



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes RR, FFT

Introduction

On August 4, 2018, the Tenants applied for a Dispute Resolution proceeding seeking a rent reduction pursuant to Section 65 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On February 21, 2019, the Tenants amended their Application seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

The Tenants attended the hearing with P.M. attending as their advocate. K.H. attended the hearing as counsel for the Landlord. All in attendance provided a solemn affirmation.

K.H. confirmed that the Notice of Hearing package and Amendment was received. As such, I am satisfied that the Landlord was served the Notice of Hearing package and I have accepted this Amendment and considered the Tenant’s claims in this hearing.

The parties agreed that email was a sufficient method of service of documents, and they confirmed that they received the other party’s documentary evidence. As such, I have accepted the documentary evidence submitted and it will be considered when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a rent reduction?
- Are the Tenants entitled to monetary compensation?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

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.

Both parties agreed that the tenancy started on July 11, 2016 and ended when the Tenants gave up vacant possession of the rental unit on January 31, 2019. Rent was established at \$1,935.88 per month, due on the first day of each month. A security deposit of \$897.50 and a pet damage deposit of \$897.50 were paid.

The Tenants have attempted to document the many ways that they felt that the poor management and renovations affected their quality of life while they lived in the rental unit. They acknowledged that they were advised at the start of their tenancy that there would be “some” construction and that the project would not be as extensive or disruptive as indicated. To demonstrate the impact this renovation project caused, the Tenants’ specific submissions are outlined below, following the same format as their documentary evidence. I find it important to note that the Tenants rely on shared evidence and experience from other residents of the building, and then include documentation that is more specific to their experience.

Issue 01: Resident Managers

From December 2015 into 2016, there was no resident manager present. In 2016, a resident manager was hired but was rarely available. This person was given the impossible task of completing duties associated with her position as she was responsible for both buildings that were under construction. Notifying this person of any issues is difficult and is largely ignored.

The Tenants specifically noted that any attempts to speak with management was unsuccessful as no one was around during normal hours. As such, they addressed repair or maintenance issues themselves, out of their own pocket.

The Landlord submitted that the *Act* does not require that a residential manager be provided and that any lack of a resident manager was simply an inconvenience for the Tenants. Notices are available advising the Tenants to contact the property manager of any issues; however, the Tenants failed to provide any evidence that they contacted a property manager regarding any complaints.

Issue 02: Failure to Maintain Cleanliness

For all of 2016, resident managers did not keep hallways and common areas reasonably clean as there were many problems associated with the general construction.

Cleaning occurs around the property but not sufficiently enough to make up for the mess caused by the renovations and contractor traffic. The Landlord's Schedule of Duties for the resident managers are not complied with fully; however, the current resident managers do a better job of this.

The Tenants specifically stated that the constant presence of dirt and dust from the renovation project transferring into the rental unit reduces their enjoyment and adds to the daily stress of the situation.

Submitted as documentary evidence are pictures of excessive garbage overflowing from the dumpsters, broken glass around the property, dirty and soiled elevators, and worker supplies and tools being stored in and around the common areas of the property.

The Landlord submitted that cleaning protocols were in place to clean the building and core building services such as building management and cleaning services returned in March 2017. Submitted as documentary evidence is an affidavit from the building manager confirming her role and availability.

Dust is to be expected during construction, and the Tenants were advised that there may be residual dust. They submit that there is no record of any complaints from the Tenants regarding this issue. In addition, the Landlord employed additional cleaning services to assist with cleaning if necessary.

Issue 03: Windows Uncleaned for Years

The exterior of the Tenants' windows were not cleaned for years and it was hard to enjoy the view from the 14th floor. It was not feasible to clean the exterior of the windows themselves. They indicated that there was tape around the windows and exposed wood.

The Landlord submitted that the *Act* does not require exterior windows to be clean at the start of the tenancy and that these should be cleaned at reasonable intervals. However, it would not be reasonable to clean the windows during the construction period. Furthermore, they submit that the Tenants evidence does not support claims of tape, residue, stains, or filth obscuring visibility.

Issue 05: Security Concerns – Doors

The security of the building is compromised as the front doors are propped open all day and sometimes at night as well. Random people come and go throughout the building and many thefts of property have occurred to date. The Tenants are concerned about the safety of their rental unit when not home.

The Landlord advised that the Tenants have not submitted any evidence pertaining to any losses that they may have suffered as a result of any security breach.

Issue 06: Scaffolding Access

There were two police incidents on the scaffolding as anyone could access the scaffolding at any time. Police recommended a security guard, but the owners simply erected a fence to deter people from accessing the scaffolding. It was unnerving for the Tenants to be unsure if the people on the scaffolding were employees or intruders.

The Landlord submitted that the threat of unauthorized people on the scaffolding was attributed to other residents of the building using the scaffolding.

Issue 07: Unsightly Grounds

The Tenants' enjoyment of the aesthetic of the property has been greatly diminished by the active, unkempt construction site. Living in an active construction zone added to their increased stress and lowered their happiness and quality of life.

The Landlord submitted that the front lawn is not an amenity that is part of the Tenants' tenancy and the unsightly yard, or the Tenants' loss of pride with respect to this is not a breach of Section 32 of the *Act*. Moreover, the property is not a cluttered construction zone as all the materials are neatly stacked and do not impede the Tenants' use of the property.

Issue 08: Lobby / Entrance as Construction Zone

The lobby has been used for the storage of workers' materials and equipment and is an active construction zone. Mailboxes were installed in 2 X 4 timber framing and is still in this condition. The carpets, ceiling, and walls of the lobby are undergoing renovation; however, the progress is slow and not yet complete. The driveway is generally always blocked by construction related issues.

The Landlord submitted that the Tenants would have been aware of the lobby construction and that any materials stored here amount to a temporary inconvenience as opposed to a loss of quiet enjoyment. The manner with which these materials are stored are neatly stacked and organized and do not restrict access to the lobby.

Issue 09: Hallways and Commons Unfinished

Hallway re-carpeting had not been completed until late 2018. Over this period of time, the carpets, painting, and lighting fixtures were in various stages of repair. Removal of the carpets has reduced the amount of noise that gets absorbed. Consequently, music from adjoining units and other people's conversations can be heard, reducing the Tenants' sense of privacy.

The Landlord submitted that any unfinished hallways do not substantially interfere with ordinary and lawful enjoyment of the premises and it appears as if the Tenants are unhappy with aesthetics mostly.

Issue 10: Exposure to Noxious Fumes

Fumes and chemicals associated with this construction project are not ventilated properly. This construction project is not likely following safety standards for their workers, so it is not likely that the residents' health is being considered either. The Tenants complained to management regarding the lack of ventilation in the bathroom as the fan stopped working, but the manager lied and stated that it was still working.

The Landlord submitted that there has been no evidence provided substantiating any exposure to noxious fumes, or that the alleged fumes contributed to allergies. Furthermore, there is no evidence of any complaints about ventilation not working.

Issue 13: Increase of Dust in Suite

The issues related to the construction have resulted in increased dust and debris, which permeates into the rental unit. Worker negligence in cleaning up after themselves causes increased dust and debris in the rental unit, which has caused the Tenants to suffer from acute medical conditions, such as respiratory issues and infections. There are long term health concerns due to asbestos and silica, causing them to delay starting a family. In addition, the thought of the dust and debris affecting long term health has worsened their current medical conditions.

The Landlord submitted that the Tenants did not mitigate this loss by advising the Landlord of these issues. Furthermore, the Tenants' claims of respiratory issues are not supported with medical documentation. Moreover, the direness of alleged situation is questionable as the Tenants continued to live in the rental unit.

Issue 15: Items Not Ready at Move In

Missing appliances, missing drapes, and missing closet rods were general issues that were not repaired or supplied in a reasonable time. Specifically, the Tenants' dishwasher was broken but later "fixed" when a wooden stick was wedged between the kitchen counter and the top of the dishwasher.

The Landlord submitted that it is not clear if this is still an issue as it appears to have been rectified.

Issue 18: Main Yard Lost to Unsightly Staging Area

The lawn has been a construction staging area and is completely unusable even to this date. They had hoped to use this area at one point, but this was never available. Their enjoyment of location was reduced because of this.

The Landlord submitted that the main yard is not an amenity that is part of the Tenants' tenancy and the unsightly yard, or the Tenants' loss of pride with respect to this is not a

loss of quiet enjoyment. Moreover, the property is not a cluttered construction zone as all the materials are neatly stacked and do not impede the Tenants' use of the property. Furthermore, the pictures submitted to not depict cluttered construction.

Issue 19: Noise from Interior Renovations

The noise issues from construction occur six to seven days a week. This noise includes sledgehammers, grinding, sanding, sawing, drilling, hammering, yelling, swearing, and music. As one Tenant works and studies at home, this noise is disruptive and a detriment to productivity. This has increased stress and contributed to worsening medical conditions. Often, the Tenants have been forced to leave the rental unit due to the level of noise created. In addition, their cat has been heavily affected by this noise.

The Landlord submitted that the Tenants' rental unit was not renovated. Other suites were renovated; however, there would have been limited disruptions. Furthermore, the Tenants have not provided specific evidence of when any disruptions may have affected them. They also referenced the affidavit of the building manager emphasizing that no residents complained of interior renovation noise.

Issue 20: Noise During Quiet Hours

Construction related noise has been heard outside of quiet hours and on weekends. This has led to a disruption in sleep, which correlates to increased anxiety and in turn, an increased risk of illness.

The Landlord reiterated that any construction work was completed within hours allowable in city bylaws. While there is an acknowledgement that there would be construction related noise, the Landlord submits that these are inconveniences rather than breaches of quiet enjoyment. Moreover, the Tenants have not submitted evidence of how the noise affected their health.

Issue 21: Noise from Exterior Renovations

Jackhammers and other loud construction equipment would be used starting at 8:00 AM, consistently waking up the Tenants. Use of this equipment would range from sporadic to many hours at a time, and the noise created by this equipment could impact and contribute to health problems. As well, a report of a consultant was referenced that confirmed the excessive levels of noise from this construction equipment that would be transferred throughout the property. Their cat has been less responsive to sound, and they speculate that the cat has suffered hearing damage as a result.

The Landlord submitted that exterior construction occurred between 7:30 AM to approximately 3:30 PM, Monday to Friday and from 8:30 AM to 3:30 PM on Saturdays. All construction complied with the city's bylaws. Work was not conducted on Sundays. Furthermore, the Tenants were well aware of the scope of the project before the tenancy started and of the timelines of the project. Moreover, the Tenants have not provided evidence of health-related problems due to the construction project.

Issue 22: Loss of Access to Fresh Air

Access to fresh air has been reduced due to all the issues associated with this construction project. In addition, venting of noxious fumes or chemicals was impossible. No effort was made on the part of management to fix the Tenants' inability to open the windows. Moreover, their unit was incredibly hot in the summer and they were not able to cool it down by opening the windows. As a result, they would often have to leave the rental unit to cool off and they wrapped their cat in ice packs to cool him off as well.

Issue 23: Loss of View and Access to Light

The windows had been covered with scaffolding and white or blue construction materials, reducing the view. In addition, the Tenants would keep the curtains closed to avoid random encounters with construction workers. This reduced the enjoyment of their home and lessened the quality of their lives.

Issue 24: Loss of Privacy

The Tenants would be required to close their curtains as it was uncertain when workers would appear in front of the windows. As a result, the privacy of the rental unit has been lessened.

With respect to the above three issues, the Landlord submitted that the Tenants were aware that they would not have access to the balcony prior to signing the tenancy agreement and that they had light, air flow, and a view from the balcony as per the photos. The Tenants also did not provide any evidence that they brought ventilation issues to the Landlord's attention. The Landlord provided several notices advising the Tenants of the construction project and provided contact information if there were issues. Finally, the presence of construction workers on the balcony outside their windows is a discomfort or inconvenience rather than a loss of quiet enjoyment.

Issue 25: Multi-Day Disruption for Window Replacement

The Landlord instructed the residents of the building to move their property away from the windows when the new windows were installed. This was a difficult, problematic, and cumbersome ordeal for the Tenants, and when work was done, the construction workers did not protect the Tenants' property.

The Landlord submitted that this is more of an inconvenience rather than a loss of quiet enjoyment and they did not provide any evidence of any specific losses.

Issue 26: Inability to Rest after Night Shifts or for Sick Days

The scaffolding/tarp was torn in 2016/2017, which would make noise and disrupt their sleep. This affected their ability to recover from illnesses, and they linked their compromised ability to sleep with worsening mental and physical conditions. Tenant K.G. advised that he worked 12 hour shifts and had every other day off but he was unable to rest due to the noise.

The Landlord submitted that the Tenants did not provide any evidence to support this claim.

Issue 28: Plumbing Failures and Water Shut-offs

Ordinary, daily routines were disrupted due to water for the building being turned off. They were forced to spend extra money on food and were required to leave the rental unit to use the washroom. Notices of the water being shut off were sometimes posted so planning for these occurrences was difficult.

The Landlord submitted that the water shut offs are normal for construction, but these are inconvenient. As the test for loss is more than inconvenience, these instances are not a breach of quiet enjoyment. The Landlord provided notices advising the Tenants of the times and duration of water shut offs and the Tenants have not provided any specific evidence to support their loss.

Issue 29: Mail Service Disruption

There was a period of time where mail would not be delivered in the building and going somewhere else to retrieve their mail was arduous.

The Landlord submitted that Canada Post advised the Tenants that their needs could be accommodated, that mail service is not provided by the Landlord, and that many Canadians do not have mail delivered directly. Furthermore, this issue lasted for two weeks and amounts to a temporary inconvenience rather than a loss of quiet enjoyment.

Issue 30: Loss of Access to Balcony

The Tenants lost use of their balcony due to the construction work being conducted. In addition to the loss of enjoyment of that space, they did not feel comfortable using the balcony after one had collapsed previously.

Issue 33: Unusable or Undesirable Swimming Pool

The Tenants would not swim in the pool in light of the track record of disregard for safety or cleanliness during this construction project.

The Landlord submitted that the pool is only available seasonally and closed from October to May. Furthermore, the Tenants have not provided any evidence of a tangible loss.

Issue 34: Reduced Elevator Availability

Elevators have been delayed or unavailable due to increase in use, especially by the construction workers. Being on the top floor, it would often take several minutes for an elevator to arrive and sometimes it would be completely occupied by construction workers.

The Landlord submitted that the Tenants did not provide any evidence of a loss; however, waiting for an elevator is a reality of living in a multi-tenanted building.

Issue 36: Evacuation & Extended Lock-Out

In addition to dust and exposure to hazardous materials, the Tenants' spending increased when they were relocated from their rental unit as they had to eat at restaurants everyday.

The Landlord submitted that the safety and well-being of the Tenants was the main priority and they were relocated due to a decision made in conjunction with VIHA. The

Landlord took steps to attempt to ensure that the Tenants were inconvenienced as little as possible, did not collect rent during this time, provided as many of the same amenities as possible, compensated the Tenants with gift cards, and provided direct contact to the Landlord in case of any problems. As a result, the Tenants have been adequately compensated.

Issue 48: Contractor Negligence, Incompetence and Conduct

Contractors hired to conduct the construction work were unprofessional, unqualified, and engaged in questionable behaviours. The safety of the residents of the building was compromised as a result. Letters were submitted to support that position that WorksSafe BC regulations were not followed, that there were significant safety and negligence issues during construction, and that there were multiple Stop Work orders issued.

The Tenants have serious concerns about their welfare due to the obvious lack of care, cleanliness, competence, and professionalism that the construction workers exercised. As well, there were concerns of potential asbestos contamination, and their property was not protected when work was undertaken in the rental unit.

The Landlord submitted that there is no evidence of unprofessional construction workers and no evidence of incompetent management. Furthermore, the photos submitted do not demonstrate a tangible loss and there is no evidence from the Tenants of any complaints.

Issue 49: Exposure to Hazardous Materials

Potential fear of future health risks due to the construction workers mishandling hazardous materials is a concern. Hazardous dust was created unnecessarily by the construction project as abatement and renovation was conducted by inexperienced, untrained contractors that were inadequately supervised.

Numerous Stop Work orders were issued, contractor statements confirmed the lack of professionalism conducted by the construction workers completing the project, and a consultant's report concluded that hazardous dust was being spread throughout the building.

Dust left behind in the rental unit due to the construction work has potentially put the Tenants' lives in danger due to the increased possibility of being exposed to carcinogens unwittingly. This has also increased their stress levels and worsened their existing medical conditions.

The Landlord submitted that since the Stop Work order, they have ensured that construction and all handling of materials has been done properly. Furthermore, notices have been posted regarding asbestos and dust and there is no medical evidence to substantiate any health concerns. Moreover, any residents that requested their units be cleaned due to excessive dust were complied with. As such, the Landlord cannot be at fault for an issue that they were not aware of.

Issue 50: Evidence for Final Submissions

Numerous documents were submitted to support the ongoing history of incidents that contributed to the Tenants' loss during their tenancy.

It is the Tenants' belief that the Landlord is only concerned about maximizing profits by taking advantage of the tenants in the building and putting their health and safety at risk.

The Landlord submitted that they acknowledge the inconvenience related to the construction; however, this is being done with improvements in mind for the residents. Moreover, the Tenants did not demonstrate that they suffered a loss equivalent to 50% of their rent.

Due to all the Issues outlined, the Tenants are seeking compensation in the amount of **\$25,699.12** for a loss of quiet enjoyment due to construction related disturbances, a loss of access to facilities, and because the property is in a poor state of maintenance and repair, all stemming from the Landlord undertaking these significant renovations to the property. Below is the breakdown of the compensation that the Tenants are seeking:

July 11, 2016 – January 2017

- 50% rent reduction totalling **\$5,983.34**

March 11, 2017 – August 2017

- 50% rent reduction totaling **\$5,122.24**

September 2017 – February 2018

- 50% rent reduction totalling **\$5,584.26**

March 2018 – October 2018

- 50% rent reduction totalling **\$7,557.37**

November 2018 – January 2019

- 25% rent reduction totalling **\$1,451.91**

The Landlord submitted that much of the Tenants' evidence is not directly from the Tenants themselves or is reflective of what they experienced. In addition, the test for a breach of quiet enjoyment must amount to a "substantial interference" and temporary discomfort or inconvenience is not a breach of quiet enjoyment. In addition, the Tenants' right to quiet enjoyment must be balanced with the Landlord's right to repair and maintain the rental unit. The Landlord submitted that the Tenants were given a notice to inform the Landlord of any issues or complaints; however, the Tenants did not submit any evidence of this. As such, the Landlord cannot be held liable for any loss as they were not notified of or given a chance to respond to any issues. As the onus is on the Tenants to corroborate their claims on a balance of probabilities, the Tenants have not satisfied this test.

Moreover, K.H. advised that these claims are subject to a two-year period from when they were aware of the problem to make a claim, based on the Statute of Limitations.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 27 of the *Act* outlines the Landlord's obligations with respect to the termination and restriction of services of facilities.

Section 28 of the *Act* outlines the Tenants' right to quiet enjoyment and states that the Tenants are 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* requires that the Landlord 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 the rental unit, make it suitable for occupation by the Tenants.

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*.

Policy guideline # 6 outlines the covenant of quiet enjoyment and states the following:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

With respect to the Tenants' claims for compensation for loss, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the

damage or loss”, and that “the value of the damage or loss is established by the evidence provided.”

Section 60 of the *Act* states that an application for dispute resolution must be made within two years of the date that the tenancy ended.

The first issue I will address pertains to the Tenants’ time frame to make this Application. While it is 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 January 31, 2019, I am satisfied that the Tenants are still within their right to make this Application for compensation for loss during the entire tenancy.

Regarding the Tenants’ claims for compensation, there is no dispute that substantial renovations were undertaken on the property, and surrounding buildings, and that the duration of this construction was to take an estimated three years to complete. While it is evident that the Landlord understands their requirement of Section 32 of the *Act* to repair and maintain the property, and while the Landlord’s position that the renovations will benefit the residents long term is understandable, the residents are still entitled to freedom from unreasonable disturbance, for the full duration of their tenancy.

When reviewing the totality of the evidence, there is no doubt that such an extensive construction project would inherently cause a substantial interference with the ordinary and lawful enjoyment of the premises. Despite the Landlord notifying and updating the residents throughout the project, in my mind, given the timeline of the construction project, this could not reasonably be considered a temporary discomfort or inconvenience as purported by the Landlord.

Rather, I find that this situation would more likely than not be considered a frequent and ongoing interference or unreasonable disturbance. Therefore, on a balance of probabilities, I accept that the Tenants’ evidence carries more weight with respect to the severity and frequency of the disturbances. As well, I agree that this construction project would have affected them negatively by impacting their day to day life, as the conditions that they were subjected to go beyond what would be considered reasonable to accept.

When establishing the amount of compensation that could potentially be awarded for all of the Issues that the Tenants presented, when reviewing the evidence before me, I found it useful to categorize the Issues into groups of significance and impact. Consequently, the Issues will be addressed in the following groups.

Not significantly impactful

Under this category, I have placed the Issues that were not substantiated with much evidence, were based more on a subjective feeling of loss, or have been corrected already. Any compensation will be awarded accordingly.

Issue 01: Resident Managers & Issue 02: Failure to Maintain Cleanliness

While the Tenants advised that they had difficulty contacting the resident manager, I find it important to note that they have not provided any evidence of when and how they attempted to contact the Landlord about these issues during the tenancy.

Furthermore, I accept that the Landlord has taken the appropriate steps to manage these concerns around the building during the renovation period. However, as this is an active construction site, I do not find that the resident managers can do much with respect to the construction materials and tools around the property.

I do recognize the impact a construction project of this magnitude could have on the Tenants' right to enjoyment of the property though. I also recognize the difficulty that would arise from maintaining the cleanliness of the building considering the scope and the significance of the construction project, and consequently the impact this would have on the residents.

Issue 03: Exterior of Windows Uncleaned

Based on the pictures the Tenants submitted specifically of their windows, I accept that the exterior of them were not likely cleaned as often as may have been necessary and I am satisfied that this is worthy of minimal compensation. However, in their pictures, regarding the tape and exposed wood, it appears as if this is merely an aesthetic issue and did not impact the Tenants' view through the window.

Issue 05: Security Concerns – Doors Left Open & Issue 06: Scaffolding Access

While the Tenants raised issues with the security of the building, I do not find that they have provided any specific evidence of how this has impacted them directly or outlined the extent or details of this impact, other than a subjective feeling that they have.

Furthermore, there is no evidence submitted that refers to exact instances or how often

they may have been affected by individuals outside their rental unit. I do, however, recognize the Tenants' concerns generally.

Issue 07: Unsightly Grounds

While I understand the Tenants' concern with this Issue, they have not provided any evidence to support how, prior to the construction, they had enjoyed this public space or quantified the loss that they suffered. Other than their subjective feeling of loss, I am not persuaded that this issue impacted the Tenants as significantly as alleged.

Issue 10: Exposure to Noxious Fumes

Based on the Tenants' scant evidence provided on this point, I do not find that they have provided any evidence to support when or how they "complained to the manager" and advised the Landlord that this was an issue that needed repair.

Issue 15: Items Not Ready at Move In

The only direct evidence that the Tenants provided on this issue is that the "dishwasher was broken and was 'fixed' by management with a wood stick wedged between the kitchen counter and the top of the dish washing machine." Based on this submission, it is not clear to me how the dishwasher was broken or how a wood stick would have corrected whatever was malfunctioning with this appliance. Regardless, as this issue is entitled "Items Not Ready at Move In", and as the tenancy started almost three years prior, I can reasonably infer that this issue was fixed near the start of the tenancy and was not an ongoing, uncorrected issue.

Issue 18: Main Yard Lost to Unsightly Staging Area

I find that the main yard is part of the common areas that are provided to residents of the building. While the Tenants advised that it was their hope to use the main yard, it is not clear in what capacity they hoped to use this area, or how often. However, it is evident that the manner with which this area was contained for such a significant portion of time, and having to live through this day in and day out, warrants some compensation.

Issue 22: Loss of Access to Fresh Air

While I accept that there were materials used during the construction that may have had strong odours, there is no evidence before me supporting that these construction materials used exuded fumes that would be considered anything more than what would be typical of these materials. I also accept that the Tenants' windows were inoperable for some time and there was a loss suffered by this issue.

Issue 25: Multi-Day Disruption for Window Replacement

While I acknowledge the Tenants' concerns with this point, they have provided little evidence to support how often or when this impacted them specifically. As such, I am not persuaded of the impact or the significance of this issue.

Issue 26: Inability to Rest after Night Shifts or for Sick Days

While I acknowledge that the Tenants would likely have been disturbed by a myriad of construction related issues, the Tenants did not submit any evidence of work schedules or when sick days may have been taken that support this claim. Furthermore, apart from anecdotal submissions, there is no evidence before me that supports the delayed recovery from illness, the reduced cognitive capabilities, or the worsening medical conditions.

Issue 28: Plumbing Failures and Water Shut-offs

While I understand the impact of this can be frustrating, it is reasonable to expect that this might occur occasionally in a construction project. The Tenants suggested that the notices informing residents of water shut offs may not have been posted; however, they have not provided any evidence of times where this was the case and that they were in the rental unit and directly affected on the days that these water shut-offs occurred. Based on the evidence presented, the residents were advised of each occurrence in writing and these instances were not unreasonable or excessive, in my view.

Issue 29: Mail Service Disruption

I acknowledge that the loss of this service may have been less convenient; however, this was a decision made by Canada Post. Furthermore, the evidence submitted indicates that Canada Post offered to accommodate individuals if necessary and that

this mail stoppage only lasted from December 22, 2016 to March 22, 2017. As such, I find that this amounts to a temporary inconvenience rather than a loss of quiet enjoyment.

Issue 30: Loss of Access to Balcony

The Tenants provided little evidence with respect to the loss they suffered due to the balcony construction work being conducted. Their submissions mostly pertained to their subjective beliefs and feelings with respect to this issue.

Issue 33: Unusable or Undesirable Swimming Pool

While the Tenants' position of the pool is understandable, the Tenants have not provided any evidence of how much they would have used the pool or what loss they suffered.

Issue 34: Reduced Elevator Availability

While one should anticipate that the availability of elevators while living in a multi-tenanted building is unpredictable, I do acknowledge that the elevators would have likely been delayed or unavailable due to increase in use during the construction period. As such, I find this to have been more than a temporary inconvenience.

Based on my assessment of the Tenants' claims on this category of Issues, I am not persuaded that the loss that the Tenants have attempted to portray is equivalent to the amount of compensation that they are seeking, or that there is even a substantiated claim with respect to each specific Issue. However, I do find that the Tenants have suffered a nominal loss on several of these Issues. As such, I am satisfied that the amount of compensation established by the evidence for this category of Issues will be awarded as a cumulative total, and the best way to illustrate this compensation is calculated as follows:

- July 2016 to January 2017: $\$5,983.34 \times 0.02 = \119.67
- March 2017 to August 2017: $\$5,122.24 \times 0.02 = \102.44
- September 2017 to February 2018: $\$5,584.26 \times 0.02 = \111.69
- March 2018 to October 2018: $\$7,557.37 \times 0.02 = \151.15
- November 2018 to January 2019: $\$1,451.91 \times 0.02 = \29.04

- Total monetary award for these Issues: **\$513.99**

Moderately impactful

Under this category, I have placed the Issues that were substantiated with some compelling, supportive evidence or where it is logical and reasonable to conclude that there was a loss that occurred as a result of the immense construction project. Any compensation will be awarded accordingly.

Issues 08, 09, 13, 19, 20, 21, 23, and 24

The consistent evidence is that this renovation project was extensive, and some parts are still ongoing. While I accept that the Landlord has a duty to fulfill their obligation to repair and maintain the property, and while it is understandable that some disturbances cannot be helped and are to be expected during such a massive renovation project, it is clear that the extent of the construction and the manner with which the renovations have been undertaken have detracted from the value that should be afforded to the Tenants.

I find that these issues have been corroborated with reliable, consistent evidence. As well, the amount of loss suffered is also based on common sense inferences of problems that would likely be expected during such an extensive construction project. As, in my view, these Issues have had more impact and are more significant, I find that the compensation granted is greater and comparable with the loss suffered. Based on my assessment of the Tenants' claims on this category of Issues, I am satisfied that the Tenants have established a claim that is commensurate with a 6% loss of the overall enjoyment of their tenancy. I find that the amount of compensation awarded is established by the persuasiveness of the evidence on these Issues and is reflective of these Issues being analyzed on the whole, and averaged out as a cumulative total. The best way to illustrate this compensation is calculated as follows:

- July 2016 to January 2017: $\$5,983.34 \times 0.06 = \359.00
- March 2017 to August 2017: $\$5,122.24 \times 0.06 = \307.33
- September 2017 to February 2018: $\$5,584.26 \times 0.06 = \335.06
- March 2018 to October 2018: $\$7,557.37 \times 0.06 = \453.44
- November 2018 to January 2019: $\$1,451.91 \times 0.06 = \87.12

- Total monetary award for these Issues: **\$1,541.95**

Significantly impactful

Under this category, I have placed the Issues that were substantiated with some compelling, supportive evidence and had significant impact on the Tenants. Any compensation will be awarded accordingly.

While I trust that the safety and well-being of the residents may have been a main priority for the Landlord, and I expect that this should indeed be the case for landlords in general, the undisputed evidence is that the residents were evacuated due to assessments of asbestos and other environmental concerns and there were subsequent Stop Work orders issued as a result. I acknowledge that the Landlord made efforts to ease the residents' transition during this period of being unable to live in the building; however, I find it reasonable that the Tenants' would have suffered a significant loss as a result of having to live through such an ordeal.

However, I do not accept the Tenants' claims of medical related issues as there has been no documented medical evidence submitted to support these claims.

I also accept that the Landlord's intention is to hire the most qualified construction personnel; however, with a project this large, I find it reasonable to conclude that this is not always possible or attainable. Based on the totality of the evidence before me, I am satisfied that there have been instances with some construction personnel that are a cause for concern or have directly or indirectly resulted in some form of loss by the Tenants.

Based on the Tenants' evidence and the nature of what they were exposed to by this construction project during the tenancy, I find that the loss the Tenants suffered to be equivalent to a 10% loss. This compensation is reflective of these Issues being analyzed on the whole, and averaged out as a cumulative total. The best way to illustrate this compensation is calculated as follows:

- July 2016 to January 2017: $\$5,983.34 \times 0.1 = \598.33
- March 2017 to August 2017: $\$5,122.24 \times 0.1 = \512.22
- September 2017 to February 2018: $\$5,584.26 \times 0.1 = \558.43
- March 2018 to October 2018: $\$7,557.37 \times 0.1 = \755.74
- November 2018 to January 2019: $\$1,451.91 \times 0.1 = \145.19
- Total monetary award for these Issues: **\$2569.91**

As the Tenants were successful in their claims, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Loss suffered	\$4,625.85
Recovery of filing fee	\$100.00
TOTAL MONETARY AWARD	\$4,725.85

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$4,725.85** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: April 4, 2019

Residential Tenancy Branch