



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMH 350 & 360 DOUGLAS APARTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDCT

Introduction

On August 2, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for damages, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord’s Agent (the “Landlord”), the Tenant and the Tenant’s Agent (the “Tenant”) attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the Notice of Dispute Resolution Proceeding package and the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

Section 63 of the Act allows an Arbitrator to assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision and include an Order.

Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms for a Settlement Agreement with the input from both parties. The parties could not find consensus on the terms of a Settlement Agreement; therefore, the following testimony and evidence was heard/reviewed, and a Decision made by myself (the Arbitrator).

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

After agreeing on the terms of the tenancy, the Landlord proposed that these proceedings proceed by way of written submission, given that both parties had submitted thorough written submissions and that the Tenant’s poor, long-distance connection was causing some challenges. Both parties indicated they were prepared to rely on their written submissions for the purpose of the Decision. The Tenant consented to the Landlord submitting another

document that was accidentally left out of the Landlord's evidence package. The Landlord immediately uploaded this document to the Residential Tenancy Branch Service Portal and promised to forward it to the Tenant via her Agent.

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

Both parties consented to amend the Landlord's name on the Application for Dispute Resolution to reflect the Landlord's legal name.

An Amendment to an Application for Dispute Resolution and evidence were submitted by the Tenant's Agent on November 22, 2018. The amendment, as stated on the form, was to adjust the monetary claim to a higher amount. Upon review of the evidence attached to the form, it referenced the dates of 2011 and 2013 in regard to the times of the tenancy. In this case, the tenancy did not begin until 2016. Furthermore, I clarified the Tenant's claim and the amount at the beginning of the hearing. I find that the Amendment was not relevant to this hearing and as such, discounted its contents.

Issues to be Decided

Should the Tenant receive a Monetary Order for damages, in accordance with Section 67 of the Act?

Should the Tenant receive compensation for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

This hearing was initiated by the Tenant to address issues in relation to her loss of quiet enjoyment, reduced access to facilities and the poor state of maintenance and repair during a period when her residential building was undergoing a major renovation. The Tenant's Application is independent of many other, similar, dispute resolution processes with the same Landlord and that involved multiple, neighbouring buildings. In this regard, it appears that both the Landlord and Tenant have submitted documentary evidence that is both specific to this tenancy and that would also be considered as collective submissions related to the various tenancy issues within the residential building(s).

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant is claiming compensation in the amount of 50% of her rent from October 2016 through to June 2018, in the amount of \$19,846.38.

The Tenant and the Landlord agreed on the following terms of the tenancy:

The one-year, fixed-term tenancy began on October 1, 2016 and continued on as a month-to-month tenancy. The monthly rent started at \$1,855.00 and on October 1, 2017, increased to \$1,923.64. The Landlord collected a \$927.50 security deposit and a \$927.50 pet damage deposit, which was returned to the Tenant at the end of the tenancy. The tenancy ended on June 29, 2018.

Tenant Evidence:

The Tenant provided the following “general overview” in their submissions:

In the summer of 2016 scaffolding or swing stages were installed and work commenced on the building exteriors of the residential property. This work involved jack-hammering and grinding on balconies and outside walls. The entire property became a very busy construction zone, inside and out, with large numbers of trades active from 7:00 a.m. through evenings on weekdays and Saturdays, and some work occurring into the evenings and on Sundays. For the next six months, July through December 2016, jack-hammering and/or grinding occurred six days a week from 8:00 a.m. through to sometime in the afternoon between 3:00 and 6:00 each day.

This work was ongoing on both towers, so often if jack-hammering was not occurring directly on one tower, it could be heard from the other (rental unit).

Old drafty windows were not sealed, and tenants reported observing visible dust building up near windows. Hallway carpets were removed, and tenants have also reported a significant amount of dust entering suites under door gaps from the common space and neighboring suite renovations.

Contractors demonstrated an alarming lack of competence, care or respect, and most did not appear to be trained or experienced. Tenants observed multiple Work Safe BC (“WSBC”) Stop Work orders throughout the year, and numerous signs that work was not being handled safely or competently.

In mid-December 2016 a WSBC officer observed disturbed hazardous materials in common spaces at the (neighbouring building that is being renovated by the same Landlord and contractor) and issued a Stop Work order on that building. The Stop Work was extended to include all buildings since it was the same contractor undertaking the same renovations on all.

In January of 2017 due to a high volume of calls from tenants of all four buildings to WSBC and (the Health Authority), hazardous material testing was undertaken, and it was confirmed that asbestos levels in common spaces and tenant suites at the (neighbouring building) were elevated. Tenants were evacuated from that building for a complete building decontamination process by a hazmat remediation company. This received extensive media coverage, exacerbating concerns for tenants in the other three buildings (including the rental unit) that their spaces were potentially also contaminated.

From the date of the Stop Work in December 2016 until work renewed a few months later, there was no jack-hammering or other significant renovation noise, but the building and grounds were left incomplete and cluttered with construction materials. Hallways were still bare concrete and unfinished walls. It was visually still a construction zone outside and inside the building.

In mid-2017 (not sure about exact date) work involving jack-hammers renewed and continued steadily for another six months.

By early to mid-2018 much of the major renovation work (work involving jack-hammering/grinding on the building shell) had been finally resolved and tenants regained access to balconies. By late 2018 the hallways were finally renovated, they had been bare concrete since mid-2016, carpets installed sometime between late 2017 and mid-2018, trim, tiles (for example), months later.

The one upgrade these buildings did need was windows. Tenants were assured those would be replaced. At a meeting in early 2018 tenants were informed windows would not be replaced.

The year-round pool and hot tub declined into a state of disrepair at the beginning of this term and were not repaired & available to tenants until late 2017, after which they were reportedly not cleaned regularly and again unavailable.

The Tenant provided the following statements regarding specific issues:

Issue 01: Resident Managers

The Tenant stated that having managers who take care of problems within a reasonable time is what she expected. Her experience, while living at the rental unit, was a complete disregard of problems that she was having with the noise disturbances, heating, windows, and nonfunctioning intercom. The Tenant stated that, if she found a manager and told them about an issue, nothing was done to resolve it. Apart from the monthly reminders about paying rent that were posted a week in advance of the 1st of every month and notices about expected water shutoffs from 9:00 a.m. to 4:00 p.m., there wasn't any communication.

The Tenant provided examples of emails where she asked management about the noise levels, flies in her apartment and insurance options with no reply.

Issue 02: Failure to Maintain Cleanliness in hallways and common areas

Issue 09: Hallways and Commons Unfinished

(Arbitrator combined these similar issues)

The Tenant submits that it was always dirty inside and outside of the residential property and provided photos of corridors without carpets and with nails and debris left on the cement. She

stated that abandoned furniture was left in the corridors for months, the garbage room was extremely dirty and smelly, and that the parking area and grass surrounding the building were littered with cigarette butts and construction screws. The Tenant submitted pictures of the uncarpeted hallway out front of her rental unit and dirty laundry room floors.

The Tenant stated that the common hallways had functional thick carpets with an underlay that fit perfectly to the baseboards when she moved into the rental unit. One month later, in November 2016, the carpets were removed. Until (mid-2018), the tenants had dirty, glue-covered, cement that was littered with nails and other garbage in their corridor. The hallway was dirty because it was not cleaned, and sounds were not muffled but rather amplified. Privacy was compromised, and dirt easily entered the Tenant's unit around gaps in the door. Sometime in March of 2018, carpet squares that had been in the basement corridor for close to a year were installed. The new carpet looks much better than the dirty cement but did not help with sound insulation like the former carpet did.

The Tenant also provided copies of correspondence between her and the Landlord to discuss compensation for the condition of her corridor and the "horrid" condition of the basement common area. The Landlord offered the Tenant a "one-time compensation of \$2,500.00" to her account. The Tenant refused this offer.

Issue 03: Failure to Maintain Cleanliness of exterior of windows

Issue 23: Loss of View and Access to Light

(Arbitrator combined these similar issues)

The Tenant provided a general statement that suite windows were dirty for two and a half years, covered in residue, construction stains and filth, to the degree of significantly obscuring visibility. This was despite the fact that fixed scaffolding or swing-stage was in place for much of this time, allowing workers easy access to clean.

The Tenant submits that in October 2016, the Landlord attended her unit to complete an inspection. When the Tenant pointed out that the windows required cleaning, the Landlord advised that new windows were in the budget for 2017 and, accordingly, they wouldn't be cleaning the windows. The Tenant stated that since that time, throughout April to September 2017, the windows were splattered with cement and toxic membrane material while the four rows of balconies were being renovated. When the deck work was completed, the windows were not cleaned until December 2017, when they were haphazardly cleaned and without removing the cement splatter.

The Tenant submitted pictures of dirty windows, although, not specifically identified as from her rental unit. The Tenant also submitted a copy of a notice to the Tenants from the Landlord, undated but titled Feb 14, 2018, that the Landlord was not going to replace the windows of the residential property.

The Tenant stated that she rented her unit because of the view. She stated that she didn't get much of a chance to enjoy it because of construction materials and workers outside her windows.

Issue 05: Security Concerns – Front or rear doors left open

The Tenant provided a general statement that doors were left propped open for extended periods and left either entirely open or ajar with extension cords overnight which allowed unauthorized people and rodents into the building, causing reduced security in common spaces and a lowered sense of security for the tenants.

The Tenant stated that she was concerned about security of the building because of the back-entry door being unlocked many times and late at night. A photo, dated October 25, 2016, was submitted of the back door being open, construction materials surrounding it and no workers on site.

Issue 07: Unsightly Grounds

The Tenant provided a general statement that the formerly well-maintained building grounds have been either fenced off, cluttered with equipment, building supplies and debris, or cleared of greenery or just maintained in poor condition. Tenants' view from the street, rental units, laundry room or lobby demonstrate a cluttered construction zone rather than maintained landscaping.

The Tenant submits that a large portion of the parking lot was used as a storage facility and included a metal-fenced area for the former contractors to hang out, eat lunch, smoke and visit. She stated that parking in her assigned space was difficult because of the location of the contractor's storage containers. The Tenant submitted pictures, dated 2016 and 2017 of scaffolding, fenced areas, construction materials, old furniture, garbage containers and debris around the building and in the parking lot. The Tenant also submitted a photo of the front entrance pond that has remained dry, unmaintained and filthy for several years.

Issue 10: Exposure to Noxious Fumes

The Tenant provided a general statement about exposure to noxious fumes; exposure to chemical fumes from paints, solvents, sealants and adhesives. With windows sealed, only two vents with no fans and no added ventilation solution, the fumes linger and have been both uncomfortable and concerning. With observation of chronic negligence or incompetence through the course of the work, it was not possible for tenants to trust that there was sufficient oversight to ensure that products being used were safe for tenants to be exposed to, and it was clear that no precautions were being taken to provide ventilation, in a building where tenants were required to keep windows closed due to exterior abatement work.

The Tenant provided a statement to say that she could not fully express her contempt for the company who believed they had the right to expose tenants to unsafe conditions and noxious chemicals while renovating an old building. The tenants were advised to keep their leaky windows closed while noxious chemicals were being applied to the decks, which did nothing to keep the smells out. The fumes from the membrane material applied to the balconies had a strong odor that caused the Tenant to have continual headaches. This material was applied to four stacks of balconies on the Tenant's side of the building and she stated that it was equally unpleasant wherever the workers were applying it. Shutting her windows during this time did not help to keep out the fumes. This work was continuous from April through September 2017.

Issue 11: Exposure to Hazardous Materials

The Tenant provided a general statement about exposure to hazardous materials: Observation of hazardous material mishandling, persistent presence of renovation dust, and evacuation of one of the other towers has caused some tenants significant fear of possible health implications. As a result of feeling that one's home has been unsafe to a degree that may lead to terminal illness represents, in the Tenant's opinion, a significant loss of quiet enjoyment.

The Tenant stated that she read the Work Safe BC reports about her residential property. The Tenant said that the contractors did not follow procedures to ensure their health and safety. Rental units were not sealed, and contaminants were not contained. When the whole renovation project was stopped by the owners and property management company, no notice was given to tenants. When a WSBC Notice was posted in the lobby, the Tenant phoned the Occupational Hygiene Officer to get more information. His only concern was with the health and welfare of the construction crew, not the tenants. The Tenant felt as if her health was at risk and abused by (management and the contractors). They did nothing to protect (the Tenant) or other tenants from the chemicals, hazardous materials and dust of construction. There were chemicals being applied continually and the tenants were told, in the heat of summer, to keep everything shut, which didn't do anything because the windows do not seal weather, insects or anything else out.

The Tenant submitted a substantial amount of documentary evidence including statements from a professional in occupational hygiene and some of the contractors on the site. These statements and the WSBC inspection reports point out that the hazardous abatement and renovation work was undertaken by a series of inexperienced and untrained contractors without adequate supervision.

The Tenant is not making a specific health claim at this point; however, is concerned for her long-term health and provided the above information as context for the manner of how the renovation was managed.

Issue 12: Faulty intercom

The Tenant submits that she lived in the rental unit from October 2016 to October 2017 without a working intercom, while paying a higher rent for a renovated rental unit. The Tenant felt that it was inconvenient not having an intercom.

Issue 13: Increase of Dust and Debris

The Tenant forwarded the general description of the dust and debris that tenants had to deal with during the renovation of the residential building: With no carpets in the hallways, heavy worker traffic, heavy renovation in neighboring suites, irregular cleaning and insufficient care taken to seal windows during exterior abatement; tenants were exposed to a dramatic and ongoing increase of dust and debris. Doors between rental units and hallways were loose fitting, with significant gaps to allow dust into units. What limited ventilation existed in the building (keeping in mind many or most windows needed be kept closed due to exterior abatement) is shared between occupied suites and suites under renovation.

The Tenant stated that the dust and debris that came into her suite was significant. The entry door and windows have gaps and cold air blows through her rental unit in the winter. The heaters cannot keep pace with the loss of heat and it can get uncomfortably cold. When work was resumed on the exterior of the building after a WSBC shutdown, tenants were advised to keep the windows shut because of debris and other work-related issues. When outside temperatures rose, tenants were advised to continue keeping their windows closed resulting in discomfort. Because the Tenant's windows were not sealed properly, debris and insects entered anyway.

The Tenant submits that she noticed there weren't any measures being taken to seal off the rental units that were being renovated. She felt that her health and safety were at risk during the period of renovations inside and outside of the residential property. When contractors were working on the balconies, demolishing and rebuilding them, it was extremely loud, dusty and dirty.

The Tenant provided photos of bare floors covered in dust and claimed that they were rarely cleaned.

Issue 14: Leaking Windows

The Tenant stated that she had leaking windows from the time she moved in that let the cluster flies access. She said the first winter was very cold with noticeable wind blowing through her rental unit from the side and front windows. The Tenant had to wear extra clothing and her guests had to keep their coats on. The Tenant asked management to have the windows fixed and she was told they would be replaced. The windows have not been replaced.

Issue 15: Items Not Ready at Move In

The Tenant stated that she did not have drapes when she moved in and that it was a long time before they were installed. The Tenant said it was distressing not to have privacy during the renovations because there were workers going past her windows, on the scaffolding, all the time.

Issue 17: Contractor Negligence, Incompetence and Conduct

A general statement, including quotes from several contractors was provided to give context regarding contractor negligence, incompetence and conduct during the renovation: Tenants observed countless demonstrations of contractor disregard for tenant safety and comfort; tenants had to deal with emergency exits that were blocked, building security that was compromised, yelling and music from staging area at 7:00 almost every morning, lewd comments directly outside windows, "accidental" worker entries of occupied units, potentially hazardous material containing debris being tossed from windows or carted through hallways, poorly completed repairs, debris, tools and equipment left throughout the corridors, and electrical panels that were left open. There has been a sense that the work is not being completed safely, competently managed, that the building is not necessarily a safe place to occupy, and that the workers have no respect for the safety or concerns of tenants.

The Tenant stated that she felt trapped by having to sign a lease. The Tenant had to spend a lot of money to move into the rental unit and the whole situation created an almost paralyzing stress. The Tenant felt that the Landlord was not looking out for her, or any other tenants, safety during the renovations.

Issue 19: Noise from Interior Renovations

The Tenant submitted the following general description of the noise related to the interior renovation: Six to seven days a week of renovation noise from neighboring suites, sometimes many at a time. Demolition with sledgehammers, grinding, sanding, sawing, drilling, hammering, yelling, swearing, and music. Noise reverberates through the common building shell and it is often difficult to tell the difference between work that's happening in the unit above versus the unit five levels above. The noise is intense and, at times, non-stop for hours, and has been ongoing for almost three years.

The Tenant stated that it was a shock to discover just how loud the demolition and renovation work was. The Tenant said she got the impression that it was done on purpose: that they were actively trying to evict the tenants through unbearable noise. The Tenant's ears hurt, and she felt that tenants, at a minimum, should be supplied with noise blocking headphones. Ordinary ear buds did not help. In the second month of the Tenant's tenancy, the carpets in the hallways were removed. Besides the extra dust and debris, the lack of sound insulation the carpets had provided added to the noise and lack of privacy.

The Tenant provided a sound clip to demonstrate the level of noise, the banging and the loud music that was occurring while interior renovations were being conducted.

Issue 20: Noise During Quiet Hours

The Tenant submitted the following general description regarding noise that occurred after regular work hours: Illegal workers had been living in vacant suites and suites undergoing renovation. Many tenants have reported hearing work well outside of regular hours, in evenings, late at night and through the weekend. Electric saws, hammering, sanding, drilling, music, yelling within the building. These workers may have considered this to be "quiet" work as it's the lighter renovation tasks, but it's still renovation noise. It's been an ongoing disturbance and continues to occur.

The Tenant stated that there was work going on in the empty suites above and below her, outside of regular working hours, including weekends, until the work was temporarily shut down in December 2016. It was disturbing to the Tenant's quiet enjoyment of the rental unit.

The Tenant provided audio examples of jackhammering that occurred on Saturday, September 16, 2017 and work that occurred on a holiday, May 27, 2017.

Issue 21: Noise from Exterior Renovations

The Tenant submitted the following general description of the conditions related to the exterior renovation noise: Jack-hammers applied to a concrete structure reverberate throughout the residential property. From within the building, a person does not experience the sound as originating from a point location, but rather emanating from all surfaces as the concrete structure acts to conduct the sound throughout with little abatement over distance. The grinding/drilling may be near or at the furthest corner of the building, but wherever you are, it sounds like the work is happening to whatever wall is nearest you, everywhere through the suite and common spaces. It is absolutely intense and insufferable, and when it's not happening in this building, it's happening in the neighboring tower - not as intense but still highly disturbing.

At times, it has been impossible to speak to another person seated next to you; telephone calls are impossible. Most residents had to leave the building frequently to avoid the noise, or wear ear protection to suffer through. Workers would appear without warning directly outside windows or on balconies, playing loud music or having loud conversations (shouting over the noise), frequently using profane language, yelling conversations between the yard and high up the building. Loud, quaking, alarming thuds as balcony slabs are tipped over.

For all of 2016 this work started with loud crew assembling outside at 7:00 a.m. There was, consistently, some bit of intense noise at 8:00 a.m. at the latest - a reliable wake-up almost every day of the week. When work renewed in 2017 the crews were somewhat more respectful, but the intense noise continued. The jack-hammering, which tenants experienced at times

sporadically, and at times sustained for hours, five or six days a week, for months on end between 2016 and 2018, was not only producing sound intense enough to potentially cause permanent hearing damage but was also in violation of noise bylaws at all times. Even if the quietest jackhammer and chisel combinations were used, the dBA levels would not have dropped to permitted levels anywhere within the buildings. What started as a highly unpleasant experience began to feel like trauma for many tenants as the experience drew out into weeks, months and years.

The Tenant stated that the noise was at a decibel that she believed must have been damaging to the ears. When escaping the building on one occasion, she met a worker in the elevator. The worker made a comment about me escaping the noise and said he could not properly perform his job because the intensity of the noise interfered with his ability to think. Since the shutdown and the hiring of a different company the demolition and renovating is a lot quieter. The Tenant believes the extreme conditions we endured before the Work Safe shutdown were being done with the malicious intent of driving people to vacate their units.

The Tenant stated that she did try to communicate with the management company about the problems around unreasonable noise levels. She had limited success with her email correspondence with management as noted under some of the other issues.

The Tenant submitted several clips of video/audio to demonstrate the construction noise and the jack-hammering that had to be endured. The Tenant also provided statements from an expert witness about the high level of noise that emanated from the jack hammers.

Issue 22: Loss of Access to Fresh Air

The Tenant submitted the following general description of why the Landlords were responsible for a lack of fresh air in the rental units: Construction noise, dust, and privacy concerns made it necessary for tenants to keep windows closed at all times. The landlord also instructed tenants to do so, notably during the very hot summer months of 2017. With windows sealed and very limited ventilation (one small vent above stove, one small vent in bathroom, neither with fans and both shared with neighboring suites undergoing renovations) access to fresh air has been very limited. No effort was made to resolve this for tenants, even when expressing concerns about fumes from paints or other chemicals being used in halls or neighboring suites. The inability to open windows prevented cooling in the summer or refreshing air to clear out cooking or construction related smells.

The Tenant stated that she was advised to keep her windows shut during the summer months of 2017 because of construction. This made residing in the rental unit even more uncomfortable because of the outside temperature and poor ventilation within the building. By the time that part of the work was finished, the Tenant was provided use of her balcony; however, she could still not use it because the work on other rows impacted her outdoor space with debris. The Tenant

had brought her deck furniture up from storage but had to take it down again because of it being ruined with flying membrane materials.

Issue 24: Loss of Privacy

The Tenant stated that she has been living in a work zone. The people she interacts with everyday are her neighbours and work crews from many different companies. Sometimes there are so many workers entering the building and going to their designated work areas, the Tenant cannot get an elevator for prolonged periods of time. The Tenant stated that the better part of her tenancy has lacked privacy. She rented an apartment with a view because that is what she wanted. Hearing workers discussing their personal lives and listening to their loud music outside her unit was not how the Tenant anticipated spending her days. The Tenant recounted her first morning in the rental unit and being awakened by loud music. The Tenant looked up to see two workers on scaffolding outside her bedroom window. When the Tenant finally received drapes for her unit, she did not get to enjoy her view because she felt the need to keep the drapes shut to have privacy from strangers/workers outside her windows.

Issue 27: Heating Failures

The Tenant stated that she experienced problems with the heating system where it would not turn off. This was problematic as the Tenant had been asked to keep her windows closed by the Landlord.

Issue 28: Plumbing Failures and Water Shut-offs

The Tenant stated that she experienced regular water shut-offs during the renovations. The Landlord would provide written notice to the tenants in the building and advise that the water would be shut off between 9:00 a.m. and 4:00 p.m. The Tenant stated that she had to fill the tub and sinks so she could flush the toilets and do dishes throughout the day.

The Tenant submitted a picture, dated April 25, 2018, as an example of the many water shut-off notices posted in the building.

Issue 29: Mail Service Disruption

The Tenant submitted a statement that mail service was disrupted for a total of approximately 6 weeks. The Tenant had to walk many blocks to stand in line and retrieve her mail.

Issue 30: Loss of Access to Balcony

The Tenant stated that it was inconvenient not to have the use of her balcony, especially during the warm months of summer. The Tenant had to remove her furniture to the storage locker. The Tenant stated that when she rented the unit, it was supposed to have the use of a balcony

included as part of the rent. The Tenant's sliding door to the balcony was locked from the outside around November 2016. Before any work was done on her balcony the construction work was stopped (WSBC order) and the Tenant was unable to open the door or use her balcony. The Tenant did not have use of her balcony for eleven months as it was not unlocked until the end of September of 2017.

Issue 33: Unusable Swimming Pool and Hot Tub

The Tenant submitted the following general description of the loss of facilities being the pool and hot tub: The pool and hot tub were shut down in November 2016, after several months of only being open after 4:00 p.m. each day. Since its re-opening the pool has been closed repeatedly, for a total of five weeks, because of lack of maintenance. The hot tub remained closed and partially full of rainwater and garbage until early May 2018.

The Tenant stated that the swimming pool was a major factor in her decision to choose this apartment building over others. The Tenant rented the two-bedroom unit for herself and overnight guests and specifically wanted the use of the pool. The Tenant has grandchildren who love to swim; therefore, the Tenant considered the pool an asset for this reason. When she moved in, the Tenant asked the building manager if the pool could be used in the winter and he stated that many tenants do, as it is kept at 85 degrees Fahrenheit. One month after the Tenant moved in, the pool was shut down.

The Tenant submitted photos, dated during her tenancy, of the closed and unkept pool and hot tub. She also submitted a copy of the letter she wrote to the Landlord, dated April 3, 2017, requesting a rent reduction for the lack of amenities, that were supposed to be included in her rent.

Issue 34: Reduced Elevator Availability

The Tenant submitted the following general description in regard to the reduced availability for the elevators: With all of the renovation underway, elevator access in the building has been a problem. The workers frequently lock out one elevator, and then also use the other to transport themselves, materials, and tools. It is not uncommon to wait several minutes or more for an elevator to arrive, only to find it full of construction workers and their items.

The Tenant stated that she has waited up to five minutes for an elevator in the morning. When workers are arriving with their equipment, there often isn't room to get on. The Tenant stated that she had to wait for renovations to be completed before she could move into the rental unit. When the unit was ready, she had to move in on a Saturday. The nonresident manager knew she was moving in that day, but warned the Tenant that weekends were his time off. He noted he might be in the building and would make an exception. He was in the building but he did not lock down the elevator for the Tenant and her movers.

Landlord Evidence:

The following evidence is a summary of the Landlord's testimony during the hearing and her written submissions:

The Landlord stated that during the fall of 2015, the ownership group for the residential property, referred to as the "Building" that includes the rental unit, undertook a project to maintain and repair the Building pursuant to their obligation in section 32 of the Act. This included work on corridor, lobby and entrance refurbishment, security upgrades, elevator modernization, painting building envelope, balconies, windows and doors, unit renovations, energy efficient systems and mechanical equipment replacement.

The Landlord submitted, as evidence, a notice to all residents of a related, but different building, dated October 30, 2015 (the "Notice"), that indicated that the work was expected to take 36 months to complete. Further, the Notice stated that as a result of the proposed construction activity at the building, there may be noise, vibration, dust and inconvenience to access and egress at the building.

The Landlord wished to make improvements and stated that there was an assessment report that confirmed an immediate need to address balcony deficiencies including concrete deterioration and corroded hardware. The Landlord stated that a consulting company provided a property condition assessment indicating that the concrete balconies were in a state of deterioration. Further, the Landlord would also be upgrading/renovating the corridor, entrance, upgrade security, modernize the elevators, paint, windows and door, unit renovations on turnover. The Landlord did not provide a copy of the assessment report as evidence.

The Landlord stated that they strive to employ workers that are highly-regarded in each city and expect these workers to operate within all Federal, Provincial and Municipal regulations and bylaws.

The Landlord stated that by late June 2016, tenants were notified to remove their items from their balconies as the renovations for balconies were to begin shortly.

Construction work on the exterior usually occurred between 7:30 a.m. to around 3:30 p.m. from Monday to Friday, and 8:00 a.m. to 3:30 p.m. on Saturdays. No work was done on Sundays. The Landlord submitted as evidence, an affidavit from the building manager of the Building, who stated "that the construction workers would not start their work involving excessive noise, such as jackhammering until around 8:00 a.m. to 3:30 p.m. in the afternoon."

The Landlord stated that there are sufficient cleaning protocols in place to clean the Building and referred to the building manager's affidavit and Schedule of Duties.

From November 7, 2016 to December 8, 2016, the Landlord issued a number of construction updates and notices to tenants. The Landlord referred to pages 22-29 of her evidence package. Of the eight notices, four of them are related to the Building in which the rental unit is a part. The Notices advise the tenants of the Building that:

- Common area hallways are being painted, carpeted and the lighting upgraded
- Elevators will be receiving a feature wall
- Balcony work is ongoing with deck railings expected soon
- Various rental units are in the process of being renovated
- The pool is unavailable due to algae growth, but the building manager will treat this and bring it back to service
- An update that the hallway painting is complete
- An update that new deck railings are being added at the front of the Building
- An update that the pool and hot tub are out of commission
- That the building managers are on vacation from December 23, 2016 to January 2, 2017.

The Landlord stated that on December 14, 2016, a Stop Work Order was placed on another building that the company owns because of concerns pertaining to improper disposal of drywall. In an abundance of caution, WorkSafe BC issued a stop work order on the Building as well. The Landlord submitted a copy of the letter to the tenants of the Building, dated December 23, 2016, that the interior construction activities were proactively stopped at the Building while work safety testing took place at a separate building.

The Landlord stated, that on February 7, 2017, the Landlord provided a notice to the residents of the Building noting that the Stop Work Order had been lifted for core services such as cleaning and building management, and that these services would be returning to the Building. The notice also noted that the findings of elevated asbestos levels in another building are unique to that building and that those findings did not apply to the current Building.

At the time of the stop work order, there was no mail delivery for 2 weeks in February 2017. Mail was still being delivered, just not to the same location. The Landlord stated that this was an inconvenience that unfortunately comes with construction for renovations that will ultimately benefit the tenants.

The Landlord issued a notice to tenants that exterior construction would resume the week of May 1, 2017. The notice indicated that construction would be focused on completing the balconies on both sides of the building. The notice also acknowledged that intermittent heavy construction, drilling and painting will resume and that the tenants may notice construction crew outside their windows. The Landlord stated that increased communication would be a focus as construction recommences and that the remaining work will be completed in six to seven weeks, weather permitting.

The building manager, in their affidavit, stated the balconies in the Building were completed by August 18, 2017.

From August 21 to 25, 2017, the Landlord provided notice to the residents of the Building that the front entrance and bridge would be closed as the bridge deck was being resurfaced. As such, Canada Post deliveries could be picked up at a nearby location.

As construction continued at the Building, including the repairs to balconies, management issued notices and updates on the construction project. In particular, the Landlord had scheduled a cleaning for all exterior windows as the construction project was finishing up for the week of September 17, 2018.

The Landlord provided the following submissions specifically related to the Tenant's claims:

Issue 01: Resident Managers

The Landlord understands that the Tenant may have been inconvenienced on some occasions because the resident managers and/or the property managers did not respond to the Tenant in a timely fashion or provide the answer she wanted, but the Landlord argues that this is more of an inconvenience than a loss of quiet enjoyment.

The Landlord stated that there are notices from (management) in the Landlord's evidence package which indicate that a property manager would be available to tenants should there be any issues and they had provided a contact. The emails submitted show that in some situations, the Tenant did receive a response though it may not have satisfied the Tenant.

Issue 02: Failure to Maintain Cleanliness in hallways and common areas

Issue 09: Hallways and Commons Unfinished

(Arbitrator combined these similar issues)

The Landlord stated that the Tenant understood the Building was under construction as exterior renovations began in mid-late June 2016, and the Tenant moved in October 2016. It is the Landlord's submission that the Landlord has satisfied its obligation to provide cleaning services at the Building, though they may not be to the Tenant's standard. However, the standard of cleanliness is not to be dictated by the residents and does not have to be to the standard of perfection. The Landlord notes that they have met their obligations with cleaning.

The Landlord does acknowledge that during the stop work order issued on December 14, 2016 to around January 2017, there were no building managers allowed in the Building. During this month, there was no cleaning done. However, since there was no construction going on, the amount of dust and debris would also be minimized. The Landlord further notes that many of the photos provided in the Tenant's application are not clear for which building it pertains to. It is unclear how another floor would affect the Tenant's quiet enjoyment.

The Landlord submits that an unfinished hallway does not substantially interfere with the ordinary and lawful enjoyment of the premises. Further, if the lack of carpets increased the amount of dust tracked into the Tenant's rental unit, which the Landlord submits there is no evidence of, then the Tenant could have asked the Landlord for assistance. The Landlord would have gladly helped with cleaning or sweeping if there was excessive dirt. However, there is no evidence the Landlord was informed of this issue and so the Tenant has not mitigated her claim. The Tenant moved into the Building with full knowledge that it was under construction and that renovations were taking place. If there is anything awarded for this, the Landlord submits that it should be a nominal amount.

Issue 03: Failure to Maintain Cleanliness of exterior of windows

Issue 23: Loss of View and Access to Light

(Arbitrator combined these similar issues)

The Landlord acknowledged that *Residential Tenancy Branch Policy Guideline 1* stipulates that the landlord is responsible for cleaning the outside of the windows, at reasonable intervals. The Landlord stated that they intend to clean the exterior of windows, if it has not already been done, but it would not make sense to do so during the construction period. The Tenant, at page 28 of her dispute package, notes that in December of 2017, some cleaning was done.

Issue 05: Security Concerns – Front or rear doors left open

In response to the Tenant's issue about building security, the Landlord replied that there is no evidence to this issue and no reported cases of theft or break-ins relating to the tenancy. The Landlord has submitted evidence of an incident report of the Building's own residents who have been seen using the scaffolding and causing a disturbance as opposed to a threat from "unauthorized people".

Issue 07: Unsightly Grounds

The Landlord submits that the front main yard is not considered the Building's "front lawn". It is not a part of the Tenant's tenancy. It is not an "amenity". Further, an unsightly yard does not amount to a loss of quiet enjoyment. The Landlord argued that the photos submitted by the Tenant do not demonstrate "cluttered construction". From the Landlord's perspective, the materials are neatly stacked and closed off as to not impede on the Building's tenants and their walkways. The grounds would have looked the same since June 2016, prior to the Tenant moving in and so the Tenant should have been aware of the construction project.

Issue 10: Exposure to Noxious Fumes

The Landlord submits that tenants were advised to not open their windows for safety reasons during the construction period. There is no loss to the Tenant. If the Tenant was concerned

about fumes, it is not clear whether she did anything about this, for example, going to see her general practitioner. The Landlord stated that it has satisfied its obligations regarding properly handling paint and sealants. The Landlord submits that discomfort is not a breach of quiet enjoyment. Painting and solvents were not an everyday occurrence and did not last the span of the Tenant's tenancy.

Issue 11: Exposure to Hazardous Materials

The Landlord submits that they have been working with health authorities and consultants in order to ensure that they would properly handle asbestos during the construction project, especially since the self-imposed stop work order. There is no evidence submitted by the Tenant of any health problems or any other loss or damage that may have resulted because of any alleged actions or inactions by the Landlord. The only evidence the Tenant has been able to offer regarding the exposure to hazardous materials is that it was possible.

Issue 12: Faulty intercom

The Landlord submits that the Tenant has not provided sufficient evidence of a loss to this part of the claim.

Issue 13: Increase of Dust and Debris

The Landlord referred to Section 7 of the Act, where an individual who is claiming for damages must prove that they mitigated such damages. If the Landlord was not aware of the alleged excessive dust in the Tenant's unit then they could not assist in cleaning the unit or help with securing the windows with tape, so no further dust would get into the unit. The Landlord submits that the Tenant has not satisfied their obligation to mitigate their damages as she did not inform the Landlord of this issue. The Landlord stated that if any amount is awarded, which the Landlord submits should not be, the Landlord believes a nominal amount is sufficient. The Landlord stated that the Tenant's evidence package was not created by the Tenant, so it is unclear as to whether any of these photos were taken by the Tenant or if they relate to her particular unit.

Issue 14: Leaking Windows

The Landlord submits that there is insufficient evidence as to how often the windows leaked and whether the Landlord inspected the situation. The Landlord proposed that if anything is awarded, it should be a nominal amount.

Issue 15: Items Not Ready at Move In

The Landlord stated that this issue has been resolved as the Landlord has provided for missing drapes. The Landlord submits there is no evidence of the tenant mitigating this or when the tenants advised the Landlord of the missing drapes.

Issue 17: Contractor Negligence, Incompetence and Conduct

The Landlord submits much of the Tenant's statements cannot be substantiated and are conjecture. Further, the evidence submitted is hearsay and cannot be considered as evidence.

There is no evidence regarding "asbestos materials being carted through hallways unsealed", no evidence that any yelling in the early morning can be attributed to the construction workers, and no evidence that work is not being competently managed.

The Landlord stated that the Tenant is not qualified as an expert of any kind to determine that the contractors retained were negligent, which is a legal test to be proved in court and/or incompetent.

The Landlord submits that if construction crews were loud or crude, that the Tenant should have reported this behavior to the Landlord, so they are aware and can resolve the issue. The Tenant has not mitigated his (her) claim.

Issue 19: Noise from Interior Renovations

The Landlord stated that the Tenant is referring to suite renovations of empty rental units in the Building, which would be updated on tenant turnover. These renovations included painting, kitchen and bathroom upgrades, and new flooring. Most of these would be completed within a short period of time and cause little disruption to the Tenant.

The Tenant does not provide evidence as to which days the suite renovations took place and the extent of the disruption. There was no demolition going on in interior suites. It is unclear whether the Tenant is speaking about exterior construction noise.

The Landlord stated that the Tenant did not provide evidence as to where this noise is coming from or whether it can be attributed to the Landlord. Although the Landlord undertook rental unit renovations at the Building, tenants may have also done their own renovations (building/moving furniture, etc.).

The Landlord also submits that the Tenant admits in his evidence that he was at work during these times, so it is not clear how the construction noise would affect him if he was not present at that time. (Arb note: this submission from the Landlord does not appear to apply to the Tenant in this Application).

Issue 20: Noise During Quiet Hours

The Landlord reiterated that any construction work has been done in abidance with municipal bylaws and this has been witnessed by the building managers present at the building. It would be reasonable that if there was an unreasonable disturbance and excessive noise, the building managers would also complain as they reside at the Building. The Landlord acknowledges that construction work does make noise, however, the Landlord submits that these are inconveniences rather than breaches of quiet enjoyment.

Issue 21: Noise from Exterior Renovations

The Landlord submits, as per the Landlord's evidence package, the balcony repairs began about mid-June 2016. Prior to this time, there was no jackhammering or major noise disruptions. The hallway and corridor renovations did not begin until August 2016. The Landlord submits that the construction took place during the day within the allowable times of the bylaws. The Landlord stated that the Tenant moved into the Building as it was undergoing construction in October 2016.

Pursuant to section 32 of the Act, the Landlord has a legal obligation to repair and maintain the Building. The Landlord stated that they are merely satisfying its section 32 statutory obligations based on the assessment provided by the (consultant).

The Landlord stated that the Tenant was aware that construction was going to commence when she moved in and that there would be inconveniences, though the repairs and renovations would ultimately benefit the tenants.

The Landlord stated that the work on the exterior of the Building was necessary in order for the Landlord to fulfill its section 32 obligations. Further, they were within the times set out in the bylaws and started in June 2016. The construction then stopped because of the Stop Work Order in December 2016 and started up again in May 2017.

The Landlord referred to Residential Tenancy Branch Policy Guideline 6, when determining whether a breach of quiet enjoyment has occurred and noted that it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. The Landlord has undertaken an excessive amount of time and costs in order to satisfy their obligations and improve the tenancy for the Tenant.

Issue 22: Loss of Access to Fresh Air

Issue 24: Loss of Privacy

(Landlord provided submissions for both of these issues below)

It is the Landlord's submission that construction taking place at the Building would last 24 to 36 months. The Tenants must take into account the Landlord's obligation to maintain the property,

though there may be some inconveniences along the way. However, these do not amount to a loss of quiet enjoyment.

The Landlord submits that the Tenant still had some air flow, light and view from her balcony, especially since the Tenant has claimed that dust is able to get in. With regard to a loss of fresh air, the Landlord submits that the Tenant has never brought to its attention his (her) issue with ventilation. If there was a repair necessary, the Landlord would have obliged to repair it as per its obligations under the Act.

If any amount is awarded for a loss of fresh air/no ventilation, the Landlord submits it to be a nominal amount.

The Landlord has submitted several notices and examples of correspondence with the Tenant to showcase its willingness to advise tenants of the construction project. On each notice, a contact is provided should any resident require an accommodation or additional information. As it was an ongoing construction project, the Landlord is not obligated to inform the tenants that construction workers will be on site. It is clear from the notices when the stop work order was not in place that workers would be at the Building.

With regard to privacy, the Landlord does not deny that construction workers would need to be on a balcony in order to repair it. The Tenants note that they suffered discomfort because of this and the Landlord again submits that discomfort or inconvenience is not a loss of quiet enjoyment.

Issue 27: Heating Failures

The Landlord stated that the Tenant does not offer any substantial evidence of requesting repairs for her alleged heating failures. The Landlord referred to the Tenant's evidence package where it states that the Landlord did respond and inspect her unit. The Landlord has sufficiently responded to the Tenant though it may not be up to her standards. The fact that she had to wait a few weeks for a professional to repair the heating system does not amount to a loss of quiet enjoyment.

Issue 28: Plumbing Failures and Water Shut-offs

The Landlord stated that with any construction project, there may be water shut offs and the Landlord agrees that these are inconvenient. However, the test for loss of quiet enjoyment is not just inconvenience. Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. The Tenant does not provide the number of times or frequency of water shut offs that would amount to a basis of a breach of quiet enjoyment. If there were water shut offs, the Landlord did provide notice to tenants. If any amount is awarded for this claim, the Landlords submits that it be a nominal amount.

Issue 29: Mail Service Disruption

The Landlord stated that Canada Post, during the mail disruption to the Building, continued to deliver mail to the tenants, though it was at another location for 2 weeks. With respect to the second mail stoppage from September 5 to 13, 2017, the tenants have not provided sufficient evidence of a tangible loss due to the mail disruption. The Landlord submits that the bridge deck at the front entrance of the Building was being resurfaced and that this was an inconvenience to tenants but does not meet the standard of breaching the covenant of loss to quiet enjoyment.

The Landlord submits that residents of the Building were provided with Notice on August 30, 2017. Further, it was not that the mail was not being delivered, it was rerouted to another location so residents still had access to their mail.

Issue 30: Loss of Access to Balcony

The Landlord did not respond to this specific issue in her submissions.

Issue 33: Unusable Swimming Pool and Hot Tub

The Landlord stated that the Tenant moved in on October 2016 and should have been aware that the pool and hot tub were out of commission. If anything is awarded, then the Landlord submits it should be a nominal amount.

Issue 34: Reduced Elevator Availability

The Landlord submits that there are two elevators available for use by the tenants. The Building has numerous rental units and the tenants do share that usage with others, including service providers retained by the Landlord. There is no evidence of a loss. If the Tenant had to wait for an elevator, then that is the reality of living in a multi-tenanted building.

Analysis

The Tenant has testified and submitted their evidence in relation to a variety of issues for the purpose of proving that they sustained a loss of quiet enjoyment, reduced access to facilities and endured a poor state of maintenance and repair during a period when her residential building was undergoing a major renovation. Subsequently, the Tenant has requested compensation for the overall loss during her tenancy.

The Landlord submitted that they were satisfying their statutory obligations to repair the building as a result of a professional assessment and as a means to improve the tenancy for the tenants of the building. The Landlord argued that they had a right to renovate and that the work on the balconies was necessary.

Section 28 of the Act outlines the Tenant's right to quiet enjoyment and states that the Tenant is entitled 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, and use of common areas for reasonable and lawful purposes, free from significant interference."

Section 32 of the Act sets out the responsibility of a Landlord to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of a rental unit, make it suitable for occupation by a Tenant.

Residential Tenancy Policy Guideline 6, "Entitlement to Quiet Enjoyment" addresses the distinction between a tenant's right to quiet enjoyment (as defined by Section 28 of the Act) and the inconvenience associated with a landlord complying with Section 32. The relevant portion of the Guideline states:

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.

Section 67 of the Act allows for an Arbitrator to determine the amount of compensation to be awarded to a party if a party has not complied with the Act.

Both parties agreed for me to make my decision after reviewing their submissions and evidence package. While reviewing the Landlord's evidence, I did not locate any copies of the property condition assessment report or subsequent recommendations that confirmed an immediate need to address balcony deficiencies, or any other renovations in the building. I find the lack of this report, of which the Landlord relied on so heavily to justify the significant renovation, diminishes the weight of the Landlord's testimony that the Landlord was "obliged" to conduct the work, pursuant to Section 32 of the Act.

Both parties provided undisputed evidence that the Tenant was aware, when she started the tenancy, that a large-scale renovation was occurring in the building. I accept the Tenant's evidence that she was surprised at the extent to which the renovation would cause her long-term discomfort and inconvenience.

Soon after moving into her rental unit, the Tenant experienced living in a six-day a week construction zone with many trades present, the noise of jack-hammering, banging and grinding, and the related dust, dirt and building materials throughout the building. I find that the Tenant experienced the full loss of the pool and hot tub for her entire tenancy, her deck for half of her tenancy and the partial loss of common areas, views, privacy and pride in her place of residence for the majority of her tenancy.

I find that the Tenant's claim of loss of quiet enjoyment, reduced access to facilities and the claim that she endured a poor state of maintenance and repair to her rental unit and residential building is corroborated by the documentation presented by the Tenant. I acknowledge that I would not necessarily make a monetary award in regard to each specific issue that the Tenant raised, for example, the loss of mail service or that the intercom was not working properly. However, I find that these and other issues did provide context and magnified the overall impact of the long-term discomfort and inconveniences that she experienced during her tenancy. I have considered the issues for their collective value and for the cumulative impact over time.

The Landlord submitted that "discomfort is not a breach of quiet enjoyment." I find that the Landlord would be correct if they said that "temporary" discomfort is not a breach of quiet enjoyment. In this case however, I find that the Tenant experienced frequent and ongoing interference and unreasonable disturbances based not only on the Tenant's testimony and the expert witness' reports, but the Building Manager's affidavit acknowledging "that the construction workers would not start their work involving excessive noise, such as jackhammering until around 8:00 a.m. to 3:30 p.m. in the afternoon."

In this case, I find that the Landlord has not demonstrated an obligation or need to repair or renovate the building or to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law. Rather, I find that the Landlord initiated a large-scale renovation of the Tenant's building, was aware of the ongoing interference and unreasonable disturbance caused by the renovations and failed to ensure that the Tenant's entitlement to quiet enjoyment was protected or that a loss of facilities was

compensated. As a result, I find that the Tenant has established a monetary award based on the Landlord's breach of Section 27 and 28 of the Act.

Before making an award, I will address the Landlord's position that a claim can only be made for infractions within the last two years. Section 60 of the Act allows a party to make an Application for Dispute Resolution within two years of the date the tenancy ended. As this tenancy ended on June 29, 2018 and the Tenant applied for Dispute Resolution on August 2, 2018, I find that the Tenant is still within her right to make this Application for compensation for loss for the entire time of her tenancy.

The Landlord submitted evidence that the Tenant failed to mitigate her losses in regard to such issues as cleanliness in the hallways and common areas, dust in the unit or contractor negligence, incompetence and disrespectful conduct. The Landlord suggested that the Tenant should have reported these issues to the Landlord so that they were aware and could resolve the issue. I find the Tenant provided sufficient examples of her attempts to contact the Landlord to address her issues with limited to no response from the Landlord. I do not accept the Landlord's argument that the Tenant failed to mitigate these issues.

In determining the amount by which the value of the tenancy has been reduced, I am guided by Policy Guideline 6 that states that the Arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

I find that the Tenant constantly experienced a loss of facilities and quiet enjoyment to various degrees throughout her tenancy. I have taken into account that, amongst other challenges, the Tenant lived through 6 days a week of major construction in her building, the loss of the pool, the hot tub and her balcony for the majority of her first year of her tenancy. For this, I find the Tenant is entitled to recover 50% of the rent paid for her first year of tenancy. I calculate 12 months of rent at $\$1,855.00 \times 50\% = \$11,130.00$.

In October 2017, the Tenant's rent was raised by the Landlord. Although the Tenant gained access to her refinished balcony, she was still experiencing living in a major construction zone and continued to experience a loss of facilities. As a result, I find the Tenant is entitled to recover 40% of the rent paid for the rest of her tenancy. I calculate 9 months of rent at $\$1,923.64 \times 40\% = \$6,925.10$.

The Tenant has established a monetary claim in the amount of \$18,155.10, which includes \$18,055.10 in damages, and the \$100.00 in compensation for the filing fee for this Application for Dispute Resolution. Based on these determinations, I grant the Landlord a Monetary Order for \$18,155.10, in accordance with Section 67 of the Act.

Conclusion

I grant the Tenant a Monetary Order for the amount of \$18,155.10, in accordance with Section 67 of the Act. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, 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: March 3, 2019

Residential Tenancy Branch