



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, FFT

Introduction

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

- an order to allow the tenant 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 12, 2019, and March 26, 2019. I adjourned each hearing pursuant to my Interim Decisions dated February 13, 2019, and March 28, 2019. The hearing was reconvened on May 17, 2019.

The landlord's legal counsel (the landlord) and the tenant attended all three hearings and were each given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses. The tenant had an advocate attend each hearing 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 section 71 of the Act, which allows an Arbitrator to find a document sufficiently served for the purposes of the Act, and section 89 of the Act, 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 tenant was 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*.

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

After two hours of oral submissions in this hearing, due to the volume of the remaining submissions, it was agreed by all parties that the tenant could submit the final portion of their oral submissions in writing but that no new documentary evidence would be considered.

The landlord was given the opportunity to respond to the tenant's final written submission after receiving it. Each party was instructed to serve the other using their previously agreed upon method of electronic service.

Each party provided these final submissions after the hearing within the time frame provided by the Arbitrator at the hearing.

Issue(s) to be Decided

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

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Written evidence was provided that this tenancy began on April 01, 2011, with a current monthly rent of \$1,342.81, due on the first day of each month. The landlord confirmed that they currently retain a security deposit in the amount of \$560.00.

The tenant provided in evidence:

- a copy of a written submission which summarizes the tenant's 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 tenant's total monetary claim of \$27,642.26, which is equal to 50% of the rent paid from December 2015 to May 2016 (\$3,665.09), 100% of the rent paid from June 2016 to January 2017 (\$9,960.72), 50% of the rent paid from March 2017 to September 2018 (\$12,337.94) and 25% of the rent paid from October 2018 to February 2019 (1,678.51). The tenant is also requesting rent abatement in the amount of \$335.70 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 and the previous building managers were not retained through the transfer of ownership with the maintenance of the building ceasing in December 2015 until new management was hired. The submission indicates that the management staff were understaffed due to being responsible for two apartment towers, which resulted in poor quality of maintenance;
- The submission indicates that, shortly after purchasing the building, the landlord has been renovating multiple units at a time as they become vacant which has contributed to noise and maintenance issues;
- The submission states that the landlord undertook unnecessary interior renovations to common areas which required the disturbance of hazardous materials and has taken an unreasonable amount of time to complete.
- The submission notes that the building was well maintained and only required some minimal repairs to the balconies but that the landlord undertook exterior renovations to upgrade the balconies from concrete to glass and steel. This construction project involved placing an opaque shroud around the building which was later replaced with a different material and which impeded the tenant's view;

- The submission indicates that there were multiple stop work orders issued during construction due to the work not being completed safely, with an example of two concrete balcony slabs being dropped from near the top of the building onto the ground below. The submission notes that the principal stop work order took place as of mid-December 2016, with work commencing again in October 2017 at which time there was no exterior construction noise. The submission indicates that the shroud was still wrapped around the building at this time;
- 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 an environmental report dated January 24, 2017, completed on behalf of the landlord, which concludes that elevated levels of asbestos were found in multiple units. The report recommends that vacating suites should be considered where a significant exposure potential exists;
- The submission further states that the building was evacuated by January 27, 2017, until on or about March 10, 2017, due to elevated asbestos levels in common spaces and some occupants' units;
- 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; and
- Copies of media files with recordings of the jackhammering and grinding sounds including a video compilation demonstrating the consistent construction sounds from varying occupants around the building.

The landlord provided in evidence:

- A copy of a written submission that indicates that there is no medical evidence presented that the tenant breathed in any hazardous airborne materials or suffered any effects of negative health;
- 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 sworn affidavit from the building manager who states that they have been the building manager since December 2015 and confirms the renovations that took place which resulted in interruption of some services from time to time. The building manager states that the tenants were encouraged to talk to her if there were any tenancy issues. The building manager indicates that interior renovations for suites on turnover commenced in or around December 2015 which they believe caused minimal noise and that they did not receive noise complaints from January 2016 to June 2016. The affidavit states that work on the exterior of the building began in September 2017 after the stop work order in December 2016 and that some balconies were completed as of February 2018;
- Copies of multiple notices to the tenants in February, March and April 2018 regarding interior/exterior work being completed with a reminder to keep windows closed during work hours to minimize dust in units;
- A copy of a letter from the regional health authority dated March 07, 2017, indicating that they did not find an elevated chance of exposure to airborne asbestos on floors 7, 10 and 14 but were not able to test the lower floors prior to clean-up;
- A copy of a notice dated March 08, 2017, regarding the re-occupancy of the building to be completed by March 10, 2017, after tenants were evacuated;
- A copy of a notice dated March 08, 2017 detailing gift cards provided to the tenants, cleaning that has been completed and a vacuum replacement program;
- A copy of a letter detailing the landlord's decision to evacuate the building on January 27, 2017, with the locks being changed on the building as of January 29, 2017;
- A copy of a Hazardous Building Materials Assessment report from an engineering firm dated August 17, 2017, for an assessment that was completed on June 01, 2017;
- A copy of a notice to remove items from decks in anticipation of the deck replacement for June 27th. 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/ Failure to Maintain Cleanliness/ Increase of Dust and Debris/Exterior of Windows Uncleaned

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 the new 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 advocate referred to various pictures in their submission such as garbage bins overflowing, streaks/stains on the elevator walls and a spider web in an elevator.

The advocate indicated that there was dust and debris in the hallways/common areas which was not cleaned up for days, weeks or months sometimes. The advocate submitted that there was also an increase in dust in the rental unit due to faulty windows which were eventually required to be sealed. The advocate submitted that all occupants' windows were unreasonably dirty during the period of construction until being replaced in February 2018, which impeded the tenant's quiet enjoyment of their unit and referred to the tenant's own picture of their dirty window provided in evidence.

The tenant stated that not having reasonable access to a manager much of the time has been difficult for them. The tenant confirmed that garbage had piled up with bins overflowing for a long period of time which affected her enjoyment of her rental unit. The tenant further submitted that the tenant's hallway was not cleaned for long periods of time, the elevators which were not cleaned for months and sometimes had dog pee on the floors. The tenant submitted that, in addition to the hallways not being cleaned, there was dangerous debris left in it which had the potential to cause tripping hazards.

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 stated that the landlord did not complete their schedule of duties with respect to cleaning through all of 2016 and that when cleaning happened it was a third party, not the management.

In response to the tenant's submissions the landlord submitted an affidavit from the building manager for the building who was in place as of December 2015 and a schedule of duties to be performed by the manager including cleaning. The landlord stated that there was a resident manager in place as the evidence shows. The landlord further submitted that there was no evidence that the tenant had formally addressed any issues of cleanliness with the building manager or had contacted about them about any maintenance required.

The landlord questioned the tenant about whether they had taken advantage of the landlord's vacuum replacement program.

The tenant replied that they had recently purchased a new vacuum shortly before the program commenced and did not think it was necessary at the time.

Security and Safety Concerns- Doors/scaffolding access/ Leaking or Difficult Windows

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 scaffolding around the building provided access to non-residents into previously inaccessible areas of the building which also contributed to security concerns during this period of construction. The advocate submitted that occupants had also been complaining about leaking or difficult windows since 2015.

The tenant confirmed that the doors have been left open late at night after work hours and that anyone can access the building. The tenant stated that when they came home in February 2018 they came across a non-resident male who was sitting on the couch who smelled of alcohol and talked in a loud voice to the tenant which caused the tenant to fear for their safety. The tenant submitted that they have been dealing with incidents like this for over two years. The tenant stated that they were concerned about their balcony door, which has a faulty lock, and was concerned about the ability to access her suite when scaffolding was up.

In response, the landlord submitted evidence of another occupant of the building who accessed the scaffolding and which resulted in a noise complaint that was addressed by the landlord. The landlord confirmed with the tenant that they had not actually experienced any theft or intrusion as a result of the doors being open or scaffolding being around the building.

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

The advocate submitted that the grounds around the building had been in good condition but became unsightly during the renovations with some grassy areas having been fenced off or cluttered with construction materials for three years. The advocate referred to a picture of a shed door which was hanging haphazardly and remained so for many months. The advocate stated that the grounds became an active construction zone with workers always around, with the pool becoming a staging area for construction materials during the off-season.

The advocate noted that, although the pool was technically usable during the construction period, it was not a desirable place to be due to all of the construction activity.

The tenant submitted that they did not want to have any friends or relatives visit them to use the pool or any other reason due to the grounds being a construction site and the construction activity around the pool. The tenant testified that she used to spend time in the grounds of the building prior to construction commencing.

The landlord submitted that the pool was open during seasonal hours and there were no restrictions to its use.

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

The advocate stated that the lobby was recently renovated prior to the new landlord purchasing the property and that the previous managers used to have events for residents there. The advocate submitted that, since the renovations began in the summer of 2016, the lobby has been used as a staging area for storage of materials and has been an active construction zone.

The advocate indicated that the second phase of renovations occurred in November 2018 to complete the lobby renovations which is still ongoing and that it remains unfinished. The advocate submitted that there is currently a temporary door in the entrance due to the sliding doors that the landlord had installed having blown off due to high winds. The advocate stated that the lobby has not been accessible to the tenants to use as they had previously for close to three years due to the reasons above.

The advocate stated that various construction materials such as large garbage bins have also interfered with the tenant's use of the loading zone at the entrance to the building.

The tenant stated that they have tripped multiple times on cords left across pathways in the lobby in addition to the cracked tiles on the unfinished floor being a tripping hazard. The tenant further submitted that the loading zone was inaccessible due to large metal containers, and then a walkway made of scaffolding, which prevented the tenant from unloading their groceries at the front door and causing them a loss of enjoyment due to the extended distance required to walk with their groceries.

The landlord questioned whether the tenant was ever restricted from entering the building due to the construction activity, to which the tenant stated that she was delayed on a couple of occasions.

Hallways and Commons Unfinished

The advocate submitted that the hallway carpets were removed in late August 2016 in addition to painting and dry-walling that was started but not completely finished. The advocate indicated that lighting fixtures were also removed with new drop-ceiling and fixtures partially installed but also left unfinished. The advocate submitted that the hallway renovations were not completed for two years and remained in an unfinished state for that whole period of time with bare concrete floors and wires hanging down. The advocate stated that the hallways had been recently renovated in 2014 and the new renovation was unnecessary.

The tenant confirmed that the hallway remained unfinished and had not been cleaned for this period of two years. The tenant questioned why the new hall carpets were not just left in as opposed to removing the carpets and leaving it unfinished for two years.

The tenant indicated that the lighting is dim as not all lights have been put in which has resulted in hanging electrical wires where the lights should be. The tenant submitted that there were also exposed metal beams in the hallways for long period of time. The tenant referred to her own pictures in evidence of her hallway which supports her testimony.

Exposure to Noxious Fumes/Loss of Access to Fresh Air

The advocate submitted that fumes from paints, solvents, sealants and adhesives lingered in the rental unit due to the windows being sealed from September 2016 to February 2018, and limited ventilation during this time consisting of a small kitchen vent and a small bathroom vent.

The tenant indicated that they have had strong smells of chemicals enter the rental unit and the inability to open the windows for fresh air made the tenant uncomfortable and she worried about her health.

The landlord confirmed with the tenant that they did not go to their doctor due to any adverse medical effects suffered as a result of the fumes. The landlord questioned whether the tenant had addressed ventilation issues with the landlord to which the tenant indicated that she had only verbally addressed the problem with the landlord.

Exposure to Hazardous Materials

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

The advocate submitted that the stop work order was extended to the tenant's building due to the construction work being done by the same company. The advocate stated that all occupants of the tenant's building were required to vacate due to concerns regarding air quality and the potential of hazardous airborne in late January 2017. The advocate confirmed that no rent was paid for February 2017 and half of March 2017 in addition to other compensation that was offered to the tenant and other occupants due to the evacuation.

The tenant indicated that they have a continuing worry that they have been exposed to hazardous materials in ways that will eventually be damaging to their health which has affected their quiet enjoyment of their rental unit. The tenant questioned her safety in the building as management and Canada Post could not enter the building but she was continuing to live there. The tenant stated that after the evacuation, workers had to wear hazmat gear to enter the building.

In response to the landlord's questioning, 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 regarding any adverse effects felt.

Faulty Intercom

The Advocate submitted that the new intercom does not work well and often results in having to go to the entrance to allow guests into the building.

The tenant states that they had given up on the new intercom system and were just having people call the tenant's cellular phone so she could go down to let them in. The tenant submitted that the temporary door has been in place since February 2019 and is not connected to the intercom so there is not even an option to use it presently. The landlord stated that they have missed an appointment with the computer repairman due to the intercom issue.

The landlord maintained that there was no service request in writing to the landlord for them to address the intercom issue.

Introduction of Pets to Formerly Pet Free Building

The advocate submitted that the building was pet free prior to the landlord acquiring the building in 2015 and which has resulted in increased noise, mess and exposure to allergens.

The tenant stated that the addition of pets to the building has affected their quiet enjoyment of the rental unit due to dogs barking for prolonged periods when left alone as well as on one occasion feeling threatened by a dog when attempting to enter an elevator.

The tenant maintained that management has not been able to keep up with the messes that have been created by the pets and have not been responsive to telephone messages left with the landlord about the cleaning required due to the pets. The tenant stated that they have had to clean up dog pee themselves as it is not addressed in a reasonable amount of time.

The landlord referred to a pet agreement form required to be completed for all occupants with pets which shows the terms and conditions of having a pet.

Contractor Negligence, Incompetence and Conduct

The advocate submitted that the numerous contractors hired by the landlord to complete the construction did not have the required level of professionalism and were neglectful. The advocate referred to an official report of a concrete slab which fell from the building and smashed below in addition to the handling of hazardous materials which resulted in the stop work order as two examples of the contractors' conduct.

The advocate testified that the contractors' negligence directly resulted in the scaffolding and shroud being around the building for many months without any work being completed during the stop work order for most of 2017. The advocate noted a total of four stop work orders as a result of the contractors' negligence.

The tenant confirmed that they have felt their safety has been compromised many times such as on one occasion, when leaving the building, she was yelled at by a worker to move in order to avoid having any objects fall on them due to work going on above. The tenant questioned the professionalism of the contractors and why there were not better protocols in place to address the safety of occupants.

Noise from Interior Renovations/Noise During Quiet Hours/Noise from Exterior Renovations

The advocate submitted that the noise from interior and exterior renovations also significantly interfered with the tenant's quiet enjoyment of the rental unit. The advocate submitted that there was noise coming from the renovation of neighbouring suites as they became vacant, which began in December 2015 and is ongoing. The advocate stated that workers had been living in the units being renovated and that there was construction noise in evenings, late at night and through the weekend.

The advocate submitted that there was excessive noise from the exterior renovations, including grinding, jackhammering, drills, saws, loud music and loud conversation from June 01, 2016, to April 30, 2018. The advocate stated that the work was occurring on the tenants' building as well as the neighbouring building in close proximity to the building that the rental unit is located. The advocate further submitted that jackhammering on the concrete buildings caused it to reverberate throughout and intensified the impact of the sounds.

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 submitted that all the units on her floor were renovated. The tenant indicated that there was also a lot of noise from the shroud around the building which had ripped and flapped in the wind during the time of the stop work order. The tenant testified that she had to use earplugs on a continual basis due to the ongoing noise for two years. The tenant stated that they have suffered from headaches as a result of the noise which as affected their quality of life due to the stress caused by the noise.

The tenant stated that she would stay away from her unit for long periods of time to avoid the noise and actually stayed with friends on one occasion as well as once in a hotel for three days when they were removing her balcony. The tenant submitted that they are retired and so there is no relief to escape the noise by going to work. The tenant maintained that she was told the renovations would only take four months but has stretched into multiple years.

The tenant submitted that they suffered sleep loss as a result of the tarps that were left up on the scaffolding during the stop work order and deteriorated into a state of disrepair during this time. The tenant stated that they caused noise from blowing in the wind which caused them anxiety and sleep loss during the night.

The landlord submitted that the repairs undertaken by the landlord were necessary and that they have offered compensation to the landlord regarding the circumstances which the tenant had declined. The landlord stated that most balconies were complete as of February 2018.

Loss of View and Access to Light

The advocate submitted that the building had scaffolding erected all around it at the end of June 2016 which was eventually covered with an opaque heavy white plastic which was then replaced with a semi-translucent blue fabric.

The tenant stated that it was impossible to see out of their unit for a year and a half and that they have lost all natural light during this time. The tenant maintains that this loss of light and their view has negatively affected their mood and comfort level in their unit.

Loss of Privacy

The advocate submitted that the tenants had a loss of privacy due to the work being done on the scaffolding. The advocate indicated that a swing stage was put in place for

work to still be completed after the scaffolding was removed which resulted in continuing loss of privacy.

The tenant stated that they moved into a unit which was high above ground as they value their privacy. The tenant submitted that, since the scaffolding came down in mid-January 2018, there are still workers passing by the windows of the rental unit on swing stages. The tenant indicated that they have had to close their curtains due to the workers constantly outside since 2016 and which continued into 2018 after the scaffolding came down due to these workers appearing outside her rental unit. The tenant referred to an incident in 2018 when she opened her curtains in the morning and a worker was there, who said good morning in a polite way, but the interaction still bothered the tenant as an infraction on her privacy.

The landlord submits that many notices were provided to occupants regarding the work to be completed to the exterior and the interior of the building.

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 it required a lot of effort to move her heavy furniture and box items in anticipation of the replacement of the windows.

Heating Failures/Interruptions

The advocate submitted that the heating systems have been inoperable or stuck on and not repaired quickly.

The tenant stated that there has been very little heat coming into their rental unit last winter.

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.

The tenant stated that they were impacted by the loss of water as there were multiple occasions where she was unable to take a shower or wash before appointments. The tenant stated that sometimes the water is turned off without any warning and she is not able to do dishes. .

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 walk a half hour to retrieve their mail at an office downtown for many months. The tenant stated that this inconvenience added to their stress and impacted their quiet enjoyment of the rental unit during that period.

The landlord referred to a notice in the tenant's evidence from the mail provider with a phone number provided to request individual accommodations. The landlord questioned the tenant about whether they had called this number to inquire about accommodations that could be made and the tenant indicated that they had not attempted to call it.

Loss of Access to Balcony

The advocate submitted that the tenant lost access to their balcony either in May 2016 or June 2016, when the scaffolding was erected and all windows were locked from the outside, to November 2017 when the tenant's balcony was completed. The advocate 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 for almost two years, which they had previously used all year round. The tenant submitted that they lost many plants due to having to bring them off of the balcony into the dining room and the lack of natural light available.

Reduced Elevator Availability

The advocate submitted that one elevator was frequently locked off and the other was used by other construction workers to transport themselves, materials and tools.

The tenant stated that they often times had to take stairs because it took too long for the elevator to arrive. The tenant submitted that they were late for a doctor's appointment due to waiting an extended period for the elevator to arrive.

Reduced Parking Availability

The advocate submitted that visitor and street parking availability had been reduced due to the volume of construction workers on the site.

The tenant confirmed that they have had difficulty with guests being able to find parking.

Evacuation & Extended Lock-out

The advocate submitted that, although the landlord paid the costs of hotels and did not charge rent during this period of evacuation, it was a very stressful time for the tenant and other occupants of the building due to not knowing how long they were going to be out of their home and what kind of cleaning was happening there while evacuated.

The tenant confirmed that they found the evacuation to be stressful. The tenant stated that the stress was in part due to a pre-planned trip during the evacuation period and the short amount of time they had to pack.

Closing Submissions

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 have been excessive, unnecessary and have 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 submitted 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 50% for loss of quiet enjoyment due to severe levels of noise as a result of the construction activity.

The advocate submitted that the tenant is not bound to mitigate where the landlord has violated the Act and referenced 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 submitted that the tenant tried to raise new evidence and add an issue in their final written submission and requested that it not be considered.

The landlord submitted that there are no documents provided of air testing prior to the tenant's evacuation. The landlord refers to evidence provided regarding air sampling that was done which shows no elevated levels of airborne asbestos was found. The landlord submits that there is no evidence that the tenant breathed in asbestos, there is no proof of injury and no monetary award should be provided based on this information.

The landlord further maintains that no medical evidence has been provided to substantiate the tenant's claim of severe stress or any potential negative health effect.

Analysis

Having reviewed the tenant's final submissions provided in writing, I find that the tenant added a new issue to their claim in their final written submission regarding fear of eviction. I find that this addition of a new issue goes beyond the instructions to provide further testimony regarding the issues that were already provided as the basis of the tenant's claim. I accept the landlord's submission that this new issue is new evidence and I will not consider it.

I find that the remainder of the tenant's final written submissions fall within the parameters of the instructions provided and I will consider them.

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.

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 tenant's 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 tenant's right to quiet enjoyment in addition to reduced services and facilities as a result of the construction activities. If any of the tenant's 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.

I find that there is insufficient evidence provided by the tenant that they personally experienced construction activity outside of the approved hours in accordance with the municipality. However, even if the construction activity only took place during times in accordance with municipal by-laws and the landlord provided notices of the work to be completed to the tenants, I find that these facts do 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 tenant 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 and around the building.

Based on the evidence provided, I accept the submissions that the lobby was stripped, left bare and turned into a construction staging area at times until work commenced on its restoration in November 2018. In addition to the above, I find that the hallways were stripped and left unfinished for two years. I find that these delays in completing the lobby, which is still in a state of incompleteness, and hallways areas are examples of the landlord not mitigating the effects of the renovation project on the tenant.

In addition to the above, I find that there was a stop work order from mid-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 the delay in construction activity caused by the stop work order also resulted in the scaffolding, with surrounding shroud, continuing to block the tenant's view and access to natural light for a prolonged period of time that was unreasonable due to the circumstances. I accept the tenant's submissions that the shroud came into a state of disrepair due to high winds which caused noise when flapping in the wind and which affected the tenant's sleep. I find that both of these extended and ongoing inconveniences were directly as a result of the actions of the landlord's construction activities.

I find that there was little that the tenant 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 tenant's duty to mitigate. I find that the tenant's right to quiet enjoyment of the rental unit was going to be negatively impacted regardless of any efforts of the tenant to mitigate. I find that it is unreasonable to mitigate the effects of construction activity, including noise, dust and debris which are beyond the control of the tenant.

Having considered the above, I find that the tenant's request of a 50% rent reduction from December 2015 to May 2016, a 100% rent reduction from June 2016 to January 2017 and a 25% rent reduction from October 2018 to the current month to be slightly excessive based on the circumstances in those periods of time.

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.

Resident Manager

Regarding the tenant's claim for a rent reduction from December 2015 to June 2016 for the insufficient operation of the resident manager, having reviewed the above, I find that the tenant has not submitted sufficient evidence to support this claim. I find that the tenant has not sufficiently demonstrated that they attempted to contact the landlord or agent for any maintenance issues prior to the interior renovations commencing in September 2016. I further find that the tenant has not proven that they suffered a loss of quiet enjoyment beyond a temporary inconvenience during this period.

Although there may have been renovations to different units in the building at that time, I find that the tenant has not demonstrated the severity of this noise during this period or that it occurred at times outside of approved hours of construction activity. For the above reasons, I find that the tenant has not sufficiently proven that they incurred any loss as a result of the operation of the resident managers and unit renovations during this period and I dismiss this portion of the tenant's claim, without leave to reapply.

Loss of Balcony/Loss of View

Although I find the advocate's submission of a 20% rent reduction for the loss of the use of the tenant's balcony to be excessive on its own, I find that it is not unreasonable in conjunction with the loss of view from the scaffolding/shroud in place at the same time as the loss of balcony (which is one of the features that determined the amount of rent paid for the rental unit), loss of natural light and loss of access to fresh air during the time of the repair. I find the period of time that the tenant was without their balcony, view and natural light to be unreasonably long due to the stop work order, which I have also considered in determining the amount of the rent reduction.

I accept the tenant's testimony that she spent a significant amount of time on the balcony with her flowers due to her retirement. I accept the tenant's submission that the location of the rental unit was a feature which contributed to the tenant choosing it due to the view and access to natural light.

Based on the notice provided by the landlord regarding exterior construction, I find that the tenant is entitled to compensation for the loss of balcony and other associated issues effective as of July 2016, the first full month the balcony was restricted. I find that the balcony was restricted until November 2017, at which time the shroud also came down, based on the tenant's testimony and evidence. I have excluded February 2017 as no rent was paid for that month. I have considered the rent reduction on the half month's rent that was paid for March 2017 as the compensation received for that month was not related to this matter.

Therefore, I find that the tenant is entitled to a rent reduction as indicated below:

July 2016 to January 2017 = \$249.02 X 7 =	\$1,743.14
March 2017 = 1,245.09/2 = 622.55 = 124.51 X 1 =	\$124.51
April 2017 to November 2017 = \$256.23 X 8 =	\$2,049.84
Total rent reduction for loss of use of balcony/view=	\$3,917.49

Exterior/Interior Construction Noise/Loss of Privacy

I find that it is undisputed that there was excessive construction noise from exterior renovations. 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 in the common areas and other rental units compounded on top of the exterior noise. It is reasonable to conclude that those interior renovations would have contributed to the loss of quiet enjoyment suffered by the tenant during the periods of intense exterior construction activity.

Although I find that the tenant has not sufficiently demonstrated that the interior noise in their rental unit was excessive outside of the period of the exterior renovations, I accept their testimony that the levels of the noise negatively impacted the tenancy in a severe manner which forced the tenant to take action such as wearing earplugs and to vacate the unit to escape the noise. I find that the video and expert witness submissions support the testimony regarding the levels of noise and its impact on the tenant.

I further find that the tenant endured an ongoing lack of privacy due to the construction activity directly outside their rental unit during this period. I accept their testimony regarding the workers passing by at regular intervals during work hours and that privacy was part of the reason the tenant chose that specific rental unit. I accept that the impact

of construction activity on the tenant may have been increased due to the fact that they are retired and I have taken this into consideration weighted against the fact that the landlord cannot work around individual tenant schedules in the building.

Taking into consideration that exterior work was stopped from mid-December 2016 to September 2017, based on the landlord's evidence, I find that the tenant is entitled to a rent reduction in the amount of 15% during the periods of intense exterior construction activity effective from July 2016 to the completion of the balconies in February 2018 as indicated below:

July 2016 to December 2016 = \$186.76 X 5.5 =	\$1,027.18
September 2017 to February 2018 = \$192.17 X 6 =	\$1,153.02

Total rent reduction for construction noise/privacy = \$2,180.20

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

- Lobby entrance as a construction zone, the unsightly grounds and failure to maintain cleanliness in and around the building during the construction period effective as of September 2016 including the hallways which were left in a state of incompleteness for two years.
 - I find it is undisputed that there were higher amounts dust and debris in and around the building which is why the landlord introduced the vacuum replacement program.
 - I accept the tenant's submission regarding increased dust in their rental unit and I find that the offer to replace a vacuum does not actually reduce the impact of the construction activities.
 - I find that the evidence supports that there were various materials left in and around the building due to the construction activities which impacted the use of common areas such as the lobby, hallways and the main yard, which I find constitute a part of the rent as common areas. I find that these various materials were left on site during the stop work order.
 - I accept the submissions that the tenant had previously used the grounds outside for leisure which was a feature that drew her to rent there and her enjoyment of it was affected by the presence of the numerous construction materials/activity.

- I find that there was a period of time where no cleaning was going on during the stop work order.
 - I find that it is not reasonable to strip the hallways and leave them unfinished for two years which is a further demonstration of the landlord's failure to mitigate.
 - I accept the tenant's submission that the lobby remains unfinished and that a temporary door has been in place since February 2019 with no operational intercom at the present time.
- Reduced security as a result of doors being left open with numerous unknown workers coming and going;
- The noisy shroud left around the building in a state of disrepair which flapped in the wind during the stop work order;
- Mail service disruption from mid-December 2016 to March 2017. I find that any requested accommodations that the tenant could have requested would not have resulted in mail being served directly to the building as there was a stop work order in place at the time;
- The continued exterior work on the building after February 2018 referred to in the landlord's notices;
- The multi day disruption to replace the windows;
- The work to repair the newly replaced windows in 2019 and resulting construction activity on swing stages;
- Reduction in water services due to numerous shut offs;
 - I find that it is reasonable that there would be multiple water shut offs during this construction period. I accept the tenant's submissions that they were impacted by these water shut offs and section 27 of the Act allows for a reduction in rent associated to restricted services or facilities.
- Although I find that the tenant has not provided sufficient evidence that they have suffered any adverse medical effects from the mishandling of hazardous materials, I accept the tenant's submission that the possibility of exposure would have caused increased anxiety when taken into context with the stop work order being issued, the evacuation, hazmat suits and the numerous signs regarding hazardous materials. I have considered the above impact on the tenant's right to quiet enjoyment of the rental unit as one of the cumulative effects regarding the reduction in the value of the tenancy; 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 accept the tenant's submission that she had to use the stairs on occasion.

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

In reaching this amount of rent reduction, I have considered that the tenant was still able to live in the rental unit for the majority of the time. I have also considered the unreasonable scope of the construction activity and the unreasonable amount of time that the construction period was extended due to the stop work orders issued.

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 after this date.

Considering that the construction in the lobby was currently ongoing as of the date of the hearing, that there has been continued exterior work to repair the new windows in 2019 and the intercom is currently not operational due to the temporary door in place as of February 2019, I find that the tenant is entitled to the rent reduction from September 2016 up until the month this second hearing took place in May 2019.

Although I have excluded February 2017 rent as it was not paid for that month, I have applied the rent reduction to half of the March 2017 rent that was paid. I find that this reduction is not related to the compensation already given for the evacuation as the tenant was not actually able to live in the unit until March 10, 2017.

As there was no evidence provided of a rent increase for 2019, I have calculated based on the current rent as of February 2019

September 2016 to January 2017 = \$124.51 X 5 =	\$622.55
March 2017 = 1,245.09/2 = 622.55 = 62.26 X 1 =	\$62.26
April 2017 to March 2018 = \$128.12 X 12 =	\$1,537.44
April 2018 to May 2019 = \$134.28 X 14 =	\$1,879.92
Total rent reduction for loss of quiet enjoyment/ Reduced services and facilities =	\$4,102.17

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 May 2019, with leave to reapply.

As the tenant was partially successful in their application, I find that they 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 tenant's favour under the following terms:

Item	Amount
Loss of Balcony Use/Loss of view/Loss of Access to Fresh Air	\$3,917.49
Exterior and Interior Construction Noise Activity/Loss of Privacy	2,180.20
Loss of Quiet Enjoyment/Reduced Services and Facilities	4,102.17
Filing Fee for this application	100.00
Total Monetary Order	\$10,299.86

Pursuant to section 72 (2) of the *Act*, the tenant may deduct the amount 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: June 07, 2019

Residential Tenancy Branch