



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      MNDCT RR FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order reducing rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing with an Advocate, and the landlord company was represented by an agent who is also Legal Counsel.

During the course of the hearing the parties agreed to amend the tenant's application to change the Style of Cause to the appropriate name of the landlord company, and the frontal page of this Decision reflects that amendment.

### Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of quiet enjoyment and loss of use of facilities?
- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

### Background and Evidence

**The tenant** testified that this month-to-month tenancy began on July 15, 2015 and the tenant still resides in the rental unit. Rent in the amount of \$790.00 per month was

originally payable on the 1<sup>st</sup> day of each month, which has been increased annually. There are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$395.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment on the 8<sup>th</sup> floor of an apartment complex. A copy of the tenancy agreement has been provided by the landlord as evidence for this hearing.

The tenant further testified that renovations began on the building around the beginning of 2016. The rental unit is located on the east side of the building, and is a small space of about 400 square feet with an extensive wall of windows of about 20 feet on the sunny side.

The tenant was working a split shift that year from January to August, 2016, starting work at 9:00 a.m. till noon, then again from 4:00 till 9:00 p.m. The tenant was unemployed for about 2 ½ months in 2016 and later again in 2017 for January and February, and again from July, 2017 to May, 2018. When not working, the tenant spent most of her time at home. Also, the tenant had a web design business which was all done from home, and difficult to do with all the jackhammering going on. The tenant had worked for a contractor and was accustomed to the noise, but pile driving in that job was less noisy than the noise caused by renovations at the rental unit. The tenant got terrible headaches and couldn't open windows because the landlord put out a notice to refrain from opening windows due to noxious chemicals, and it was very hot. Water was turned off so the tenant couldn't shower. There was no working toilet for days, the tenant couldn't shower sometimes or wash her hands, sometimes from 9:00 a.m. to 5:00 at night, or sometimes from 9:00 a.m. to 1:00 p.m. The times varied, but the shortest duration was 2 hours and that was unusual. It happened fairly often and usually with very little notice. On one occasion the water went off while the tenant was in the shower. A notice was put up by the basement elevator, but the tenant hadn't gone out so didn't see it. Sometimes it happened several times per week, especially during the main part of the construction which is when jackhammering was going on.

Aside from noise and windows, there was also a mess all the time, and the tenant found it difficult to park due to a big van blocking the space to get to the tenant's parking stall.

Security was also an issue. Work was being completed and everyone's doors were open, and no one was watching to ensure that no one entered any of the apartments.

Stress prevented relaxation and sleep. The tenant testified that she tried to sleep during her split shifts but couldn't; the noise was very disruptive. The noise from renovations went on all day, starting before 7:00 a.m. and ending well after 7:00 p.m., or

often until bedtime. The tenant was unable to rest, take naps, open windows to decrease the heat, and had no water on many occasions. It was not just inconvenient, but a disruption of the tenant's life-style. Only this last year it's been less disruptive in magnitude. It was overwhelmingly disruptive for an extensive period of time, including jackhammering for a year, then another year of noise, and only around December, 2018 or January, 2019 the noise reduced.

The renovations have affected the tenant's personal life preventing her from having people over for a visit; they'd comment on the mess. The tenant's career has also been affected, given that she had about 10 websites at one time and now only one partly due to the noise and being unable to work and talk to clients on the telephone. The tenant charged \$75.00 per hour for that business.

The tenant has provided written submissions indicating that rent was increased on December 1 each year. Rent was \$805.00 per month in 2016 and increased to \$822.91 per month on December 1, 2016, and to \$852.99 on December 1, 2017. The submissions also contain an amended Monetary Order Worksheet setting out the following claims, totalling \$15,263.39:

- 67% rent reduction from January 2016 to December 2016
  - 50% for general loss of quiet enjoyment;
  - 5% for loss of pool facilities;
  - 2% for loss of the lounge room (used for storage); and
  - 10% for the landlord's failure to repair and maintain common areas;
- 47% rent reduction from January 2017 to February, 2017
  - 30% for general loss of quiet enjoyment;
  - 5% for loss of pool facilities;
  - 2% for loss of use of the lounge room (used for storage); and
  - 10% for the landlord's failure to repair and maintain common areas;
- 67% rent reduction from March 2017 to September 2017
  - 50% for general loss of quiet enjoyment
  - 5% for loss of pool facilities;
  - 2% for loss of the lounge room (used for storage); and
  - 10% for the landlord's failure to repair and maintain common areas;
- 37% rent reduction from October 2017 to June 2018
  - 20% for general loss of quiet enjoyment;
  - 5% for loss of pool facilities;
  - 2% for loss of the lounge room (used for storage); and
  - 10% for the landlord's failure to repair and maintain common areas;

- 17% rent reduction from July 2018 to March 2019
  - 15% for general loss of quiet enjoyment; and
  - 2% for loss of the lounge room (used for storage).

The tenant also testified that she was informed that workers were instructed to be noisy.

About 2 years ago the tenant advised the landlord about a cracked window, and tenants were told new windows would be installed, but it's still not done. Also the lobby has not been completed. The tenant periodically mentioned things to the building manager, and wrote to him about some things, however stuff is still backing up into the bathroom sink in the tenant's rental unit. A fellow put horrible chemicals down a sink which backed up into the tenant's sink, which continues to happen. Use of the elevator has also been restricted, being used by workers to transport supplies.

Copies of numerous notices posted in hallways, as well as numerous photographs have been provided as evidence for this hearing. Also provided are numerous news articles describing unsafe work practices and likening the interruptions and treatment of tenants to "reno-victions" in the landlord's attempt to force tenants to move out.

Previous Decisions of the director, Residential Tenancy Branch have also been provided for this hearing.

The Written Submissions of the landlord state that the renovation project is substantially complete, and that essential services or facilities are not restricted. The Submissions also point out that any reduction in rent must reflect the value of the service or facility and that the amount claimed is excessive.

The landlord also submits that the news articles provided by the tenant refer to another renovation project, and as such are not relevant to this rental unit.

The building has 2 elevators, and never were both unavailable during construction. Temporary inconvenience does not constitute loss of quiet enjoyment, and the tenant did not notify the landlord of prolonged or extended inconvenience.

Water had been shut off, which may have lasted for 4 hours, or from 9:00 a.m. to 5:00 p.m. on occasion, but the landlord did not terminate the service, and there were no extended periods of time. The tenant has not provided the number of times or frequency of shut-offs that would justify monetary compensation for loss of quiet enjoyment and breach of Section 27 of the *Residential Tenancy Act*.

There is no evidence that the tenant's parking spot was ever restricted or terminated, and no evidence that the tenant advised the landlord of parking issues.

With respect to noise during construction, the landlord submits that renovations were necessary to maintain the rental building, and work took place during the day within the allowable times of the bylaws. A Stop Work Order halted work on another building and during that time, in December 2016, such work stopped in this building as well, and work started again in May, 2017 which should be considered. The tenant's evidence states that jackhammering would not occur every day during the construction period. Any award should be a reduction of 5% of rent during the relevant period.

The landlord had notices posted and corresponded with the tenant and on each notice a contact is provided for any resident requiring accommodation or information, and the tenant never asked for either. Windows could be opened after work was done as indicated in the notices.

The tenant's concern about safety and security is based on assumptions and past experiences, and not any loss or damage suffered by the tenant. Further, there is no evidence or information to substantiate any exposure to hazardous materials in the building.

One of the previous Decisions of the director, Residential Tenancy Branch provided by the tenant awarded 3-4% of the monthly rent, which the landlord submits would be fair for loss of use of the balcony in this rental unit from July, 2016 to August, 2017.

Counsel for the landlord submits that there is no rationale for the amounts claimed by the tenant and appears to be arbitrary. Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment, and the landlord had an obligation under Section 32 to maintain and repair. With respect to noise, counsel for the landlord submits that 5% of rent would be reasonable during the relevant period, but noise from interior renovations were an inconvenience, not a breach of quiet enjoyment.

With respect to the tenant's claim for ongoing rent reduction, counsel for the landlord submits that essential services or facilities are currently not being restricted, and no evidence has been submitted by the tenant that warrants ongoing reduction in rent, considering that the renovation project is substantially complete.

### Analysis

In this case, the tenant seeks loss of quiet enjoyment and loss of use of facilities during construction and renovations of a large apartment building that has been going on since 2016. The tenant has carefully set out the monetary compensation sought taking into consideration the duration, the specific losses, rental increases, and her personal circumstances during those time periods.

There is no question that the renovations have caused loss of use of the pool area and lounge. I am also satisfied that the tenant's right to quiet enjoyment has been significantly affected by the lengthy and ongoing renovations, without any offer of compensation by the landlord. A landlord is required to provide a tenant with quiet enjoyment, free from unreasonable disturbances. I find that 2 ½ years or more of disturbances, and during a portion of the renovations, significant disturbances, causing the tenant's sleep and enjoyment of life to be affected.

Counsel for the landlord submits that the tenant didn't mitigate by providing the landlord with something in writing complaining about such disturbances. I question whether or not it would have, or if it would have been feasible for the landlord to have the work stop. I don't think it was necessary for the tenant to put it in writing that she has been affected by the work considering the lengthy duration. Counsel for the landlord submitted that each notice posted by the landlord gave tenants a contact number for any resident requiring accommodation or information. None of the notices provided as evidence for this hearing mention anything about accommodation.

I have read all of the evidentiary material, including written submissions of both parties, and past Decisions of the director, Residential Tenancy Branch. I agree that I am not bound by any of the Decisions, and I note that the amounts of the claims vary, and the monetary awards vary from 10% to 50% of the rental amounts. Counsel for the landlord submits that there is no rationale for the amounts claimed by the tenant and appears to be arbitrary. I agree with counsel for the landlord that temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment, and that the landlord had an obligation under Section 32 to maintain and repair.

The tenant referred to loss of a portion of the elevator service, water, parking, intercom, noise, airflow, security, exposure to hazardous materials, loss of resident managers, windows, cleanliness and loss of the balcony. I do not find that it is necessary to

address each concern individually considering that whether the losses or noise were a discomfort or change in life-style, it was continuous in one way or another.

Rent was \$805.00 per month in 2016 and increased to \$822.91 per month on December 1, 2016, and to \$852.99 on December 1, 2017, and \$876.71 on December 1, 2018. Using those dates and the tenant's monetary order worksheet as a template, I find as follows:

- 67% rent reduction from January 2016 to December 2016
  - 50% for general loss of quiet enjoyment;
  - 5% for loss of pool facilities;
  - 2% for loss of the lounge room (used for storage); and
  - 10% for the landlord's failure to repair and maintain common areas.

I find that the timeline is excessive considering that the excessive noise that the tenant claims began in mid-June, 2016 and stopped on or about December 14, 2016. I find that the tenant has established loss of quiet enjoyment, being 6 months during that time period. Given that the pool and common areas are contained in the tenancy agreement, and although there is no evidence to suggest that the tenant actually used the pool, I find that the tenant has established monetary claim in the amount of 30%, inclusive of pool and lounge room facilities. I dismiss the tenant's application for 10% for the landlord's failure to repair and maintain common areas; the landlord had an obligation to repair and maintain which is exactly what the landlord is doing. Any further award would only serve to punish the landlord for not finishing the work earlier, which I cannot order. I am not satisfied that the tenant has established that common areas could have been finished earlier, and I find it is merely an inconvenience.

Rent during that period was \$805.00 per month until November and \$822.91 in December, 2016, and I grant a monetary order for 2016 in the amount of \$1,451.69 ( $\$805.00 \times 30\% = \$241.50 \times 5.5 \text{ months} = \underline{\$1,328.25}$  and  $\$822.91 \times 30\% = \$246.87 \times \frac{1}{2} \text{ a month} = \underline{\$123.44} + \$1,328.25 = \underline{\$1,451.69}$ ).

- 47% rent reduction from January 2017 to February, 2017
  - 30% for general loss of quiet enjoyment;
  - 5% for loss of pool facilities;
  - 2% for loss of use of the lounge room (used for storage); and
  - 10% for the landlord's failure to repair and maintain common areas.

I find that the same rationale as above applies to this time period. Rent at that time was \$822.91, and I grant a monetary order for January and February, 2017 in the amount of \$493.74 ( $\$822.91 \times 30\% = \$246.87 \times 2 = \underline{\$493.74}$ ).

- 67% rent reduction from March 2017 to September 2017
  - 50% for general loss of quiet enjoyment
  - 5% for loss of pool facilities;
  - 2% for loss of the lounge room (used for storage); and
  - 10% for the landlord's failure to repair and maintain common areas;

I find that the same rationale as above applies to this time period. Rent at that time was \$822.91, and I grant a monetary order for March to September, 2017 in the amount of \$1,728.11 ( $\$822.91 \times 30\% = \$246.87 \times 7 \text{ months} = \underline{\$1,728.11}$ ).

- 37% rent reduction from October 2017 to June 2018
  - 20% for general loss of quiet enjoyment;
  - 5% for loss of pool facilities;
  - 2% for loss of the lounge room (used for storage); and
  - 10% for the landlord's failure to repair and maintain common areas.

I find that the same rationale as above applies to this time period. Rent at that time was \$822.91 and \$852.99 effective December 1, 2017, and I grant a monetary order for October, 2017 to June, 2018 in the amount of \$2,285.03 ( $\$822.91 \times 30\% = \$246.87 \times 2 \text{ months} = \underline{\$493.75}$  and  $\$852.99 \times 30\% = \$255.90 \times 7 = \underline{\$1,791.28} + \$493.75 = \underline{\$2,285.03}$ ).

- 17% rent reduction from July 2018 to March 2019
  - 15% for general loss of quiet enjoyment; and
  - 2% for loss of the lounge room (used for storage).

I find that the same rationale as above applies to this time period except for no loss of the pool. Rent at that time was \$852.99 until the end of November, 2018 and I have no knowledge of the rental increase amount commencing December 1, 2018. I grant a monetary order for July 2018 to November, 2018 in the amount of \$1,279.48 ( $\$852.99 \times 30\% = \$255.90 \times 5 \text{ months} = \underline{\$1,279.48}$ )

$(\$1,451.69 + \$493.74 + \$1,728.11 + \$2,285.03 + \$1,279.48 = \underline{\$7,238.05})$

Since the tenant has been partially successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of



the tenant in the amount of \$7,338.05, and I order that the tenant be permitted to reduce rent for future months until that sum is realized, or may otherwise recover it.

With respect to the tenant's claim for ongoing rent reduction, counsel for the landlord submits that essential services or facilities are currently not being restricted, and no evidence has been submitted by the tenant that warrants ongoing reduction in rent, considering that the renovation project is substantially complete. I see no evidence to the contrary. The tenant testified that it was overwhelmingly disruptive for a year with jackhammering, then another year of noise, and only around December, 2018 or January, 2019 it reduced. I dismiss the tenant's application for on-going rent reduction.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$7,338.05, and I order that the tenant be permitted to reduce rent for future months totalling that amount, or may otherwise recover it by filing the monetary order for enforcement with the Provincial Court of British Columbia, Small Claims Division, pursuant to the *Court Order Enforcement Act*.

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: July 05, 2019

Amended: July 26, 2019

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Residential Tenancy Branch