



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES 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 attended the hearing and 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. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

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 request of both parties**, they asked that I proceed by way of written submission, given that both parties had submitted lengthy, written submissions. Both parties indicated they were prepared to rely on their written submissions. I agreed that I would proceed as requested. I also confirmed with both parties that they were content with the evidence submitted and that a decision would be issued based on that evidence. In addition to the above, each party was given an opportunity to highlight and draw my attention to specific items or submissions. Each party was also given the opportunity to make verbal submissions to highlight any and all portions of the written submissions. This hearing lasted 75 minutes.

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 or a monetary order as compensation?

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

Background and Evidence

This tenancy began on August 1, 2014 with the current rent payable of \$806.00. Both parties agreed that 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. Some of the work conducted but not limited to is: security system upgrades, elevator modernization, work on the exterior balconies, windows and doors, erecting scaffolding to make repairs to the building exterior, painting of the exterior envelope of the building work on the common area corridors, lobby and entrance, 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 reduced or no access to facilities', loss of quiet enjoyment and poor state of maintenance and repair. The tenant provided the following written submission:

*MU (partner) and I have lived here since August 2014, prior to the renovations beginning. Since these renovations started there have been continuous and intrusive events(extreme noise, workers operating on off-hours, water shut offs, problems with getting requested repairs completed, heating issues, dirt, reduced use of amenities including the pool, and personal damages resulting from water leaks). This represents an unacceptable loss of enjoyment of the residence that has impacted our quality of life.*

The tenant testified that the biggest inconvenience was the ongoing noise when the exterior and interior renovation was being conducted. The tenant testified that security issues were of a concern as well. The tenant testified that they enjoy living in the building but the prolonged renovations have impacted their quality of life.

The landlords counsel submits that work was done in a reasonable manner in accordance with professional standards. Counsel submits that due to the age of the rental building and the scope of work contemplated the project has been ongoing and is

necessary. Counsel submits that they have made reasonable accommodations for the tenants to minimize disruption and while some aspects of the tenancy have been impacted it is no more than would be expected for the nature of the work. Counsel submits that the overall benefit that the tenants will enjoy in a fully renovated building will substantially outweigh the negatives.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here as they are too extensive to reproduce. For absolute clarity and brevity, I address the principal aspects of the tenant's claim and my findings around each are set out below.

The tenant seeks compensation for loss in the value of the tenancy due to the ongoing construction. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant alluded to two water leak incidents in the building. One was prior to the renovations and is not related to this claim, accordingly; I dismiss that portion of his application. In regards to the four days in 2017 where he and his partner had to vacate the unit as a result of a water leak and stay in a hotel; I find that the tenant has not provided sufficient evidence to show that the landlord acted negligently or recklessly to cause the leak and therefore were not in contravention of the *Act*. I find that no further compensation is required for that event.

Compensation Claim – \$14, 834.00

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.

Although I accept that the tenants were impacted to some degree while the renovations were ongoing, I find that the evidence does not support the full amount of the monetary claim. I find that the tenants' suggestion for compensation is excessive and unreasonable as the evidence does not support the amount as sought. Furthermore, the tenant testified that his partner was significantly impacted by the renovations to the point where she altered her lifestyle so substantially that she would leave the suite for extended periods, but chose not to attend the hearing to provide testimony today. Also, in the tenants own testimony he stated that he had at no time advised the landlord in writing of his concerns about the ongoing renovations.

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 at a reasonable level and to be expected from a renovation project and simply cannot be avoided. I find that there is insufficient evidence that the nature, duration or level of the disturbance has been at a level that is not consistent with a renovation project of this size. In addition, the landlord conducted the work without the necessity of displacing tenants or ending tenancies, which in turn resulted in the work taking longer which is completely reasonable and to be expected under the circumstances. Furthermore, I find

that the tenants' lack of evidence showing the landlord was acting in contravention of the Act and the tenants' lack of mitigation to be a consistent pattern throughout the timeline of events. Also, the tenant did not provide sufficient evidence as to what actual loss he has incurred. The tenant was unable to provide sufficient logic or an explanation as to how calculated the amount of compensation he was seeking.

As outlined above, under section 67 of the Act, a party must satisfy all four factors when making a monetary claim. I find that the tenant has provided sufficient evidence of noise which I will address later in this decision. However, the tenant has not provided sufficient evidence to support the other items claimed for in this application. The tenant has failed to provide sufficient evidence that the landlord was acting recklessly or negligently to illustrate a breach of the Act, and secondly; the tenant did not provide sufficient evidence to illustrate what steps he took to mitigate the issues.

Although I find that the tenants are requesting an excessive amount and that the landlord is conducting the work within professional standards, I am satisfied that the disturbance to the tenants' daily life warrants *some* compensation. I am satisfied that there was a reduction in the value of the tenancy as a result of noise. Each party provided a calculation as to what they believe to be the appropriate amount however, the parties were at odds on the hours and days that work was being performed, as well as to when the work stopped as a result of "Stop Work" order. After thoroughly reviewing the documentation I find that the issue of noise occurred over a 20 month period based on the documentation before me.

I find that a monetary award of \$2000.00, which is \$100.00 for each month that I find that the evidence shows there, was some impact and reduction in the value of the tenancy as a result of excessive noise. As the tenants were partially successful in their application, the tenants are entitled to the 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, February 21, 2019, with leave to reapply.

### Conclusion

The tenants are entitled to a monetary order of \$2100.00. 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: February 21, 2019

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Residential Tenancy Branch