



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      RR

### Introduction

This hearing was convened in response to applications by the tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The tenants requested:

- a Monetary Order pursuant to section 67 of the *Act* for money owed or compensation for damage or loss under the *Act*;

Both the landlord and the tenant appeared at the hearing. The landlord was represented their counsel K.H. (the “landlord”) while the tenant was assisted at the hearing by advocate P.W.

Both parties confirmed receipt of each other’s evidentiary packages and the landlord confirmed receipt of the tenant’s application for dispute.

Following opening remarks, the tenant’s advocate explained the tenant sought to amend his application to reflect an application for a lower monetary amount of \$13,687.00. As the landlord would not be prejudiced by this change, the tenant’s application is amended to reflect this new amount pursuant to section 64(3)(c) of the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award representing a retroactive reduction in rent?

### Background and Evidence

The tenant explained this tenancy began in August 2016. Rent is currently \$1,505.00 (inclusive of parking) per month and a security deposit of \$687.50 paid at the outset of the tenancy continues to be held by the landlord.

The tenant supplied a significant evidentiary package in support of his claim. The tenant is seeking a monetary award of \$13,687.00 representing a retroactive reduction in rent for the time period spanning August 2016 to February 2019.

During the late spring/early summer of 2016 extensive renovations to the entire property containing the tenant's rental unit were begun. The scope of the renovations can only be described as extensive. Among the renovations undertaken were:

- replacement of carpets
- replacement of lighting
- full renovation to all suites (kitchen appliances etc.)
- balcony upgrades
- landscaping of property
- replacement of windows

In order to accomplish the above described repairs, along with other renovations not listed, the landlord's contractors were required to jackhammer concrete and rebar, use various power tools and saws to replace dry wall and carpeting, remove walls to access wiring, hammer nails and use various hydraulic cranes to move equipment, tools and personnel around the property. It is alleged by the tenant, that all of these various construction works led to a significant inability to enjoy the rental unit and apartment grounds as he anticipated. The tenant sought a monetary award in the form of a return of rent paid during this construction and for loss of quiet enjoyment.

The tenant described himself as a full-time student who attended a local university. The tenant said he moved into the property in August 2016 after signing a tenancy agreement in July 2016. The tenant acknowledged some repair works were being undertaken when he first viewed the property but the tenant maintained that he had been assured by the property manager that all repair and construction work would be complete by November 2016.

The tenant said the majority of his claim related to the loss of quiet enjoyment resulting from the noise associated with jackhammering of concrete and rebar. The tenant described the noise as taking place between 9:00 A.M. and 5:00 P.M. Monday through Friday. The tenant said the noise would occasionally continue into some Saturdays. The tenant described the negative effect this noise had on his ability to remain in the rental unit, saying he could not concentrate to study, listen to music or quietly rest.

The tenant also explained he suffered a loss of enjoyment as a result of the constant presence of construction workers on the grounds and near his unit as they accessed various portions of the building from scaffolding. In addition, the tenant detailed his loss of a balcony from August 2016 to February 2018. The tenant said that not only was the loss of a balcony frustrating for obvious reasons (inability to enjoy a portion of the rental suite) but he was denied an ability to open the balcony door, thus creating a very hot and stuffy rental unit during the summer months. The tenant described the windows of the rental property as being "very" dirty; he noted large amount of garbage piled up in the parking area, saying it was "embarrassing" to host people in his home. In addition, the tenant described frustration in waiting for an elevator that was often "locked out" or occupied by construction personnel and he noted a loss of the lobby area as a common space because of its use as a staging area for the construction work.

The tenant also expressed concerns regarding long-term health problems associated with a potential exposure to asbestos. While the tenant and his advocate acknowledge there had been no direct exposure to asbestos on the property in question, asbestos was found in neighbouring property which was owned by the same landlord and subject to similar renovations.

Further to the above alleged loss, the tenant highlighted; mail service disruption, reduced parking and disturbances to his sleep. The tenant testified that from August to December 2016 he worked the night shift at Whole Foods while at the same time he was enrolled as a student three days per week. The tenant said this busy schedule made his ability to rest of great importance and the tenant noted the above described disturbances led him to experience a continuous loss of sleep during the Fall of 2016.

As part of his evidentiary package, the tenant produced several photographs depicting the scale and scope of the renovations. He also included a detailed description of the manner in which his ability to enjoy the unit and premises were affected and he incorporated an expert report from R.M. who detailed the hazardous noise levels present on the property which resulted from the construction.

Counsel for the landlord acknowledged the scale of construction work was significant but she questioned the level of loss sought by the tenant. During cross-examination by counsel, the tenant acknowledged moving into the property after construction had specifically jackhammering of the property, had begun. The tenant further confirmed that at no point were the elevators inoperable; they were simply slow. Counsel highlighted the fact that the tenant described his first term of school (Sept-Dec 2016) as running from Tuesday, Wednesday and Friday for three hours per day. Starting in

January 2017 and going through the 2018 school year, the tenant was enrolled in full-time studies. The tenant said this required him to be on campus five days per week during the day. The tenant confirmed he attended no night classes and described his commute to school as approximately 20-25 minutes. The tenant also confirmed under questioning from the landlord's counsel, that he did not have any associated doctor's notes or medical forms describing any adverse reactions to any asbestos or other items which may have been present during the renovations.

The landlord submitted a twelve page evidence package in which the landlord provided specific responses to the tenant's individual claims. This document from the landlord noted amongst other points, "he [the tenant] was aware that the Building was under construction. The tenant states at he believed it [the renovations] would be completed by November, although there is no written evidence of being told this time line...the landlord submits that since the Tenant expected construction until November, that any rent reduction should begin after this time."

### Analysis

The tenants submitted a claim for a monetary award in the amount of \$13,687.00 for loss of quiet enjoyment pursuant to section 28 of the *Act*. That section provides in part:

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;

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

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 a 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 covenant of 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.

The onus is on the party making the claim to show on a balance of probabilities that there has been a loss of quiet enjoyment as a result of the action or negligence of the landlords.

The parties have testified that the rental building has undergone some major renovations and repairs on both the interior and exterior of the building. The work has been ongoing since June 2016. The parties agreed the scope of work being undertaken was major.

I find that there is sufficient evidence that the construction work has caused an unreasonable disturbance to the tenant. The tenant provided evidence to the manner in which he was affected by the renovations. Specifically, the tenant described a loss of sleep, an inability to quietly enjoy his apartment and a total loss of balcony from August 2016 to February 2018. Furthermore, the tenant detailed the hardships involved with an inability to open his balcony door during the summer months and the everyday inconveniences associated with living in a property subject to such large renovations. I find the totality of these submissions sufficiently demonstrates that the discomfort was not "temporary" and qualifies as "frequent and ongoing."

The tenant suggested a monetary award of \$13,687.00 representing a 30% reduction in rent from August 2016 to February 2018.

I find this amount to be disproportionate to the loss suffered because the tenant was a full-time student who was on campus five days per week (Monday through Friday) for the majority of the day between January 2017 and for the entire academic year of 2018. The days when the tenant was on campus largely coincided with the days on which the majority of construction was taking place so he was not subject to significant disturbance during that time. Furthermore, the tenant had knowledge of renovation work on the property when he took possession of the rental unit. While the tenant may have been subject to a misrepresentation on behalf of the property manager related to the length of the construction, the tenant acknowledged that he understood the property would be subject to renovations until November 2016.

I will therefore grant the tenant an award equivalent to a return of 30% of his rent (based on \$1,375.00 rent) for November and December 2016 and a return of 15% of the rent (based on \$1,475.00 rent) for January 2017 to February 2019. I find that while the

tenant has been subject to a considerable amount of noise and loss of quiet enjoyment following the November 2016 date originally proposed to him, the loss of quiet enjoyment for November and December 2016 were particularly acute due to his part-time school schedule and his evening employment at a local grocery store. Any claims related to the potential side health side effects stemming from construction are premature.

I award damages as follows:

ITEM	AMOUNT
Return of 30% rent for November and December 2016 (30% of 1,325 = 412.50 x 2)	\$825.00
Return of 15% rent for September and October 2016 and January 2017 through February 2019 (15% of 1,475 = 221.25 x 28)	6,195.00
<b>TOTAL =</b>	<b>\$7,020.00</b>

#### Conclusion

I issue a monetary order in the tenant's favour in the amount of \$7,020.00. The tenant is provided with these Orders in the above terms and the landlord 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: March 4, 2019

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Residential Tenancy Branch