Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, FFT

Introduction

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

- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was originally convened via teleconference on February 14, 2019. I adjourned the hearing pursuant to my Interim Decision dated February 15, 2019, and it was reconvened on April 04, 2019.

The landlord's legal counsel (the landlord) and Tenant J.L. (the tenant) attended both hearings and were each given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses. The tenant stated that they were representing the interests of both tenants had an advocate attend the hearings to assist with submissions.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, due to the large volume of material, only the relevant details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application), which was received by registered mail, an Amendment to an Application for Dispute Resolution and an evidentiary package, which were shared upon a mutually agreed electronic platform. In accordance with sections 89 and 71 of the *Act*, which allows an Arbitrator to find a document sufficiently served, I find that the landlord was duly served with these documents.

The tenant acknowledged receipt of the landlord's evidentiary package and submissions, which were also shared on an agreed upon electronic platform. In accordance with section 71 of the *Act,* I find that the tenants were duly served with the landlord's evidence.

Preliminary Matters

At the outset of the hearing the landlord requested to have the legal name of the landlord amended from the landlord's property manager to the actual owner of the premises. The tenant did not object to the amendment requested.

For the above reasons, I have amended the landlord's name on the Application pursuant to section 64 of the Act.

Issue(s) to be Decided

Are the tenants entitled to an order to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Written evidence was provided that this tenancy began on September 01, 2009, with a current monthly rent of $1,392.75, due on the first day of each month. The landlord confirmed that they currently retain a security deposit in the amount of $562.50.

The tenants provided in evidence:

- a copy of a written submission which summarizes the tenants' Application based on the impact of a significant renovation project which contributed to reduced or no access to facilities, a loss of quiet enjoyment and a poor state of maintenance and repair on the premises;
- The updated submission details the tenants' total monetary claim of $28,781.23, which is equal to 60% of the rent paid from December 2015 to October 2018 and 25% from November 2018 to February 2019. The tenants are also requesting rent abatement in the amount of $348.19 per month, which represents 25% of the current monthly rent, until the renovation issues are resolved;

- The submission states that the landlord purchased the building in 2015, which was well maintained at the time and only required some minimal repairs to the balconies. The submission indicates that, shortly after purchasing the building, the landlord undertook unnecessary interior renovations which took an unreasonable amount of time to complete and which required the disturbance of hazardous materials, in addition to exterior renovations to upgrade the balconies from concrete to glass and steel;
- The submission notes that the previous building managers were not retained through the transfer of ownership and that maintenance of the building ceased in December 2015 until new management was hired later in 2016. The submission indicates that the maintenance staff was understaffed, which resulted in poor quality of maintenance;
- Copies of multiple witness statements from new occupants to the building who state that they were all told by the landlord that the expected timeline of the renovations was going to be a few months. The new occupants state that they did not have any indication that the jackhammering would continue to go on for multiple years;
- A copy of a signed statement from an expert witness who provides first hand observations obtained in their capacity as a professional inspecting the building at the time of the renovations, with supporting documentation. This statement and documentation detail the impact of the construction noise due to multiple sites under construction by the same landlord in close proximity to each other as well as a stop work order issued on December 16, 2016, for the mishandling of hazardous materials and the safety of the workers;
- A copy of a witness statement from a contractor dated January 08, 2019, who supervised the work site before the stop work order was imposed. The contractor states that the work site was unprofessional due to the unreasonable scope of work which was undertaken with a limited budget. The contractor states that he would have found it difficult to live at the building with the daily ongoing construction sounds as well as construction materials and debris left in common areas.
- Copies of previous decisions from the Residential Tenancy Branch showing decisions for similar circumstances;
- Pictures of filthy windows; and
- Copies of media files with recordings of the jackhammering and grinding sounds including a video compilation demonstrating the consistent construction sounds from other occupants around the building.

The landlord provided in evidence:

- A copy of a written submission which states that the tenants' request of a 60% rent reduction from December 2015 to October 2018 is excessive and that the arbitrator must take into account the timelines of specific losses such as the loss of balcony, renovation noise and mail service disruption;
- The landlord submits that the landlord wanted to make improvements to the building such as elevator modernization, lobby refurbishment, painting the envelope and other upgrades to fulfil the landlord's obligations under section 32 of the Act. The landlord further submits that the repairs to the balconies were necessary due to concrete deterioration and corroded hardware;
- A copy of an assessment report from an engineer which indicates deficiencies in the concrete balconies and corroded balcony hardware with immediate repairs being recommended;
- A copy of a notice dated December 03, 2015, advising of the new management for the building and providing multiple contact numbers for the property manager or after-hours emergency. The notice states that the landlord will undertake interior and exterior renovations which are expected to take 24 months;
- A copy of a notice to remove items from decks in anticipation of the deck replacement for June 21st. The notice advises occupants to keep windows closed due to dust and noise during the improvements;
- A copy of a notice dated August 26, 2016, regarding the work commencing on the interior hallways and entrance to the building which it notes is expected to take two to three months; and
- Copies of previous decisions from the Residential Tenancy Branch for similar circumstances.

Resident Managers

The advocate submitted that the property manager, who assumed responsibility for the building in December 2015, was unresponsive to occupants who attempted to contact them for any issues that arose until December 2016. The advocate maintained that this property manager was not able to keep up with maintenance and cleaning of the building due to a reduced staff for most of 2016 which caused a loss of enjoyment for the tenants.

The tenant stated that they had no resident manager for a period of time when the new landlord purchased the building. The tenant submitted that they had leaky taps which were only fixed at the beginning of 2017 when new managers assumed responsibility

for the building. The tenant further submitted that air ducts have not been cleaned since new managers started at the building.

The landlord submitted that there is no evidence submitted by the tenant of the ducts not being cleaned or any service request for repairs required. The landlord maintains that the tenants did not suffer a loss of quiet enjoyment due to the maintenance of the building, did not mitigate their circumstances and their claim is unsubstantiated.

Failure to Maintain Cleanliness

The advocate stated that there was dust and debris which were not cleaned up for days, weeks or months sometimes. The advocate testified that common areas were not cleaned for long periods. The tenant submitted that the carpets used to be cleaned in the common areas every week and that they no longer wanted to spend time there. The tenant indicated that they used the lobby for socializing prior to the renovations commencing.

The landlord submitted that there are cleaning protocols in place and that there is no record of complaints from the tenant. The landlord admits that no cleaning took place during the stop work order and that if any amount is awarded, it should be a nominal amount for that period of time when the stop work order was in effect.

Exterior of Windows Uncleaned

The advocate submitted that the tenants' windows were unreasonably dirty during the period of construction. The tenant confirmed that the pictures of dirty windows in evidence were not taken from within their own rental unit. The tenant stated that they could not tell what the weather was outside unless they opened the window.

The landlord submits that it would not be reasonable to clean the windows during the construction period. The landlord maintains that the tenants have not demonstrated that they have suffered any damage or loss under the Act as a result of the dirty windows.

Security Concerns- Doors Left Open

The advocate submitted that there were security concerns for the building due to different doors being left open or unlocked for 24 hours a day during the construction. The advocate further submitted that construction materials around the building provided

access to non-residents which also contributed to security concerns during this period of construction.

The tenant submitted that the doors were left open late at night until 8 or 9 pm when they came home and that anyone could access the building. The tenant stated that with strangers “constantly wandering in and out of the apartment, I cannot tell if they belong to the construction crew or not…..This makes me feel very unsecure and unprotected”. The tenant confirmed that they did not personally experience any theft of loss but that they did not have an unwanted religious group knock on their door as a result of the poor security.

The landlord submits that there is no evidence that the tenants suffered a loss or damage under the Act due to a lack of security for the building due to open doors. The landlord indicates that the landlord has maintained adequate locks as required by the Act and that the landlord is permitted to perform construction activities during the hours referenced by the tenant which would result in the doors still being open at that time.

Unsightly Grounds/Main Yard Lost to Unsightly Staging Area/Unusable Swimming Pool

The advocate submitted that the grounds around the building were unsightly during the renovations with some grassy areas having been fenced off or cluttered with construction materials which had gone on for three years. The advocate stated that the grounds became a construction zone with workers always around and the pool became a staging area for construction materials.

The tenant testified that they had previously used the lawn for socializing. The tenant stated that part of their rent is their view and that the unsightly grounds impacted their enjoyment of their rental unit due to having to look at it every day. The tenant did not indicate the frequency that they used the pool prior to construction but that they were affected by having to look at the construction materials in the pool area and they have concerns about the cleanliness of the pool at present.

The landlord submits that that the main yard is not considered an amenity and that the photos provided do not demonstrate “cluttered construction” or a “construction zone” as they consider the materials to be neatly stacked. The landlord notes that the tenants’ submission that the unsightly grounds caused a loss of quiet enjoyment is unsubstantiated and should be dismissed.

The landlord submits that the tenants have not given any evidence of how often they used the pool. The landlord submits that the use of the pool is seasonal and that there was no restriction to use it beyond the season it is open. The landlord notes that, if anything is awarded, it should be a nominal amount in consideration that the cost of a gym membership could be up to $10.00 a month.

Lobby/Entrance as a Construction Zone/Loss of Use of Loading Zone

The advocate submitted that the lobby was renovated prior to the new landlord purchasing the property and that the previous managers used to have events for residents there. The advocate stated that through 2016 and 2017 the lobby was used as a staging area for storage of materials and the workers socializing. The advocate indicated that the lobby was flooded in November 2017, was sealed off when hazardous materials were removed sometime after that and not restored to usable state since. The advocate maintains that another phase of renovations occurred in September 2018 which is still ongoing.

The tenant testified that the lobby is occupied by workers or construction materials and they have lost access to the common areas that they previously used to socialize. The tenant stated that they had to walk farther with groceries from January 2016 to April 2018 due to the construction activities which impeded access to the loading zones.

The landlord submits that they gave proper notice of the renovations to occur. The landlord maintains that any material placed in the lobby was for use that day or shortly after and that the photos show neatly stacked construction materials. The landlord submits that this portion of the tenants' claim is unsubstantiated and should be dismissed.

The landlord states that the loading zone is not a service or facility essential to the tenants' use of the rental unit and is not a material term of the tenancy agreement.

Hallways and Commons Unfinished

The advocate submitted that the hallway carpets were removed in late August 2016 and not replaced for two years. The advocate stated that the carpets had just been recently replaced in 2014 and the renovation was unnecessary.

The tenant indicated that the renovations have been in process for an unreasonably long time and that there are many construction materials in the hallways which should not be there. The tenant stated that it was visually unpleasant but confirmed that they did not spend extended periods in the hallways.

The landlord submits that an unfinished hallway does not substantially interfere with the ordinary and lawful enjoyment of the premises. The landlord states that if there is any award for this issue, it should be nominal amount and that the commencement date of September 2018 for the lobby renovation should be taken into consideration.

Exposure to Hazardous Materials

The advocate submitted that there was a stop work order issued on December 14, 2016, as a result of hazardous material not being handled properly during the interior construction. The advocate stated that there were no procedures in place and air monitoring did not take place prior to the stop work order.

The tenant confirmed that they have not felt any ill effects due to exposure to hazardous material and that they have not seen a doctor. The tenant stated that their primary concern is stress and worrying about future problems. The tenant indicated that asbestos has a latency period of 10-40 years before health issues can develop, which gives her concern about the future. The tenant indicated that it was upsetting to live in a building where workers were negligent with the handling of materials which could adversely affect her health.

The landlord submits that there is no evidence of any medical issues that the tenants have suffered due to potential exposure to hazardous materials.

Increase of Dust and Debris

The advocate submitted that the tenants have incurred an increase of dust and debris due to the construction activity.

The tenant stated that they are allergic to dust and they have been sneezing more since the construction activity started. The tenant indicated that they had to clean up dust in their rental unit every day and they have concerns about the air quality. The tenant confirmed that they did not see a doctor for the sneezing. The tenant admitted that they did not take pictures in their rental unit to confirm the increased dust.

The landlord submits that there is no evidence that that the tenant is allergic to dust or that they made any effort to contact the landlord about assistance with cleaning the dust. The landlord maintains that if there were any complaints about excessive dust, the managers responded to it accordingly. The landlord states that, if any amount is awarded, a 2% rent reduction is sufficient during the period the construction was ongoing.

Leaking or Difficult Windows

The tenant stated that the old windows were… "…thin, leaky, and hard to open". The tenant maintained that the windows did not block the cold wind from outside which was compounded with the removal of the curtains. The tenant confirmed that she did not contact the landlord about the leaking windows.

The landlord stated that there is no evidence of water ingress into the rental unit. The landlord submits that this is the first time the landlord has heard the tenants complain about leaking or difficult windows and no request for a repair to the windows was ever received by the landlord. The landlord maintains that if there was an issue, the tenants did not mitigate and the claim should fail.

Noise from Interior/Exterior Renovations/Inability to Rest after Night Shifts or for Sick Days

The advocate submitted that, in addition to all of the above, the noise from interior and exterior renovations also significantly interfered with the tenants' quiet enjoyment of the rental unit. The advocate submitted that there was noise coming from neighbouring suites due to renovations being completed as of December 2015.

The advocate submitted that there was excessive noise from the exterior renovations, including grinding, jackhammering, drills, saws, loud music and loud conversation from January 01, 2016, to February 28, 2018. The advocate further submitted that jackhammering on the concrete building caused it to reverberate throughout and intensified the impact of the sounds.

The advocate stated that when the work was completed on the tenants' building in 2017, it began on the neighbouring building in close proximity to the building that the

rental unit is located. The advocate confirmed that there was a stop work order from December 2016 until September 2017 at which time there was no jackhammering.

The tenant stated that they work weekends and have days off during the week due to the nature of her job and that the other tenant stayed at home all day until March 2018, when they began to work weekends as well. The tenant indicated that they could not have a comfortable day off at home during this period of construction activity as they could not stay in their rental unit for long periods of a time during the day due to the construction noise which started at 8:00 a.m. The tenant testified that their daily routine was impacted and that they were not able to communicate with family overseas on video conferencing due to noise from renovations.

The tenant indicated that the loud noises caused them headaches. The tenant stated that they had a lot of rental units on their floor which were renovated in addition to the exterior noise. The tenant indicated that the noise decreased in 2018 and confirmed that both tenants were out of the country for about a month during May/June 2018.

The tenant stated that there was also a flood in her rental unit due to the renovations and fans were placed in the rental unit for a week to dry it out.

The landlord submits that the interior renovations in other rental units were completed in a short amount of time with little disruption to the tenants and no recorded complaints. The landlord maintains there was no demolition occurring in the renovated rental units. The landlord notes that the tenant does not provide evidence of the days that the interior construction took place or a call log of their video conference calls which would demonstrate their loss of quiet enjoyment.

The landlord submits that the tenant’s primary complaint is centered on noise during the construction period. The landlord notes that the balcony repairs began on or about June 27, 2016, and the lobby renovations began on August 26, 2016, with work ceasing in December 2016 and commencing again in September 2017. The landlord submits that all work was performed during allowable hours in accordance with municipal by-laws. The landlord submits that they have the right to repair the building in accordance with the Act and that, if any award is considered, the landlord feels that a 10% reduction during the relevant period of construction would be reasonable.

Loss of Access to Fresh Air/Loss of View and Access to Light

The advocate submitted that all occupants in the building were required to keep their windows closed during the exterior construction in July 2016 due to the dust and the noise. The advocate maintained that tenants suffered a loss of access to fresh air as a result of the exterior construction.

The tenant confirmed that they kept their window shut during the day from July 2016 until summer 2018. The tenant maintained that they had to go outside to get sunlight and fresh air. The tenant confirmed that they could open the windows at night to get fresh air at that time when the construction activities were not taking place.

The landlord submits that the tenants never brought an issue with ventilation to the landlord as it would have responded to as required.

Loss of Privacy

The advocate submitted that the tenants had a loss of privacy due to the work being done on the balconies and workers passing by the windows of the rental unit during the same period as noted above.

The tenant confirmed that they felt that they suffered a loss of quiet enjoyment due to the lack of privacy with workers passing regularly by the windows during working hours. The tenant submitted that they had their curtains removed by the landlord from November 2016 to August 2017 which magnified the loss of privacy. The tenant confirmed that they did not ask for new curtains.

The landlord submits that any loss of privacy due to construction workers passing by their windows would be a temporary discomfort during the construction period and does not constitute a loss of quiet enjoyment.

Multi-Day Disruption for Window Replacement

The advocate submitted that the replacement of the windows was appreciated by the residents but that the tenants were required to move their furniture from the walls to accommodate this work.

The tenant stated that they were given notice that the windows would be replaced in December 2016 and that they were required to move their furniture away from the wall. The tenant stated that they received assistance to remove their furniture from around the walls at that time from a friend. The tenant indicated that the stop work order happened around that period and the windows were not installed until November 2017. The tenant maintained that they left their rental unit in this state for this whole period as it was difficult for the tenants to move the furniture and the assistance they had previously received was a one-time offer only. The tenant stated that they thought that the work would resume sooner than it did and did not contact the landlord about this.

The landlord maintains that there is no evidence of a notice requesting the tenants to move their furniture away from the windows. The landlord maintained that having furniture moved away from the walls would only be an inconvenience as opposed to loss of quiet enjoyment.

Plumbing Failures and Water Shut Offs

The advocate submitted that there were multiple times where water service was lost, sometimes without notice, during the weekdays and weekends. Six different notices were submitted from the property manager for times that the water was shut off for the building.

The tenant stated that they were impacted by the loss of water as the tenants did not work regular hours and were home during many days when the water would be shut off. The tenant indicated that many of the notices of shut offs were at the last minute, would last for the whole day and occurred almost every week .

The landlord submits that the landlord gave notices of water shut offs and that this was an inconvenience rather than a breach of quiet enjoyment. The landlord indicates that if any amount is awarded for water shut offs, it should be a nominal amount.

Mail Service Disruption

The advocate stated that mail service was disrupted due to the stop work order from December 2016 to March 2017.

The tenant stated that they had to retrieve their mail at an office downtown at that time which was very inconvenient.

The landlord submits that the interruption in mail service was only a temporary inconvenience and was outside of the landlord's control. The landlord indicates that it was only for a short period of time until March 01, 2017, as indicated by the tenant.

Loss of Access to Balcony

The advocate submitted that the tenants lost access to their balcony from July 2016, when all balcony doors were locked from the outside, to October 01, 2017. The advocate submitted referred to a previous Residential Tenancy Branch decision where the arbitrator awarded 20% for the loss of use of the balcony.

The tenant confirmed that they lost access to their balcony, which they used in the warmer temperatures as part of their living space. The tenant maintained that, even if they did not use the balcony a lot during the winter, they should be able to open it for fresh air and it is a part of their rent.

Regarding the tenants' loss of access to the balcony, the landlord submits that the exterior of the building is worth less than the interior and that a 5% rent reduction from July 2016 to October 01, 2017, which is based on dates provided by the tenants, is reasonable.

Reduced Elevator Availability

The advocate submitted that one elevator was frequently locked off and the other was used by other construction workers as well.

The tenant stated that they often times had to take stairs because it took too long for the elevator to arrive.

The landlord submits that reduced elevator access is inconvenient but there is no evidence of a loss and that the upgrades are being done for the benefit of the tenants. The landlord maintains that this claim should be dismissed.

Closing Arguments

In closing the advocate submitted that the landlord could have mitigated the impact of the construction project in a number of ways, including but not limited to, limiting the

scope of the project, not starting work before ready to follow through to complete it (such as tearing up carpets two years before replacing them or priming walls for paint two years before painting them) and ensuring that proper procedures were in place which would have avoided the stop work order.

The advocate maintained that the renovations undertaken were excessive, unnecessary, and has not improved the aesthetics in some areas as intended. The advocate stated that providing notices of the work to be completed does not minimize the impact of the construction project. The advocate stated that tenants should not have to fear being sick and this is a loss of quiet enjoyment. The advocate referred to other Residential Tenancy Branch decisions provided in evidence in which the arbitrator has awarded rent reductions of 25% for loss of quiet enjoyment due to construction activity.

The advocate submitted that the tenant is not bound to mitigate where the landlord has violated the Act and referred to a previous Residential Tenancy Branch decision where the arbitrator referred to a previous ruling which states:

"the burden which lies on the defendant of proving the plaintiff failed in his duty of mitigation is by no means a light one, for this is a case where a party already in breach of contract demands positive action from one who is often innocent of blame."

(*Red Deer College* v. *Michaels and Finn* [1975] 5 W.W.R. 575 at 580).

The landlord referred to a report submitted regarding the repairs required on the balcony due to deficiencies in the hardware. The landlord stated that the burden of proof is on the tenant to demonstrate that they have suffered a loss beyond temporary inconvenience and that the Act requires the tenant to mitigate their damages.

The landlord stated that many of the tenants' concerns are about aesthetics and that this does not constitute a loss of quiet enjoyment. The landlord maintained that the rent abatement requested is excessive and that the tenants always had access to their rental unit.

Analysis

Section 7 (1) of the *Act* stipulates that when a party does not comply with the Act, the regulations or tenancy agreement, the non-complying party must compensate the other for damage or loss. Section 7 (2) of the *Act* states that a landlord or tenant who claims

compensation for damage or loss that results from the other's non-compliance with this *Act* must do whatever is reasonable to minimize the damage or loss.

Section 32 of the *Act* establishes that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

Section 27 of the Act establishes that a landlord may terminate or restrict a service or facility, that is not a material term or is essential to the tenants' use of the rental unit as living accommodation, if they give 30 days' notice in the approved form and reduce the rent in an amount that is equivalent to the reduction in value of the tenancy.

Section 28 of the *Act* grants tenants the right to quiet enjoyment including, but not limited 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 *[landlord's right to enter rental unit restricted]*; and use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6, "Entitlement to Quiet Enjoyment" establishes;

> 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.
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> In determining the amount by which the value of the tenancy has been reduced, 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. A tenant may be entitled to compensation for loss of use of

> a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

Section 65 of the Act allows an arbitrator to make an order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement for repairs, services or facilities agreed upon but not provided.

While I accept the landlord's right to perform whatever repairs or renovations that they choose to complete, I find that the extent of the landlord's interior and exterior renovations go beyond the landlord's obligation to repair and maintain the premises under section 32 of the Act. I find that the landlord sought to improve and change the aesthetics of the building and that the landlord's right to perform these renovations have to be balanced with the tenants' right to quiet enjoyment, the tenants' access to common areas and the impact of reduced or interrupted services and facilities during the period of construction activity.

I find that there were frequent and ongoing unreasonable disturbances to the tenants' right to quiet enjoyment in addition to reduced services and facilities as a result of the construction activities. If any of the tenants' issues were isolated incidents considered on their own, it could be argued that the impact would be a temporary inconvenience; however, I find that the ongoing cumulative impact of all of the issues associated to the construction activity reduced the value of the tenancy.

Although I accept the landlord's submission that construction activity took place during times in accordance with municipal by-laws and that they provided notices of the work to be completed to the tenants, I find that this does not change the fact that there was a significant impact on the tenancy due to the scope and extended time period of the construction project.

I find that the landlord did not reasonably mitigate the effects of their construction project on the tenants as they sought to perform extensive interior and exterior renovations at the same time on multiple buildings which unreasonably increased the scope of the work being completed. I find that it is undisputed that the landlord was carrying out renovations of other units during this period which further contributed to the construction activity that was taking place in the building.

Based on the evidence provided, I accept the tenants' submissions that the lobby was stripped, left bare and turned into a construction staging area at times until work commenced on its restoration in September 2018. I find that this delay, from the commencement of the lobby renovations to its completion, is another example of the landlord not mitigating the effects of the renovation project on the tenants.

In addition to the above, I find that there was a stop work order from December 2016 until September 2017 due to work procedures that were not in compliance with the relevant regulations. I find that this delay could have been mitigated if the landlord had required a higher standard of practices from their chosen contractors. I find that the company who completes the construction project is an agent of the landlord and that the landlord bears responsibility for the unreasonable delay and reduction in services caused by the stop work order. I find that this delay unreasonably resulted in the grounds and portions of the building being left in an unfinished state with construction materials left throughout the building and grounds for a prolonged period of inactivity.

I find that there was little that the tenants could have done to mitigate the cumulative effects of a large scale construction project in and around the building where they reside. I accept the advocate's submission from (*Red Deer College* v. *Michaels and Finn* [1975] 5 W.W.R. 575 at 580) regarding the tenants' duty to mitigate. I find that the tenants' right to quiet enjoyment of the rental unit was going to be negatively impacted regardless of any efforts of the tenants to mitigate. I find that it is unreasonable to mitigate the effects of construction activity and sounds which is beyond the control of the tenants.

However, having considered the above, I do find that the tenants' request of a 60% rent reduction from December 2015 to October 2018 to be excessive. I find that there were different issues which affected the tenancy at different times with varying degrees of severity depending on the intensity of the construction activity.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Regarding the tenants' claim for the insufficient operation of the resident managers since the landlord acquired the property, having reviewed the above, I find that the tenants have not submitted any evidence which demonstrates that they attempted to contact the landlord or agent for any issues that were not addressed by the landlord or

their agent in a reasonable amount of time. For this reason, I find that the tenants have not sufficiently proven that they incurred any loss beyond a temporary inconvenience as a result of the operation of the resident managers and I dismiss this portion of the tenants' claim.

I find that the landlord's submission of a 5% rent reduction for the loss of the use of the tenants' balcony from July 2016 to October 2017 to be reasonable. I find that the use of the balcony is intermittent due to the amount of time that could be reasonably spent there, which is dependent on the season or inclement weather. I find that opening the balcony for fresh air is not the same as using the balcony for living space.

Therefore, I find that the tenants are entitled to a rent reduction as indicated below:

July 2016 to August 2016 = $62.75 X 2 =	$125.50
September 2016 to August 2017 = $64.57 X 12 =	$774.84
September 2017 to October 2017 = $66.96 X 2 =	$133.92
Total rent reduction for loss of use of balcony =	$1,034.26

I find that it is undisputed that there was excessive construction noise from exterior renovations. Although I find the landlord's submission of a 10% rent reduction to be reasonable if only taking into account the exterior noise, I find that the tenants endured an ongoing lack of privacy due to the construction activity directly outside their rental unit. I accept their testimony regarding the workers passing by at regular intervals during work hours.

Based on a balance of probabilities and taking into account the interior renovations taking place on the building and in different rental units, I find it is reasonable that there was noise from interior renovations caused by the landlord's construction activity on the common areas and other rental units in addition to the exterior noise. I find that the tenants have not sufficiently demonstrated that the interior noise was excessive outside of the period of the exterior renovations; however, it is reasonable to conclude that those interior renovations would have contributed to the loss of quiet enjoyment suffered by the tenants during the periods of intense exterior construction activity.

I accept the impact of construction activity on the tenants may have been increased due to the hours that they work. I have taken this into consideration weighted against the

fact that the landlord performed the activity during allowable hours and the landlord cannot work around individual tenant schedules in the building.

For the above reasons, also taking into consideration the stop work order issued from December 2016 to September 2017, I find that the tenants are entitled to a rent reduction in the amount of 15% during the periods of intense exterior construction activity from July 2016 to February 2018 as indicated below:

July 2016 to August 2016 = $188.25 X 2 =	$376.50
September 2016 to August 2017 = $193.71 X 3.5 =	$677.99
September 2017 to February 2018 = $200.88 X 6 =	$1,205.28
Total rent reduction for construction noise/activity =	$2,259.77

For the remainder of the issues claimed, I find that the tenants have suffered a reduction in the value of their tenancy as a result of the landlord's construction due to the cumulative effects of the following frequent and/or ongoing disturbances as well reductions in services/facilities, including but not limited to:

- The unsightly grounds and failure to maintain cleanliness in and around the building during the construction period. I find it is reasonable that there would be higher amounts dust and debris in the building in addition to the materials left in and around the building due to the construction activities which impacted the use of common areas such as the lobby and the lawn which I find constitute a part of the rent;
    - I accept the tenant's submission that they had previously used the lobby for leisure purposes prior to construction.
    - I accept the tenants' submissions that they had previously used the grounds outside for leisure which was affected by the presence of the numerous construction materials. I find that this construction material also impacted the tenants' enjoyment of the property in relation to their view from the rental unit as well as coming and going from the building.
    - I find that the landlord has confirmed a period of time where no cleaning was going on during the stop work order and that the windows were not cleaned during the construction period.
- Reduced security as a result of doors being left open with numerous unknown workers coming and going;
- Reduction in water services due to numerous shut offs;

    - In addition to the 6 notices of water shut offs provide, I accept the tenant's submissions that not all shut offs were with notice, as is reasonable to be expected in a construction project of this scope. Although it is not necessary for the landlord to tailor interruptions in water service to the hours of individual tenants, I accept the tenants' submissions that they were impacted by these water shut offs due to the hours that they worked and section 27 of the Act allows for a reduction in rent associated to restricted services or facilities.
- I find that the tenants have not provided any evidence or testimony that they have suffered any adverse medical effects from the mishandling of hazardous materials; however, I accept the tenants' submission that the possibility of exposure would have caused increased anxiety when taken into context with the stop work order being issued and the numerous signs regarding hazardous materials. I have considered the above impact on the tenants' right to quiet enjoyment of the rental unit as one of the cumulative effects regarding the reduction in the value of the tenancy;
- Although the tenant has not provided evidence of the notice given to move her furniture in anticipation of the window replacement, I accept their testimony that their curtains had been removed for the same purpose in November 2016. I find that it would not be reasonable for the tenants to move their furniture away from the walls for no reason in December 2016, at their own inconvenience. I find that the stop work order interrupted the landlord's plans due to the neglect of the landlord's agent and which left the tenants in limbo waiting for the intended work to commence. I find that the removal of curtains and the furniture removed from the walls for a short period of time would be a temporary inconvenience; however, I accept the tenant's testimony that this went on for 11 months due to the stop work order which I find is a loss of quiet enjoyment as it was an ongoing situation which affected privacy and comfort due to the actions of the landlord; and
- Reduced elevator availability.
    - Based on a balance of probabilities, I find that it is reasonable that elevator access would be reduced due to the numerous workers on site performing exterior and interior renovations.

I find that a global amount of a rent reduction for the cumulative effects is more reasonable than to grant an award for each issue. In balancing the right of the landlord to perform repairs and maintenance with the tenants' right to quiet enjoyment, I have established that a limited rent reduction in the amount of 10% is reasonable, increased

to 12% for the time that the curtains and furniture were moved from December 2016 to October 2017.

In reaching this amount of rent reduction, I have considered that the tenants were still able to live in the rental unit. I have also considered the unreasonable amount of time that the construction period was extended due to the stop work order issued, the issues in relation to it and the scope of the construction activity.

Based on the submissions of both parties, I find that the beginning of the renovations of the entrance, hallways and corridors began on August 26, 2016. For this reason I find that September 2016 is the date when the impact of the renovations became amplified with the expanded scope of construction activity undertaken by the landlord at this time. I further find that the notices for water shut offs all take place within this period.

As the construction in the lobby was currently ongoing as of the date of the hearing, I find that the tenants are entitled to the rent reduction from September 2016 up until the month this hearing took place in February 2019.

September 2016 to November 2016 = $129.14 X 3 =	$387.42
December 2016 to August 2017 = $154.97 X 9 =	$1,394.73
September 2017 to October 2017 = $160.70 X 2 =	$321.40
November 2017 to August 2018 = $133.92 X 10=	$1,339.20
September 2018 to February 2019 = $139.28 X 6=	$835.68
Total rent reduction for loss of quiet enjoyment/ Reduced services and facilities =	$4,278.43

I find that it is premature to make an order regarding future rent reduction or damages as there is some work to be finalized and completed. For this reason I dismiss the tenants' application for a rent reduction after February 2019, with leave to reapply.

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

Conclusion

Pursuant to section 67 of the *Act*, I grant a monetary Order in the tenants' favour under the following terms:

Item	**Amount**
Loss of Balcony Use	$1,034.26
Exterior and Interior Construction Noise/Activity	2,259.77
Loss of Quiet Enjoyment/Reduced Services and Facilities	4,278.43
Filing Fee for this application	100.00
Total Monetary Order	**$7,672.46**

Pursuant to section 72 (2) of the *Act,* the tenants may deduct the amounts of rent paid to the landlord until the Monetary Order is satisfied.

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 23, 2019

Residential Tenancy Branch