loss under such circumstances.

I find that the limited use of balconies and view during exterior work had some impact on the tenancy but not to the amount suggested. I find that most of the complaints by the tenant concern aesthetic issues. There is little evidence that the disruption of utilities or common amenities was anything more than temporary. While the tenant complains of the noise and dust the tenant continued to reside in their rental unit except for the period when the landlord made arrangements for alternate accommodations.

The tenant suggests that a percentage of the rent paid should be retroactively reduced for the periods when work was being done. The tenants submit that during periods of heavy work the rent should be retroactively reduced by 100% and by other amounts

during other periods. I find that the amounts suggested by the tenants to be grossly disproportional to the actual impact on the tenancy.

Under the circumstances, I am issuing a monetary award which reflects that the tenants did suffer some loss in the value of the tenancy agreement. Based on the evidence I find that the loss was not significant, had little impact on the tenants' ability to occupy the rental unit and that the tenants' complaints are unreasonable given the work conducted. I accept that the project has been ongoing for several years but I find that the duration of the project to be a reasonable result of the scope of work and age of the building.

I find that a monetary award of \$1,500.00, which is the equivalent of approximately 2.5% reduction of the monthly rent for each month of renovation work since November 2015, to be appropriate. In coming to this determination, I have also taken into consideration the monetary compensation already provided to the tenants by the landlord and the annual increase in the monthly rent.

As the tenants were partially successful in their application, the tenants are entitled to recovery of the \$100.00 filing fee for this application.

I find that it is premature to make an order regarding future rent reduction or damages as there is some work to be finalized and completed. I dismiss the tenants' application for loss arising after the date of the hearing, January 29, 2019, with leave to reapply.

### Conclusion

I issue a monetary order in the tenants' favour in the amount of \$1,600.00 which includes the loss of the value of the tenancy to the date of the hearing and the filing fee for their application.

As this tenancy is continuing, I allow the tenants to recover the filing fee by reducing the monthly rent by that amount on the next monthly rental payment to the landlords.

The tenants are provided with these Orders in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 31, 2019

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Residential Tenancy Branch