



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding IMH415 & 435 MICHIGAN STREET  
APARTMENTS LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RR, MNDCT, FFT

### Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution ("application") dated January 1, 2019, and amended by an Amendment to an Application for Dispute Resolution received at the Residential Tenancy Branch on January 28, 2019 ("amendment"). The tenant is seeking remedy under the *Residential Tenancy Act* ("Act"). The tenant applied for a rent reduction for repairs, services, or facilities agreed upon but not provided, for compensation due to a loss of quiet enjoyment and to recover the cost of the filing fee.

The tenant, counsel for the tenant DK ("tenant's counsel"), a student observer DL, and counsel for the landlord RH ("landlord's counsel") attended the teleconference hearing. The parties were affirmed and the hearing process was explained to the parties. The parties were also provided the ability to ask questions during the hearing process. Only the evidence relevant to this decision is described below.

Neither party raised any concerns regarding the service of documentary evidence. As both parties confirmed that they were served with documentary evidence and had the opportunity to review that evidence prior to the hearing, I am satisfied that the parties were sufficiently served in accordance with the *Act*.

### Preliminary and Procedural Matters

Firstly, I have amended the tenant's application pursuant to section 64(3) of the *Act* as I find it is obvious that the tenant is seeking compensation for loss of quiet enjoyment as part of their original application and amendment as the tenant specifically states that in the description of their application.

In addition, landlord's counsel requested that the name of the landlord be amended to reflect the correct corporate landlord. Pursuant to section 64(3) of the *Act*, I have amended the name of the landlord to reflect the correct corporate landlord.

In addition to the above, both parties confirmed their correct email addresses and confirmed their understanding that the parties would be sent the decision by email. Furthermore, if a monetary order is granted, the successful party will be sent a monetary order by email, for service on the other party.

### Issues to be Decided

1. Is the tenant entitled to a monetary order for a reduction of rent for repairs, services, or facilities agreed upon but not provided under the *Act*, and if so, in what amount?
2. Is the tenant entitled to a monetary order for compensation for loss of quiet enjoyment under the *Act*, and if so, in what amount?
3. Is the tenant entitled to the recovery of the cost of the filing fee?

### Background and Evidence

The parties agreed that the tenancy began in approximately 2002. The parties agreed that the monthly rent was as follows:

Rent as of following dates	Amount of Rent
1. October 20, 2015	\$1,015.00
2. October 1, 2016	\$1,044.44
3. October 1, 2017	\$1,083.08
4. October 1, 2018	\$1,126.40

At the outset of the hearing, the tenant's counsel stated that the tenant has further reduced their claim from the amendment amount of \$19,348.00, to the \$16,416.25, comprised as follows:

Time Period	Details	Amount of reduction	Amount claimed
Dec 2015 – Jun 2016	<ul style="list-style-type: none"> <li>• Construction noise and jackhammering</li> <li>• Dust and construction materials in common areas</li> <li>• Lack of building security</li> </ul>	50% (30% general loss of quiet enjoyment/restriction of water/other services & 20% loss	\$3,552.50

	<ul style="list-style-type: none"> <li>• Loss of access to balcony</li> <li>• Loss of airflow and light; extreme heat in unit</li> <li>• Water shut-offs</li> <li>• Landlord failure to maintain cleanliness</li> </ul>	of balcony)	
Jul 2016 – Dec 2016	<ul style="list-style-type: none"> <li>• Construction noise and jackhammering</li> <li>• Dust and construction materials in common areas</li> <li>• Lack of building security</li> <li>• Loss of access to balcony</li> <li>• Reduced elevator availability</li> <li>• Water shut-offs</li> <li>• Parking obstructions</li> <li>• Loss of airflow and light; extreme heat in unit</li> </ul>	50% (30% general loss of quiet enjoyment/restriction to water/other services & 20% loss of balcony)	\$3,089.16
Jan 2017 – Feb 2017	<ul style="list-style-type: none"> <li>• Mail interruptions</li> <li>• Loss of access to balcony</li> <li>• Loss of airflow and light</li> <li>• Unfinished and bare hallways</li> <li>• Construction noise</li> <li>• Dust and materials in common areas</li> <li>• Water shut-offs</li> <li>• Lack of building security</li> </ul>	25% (20% loss of balcony & 5% general loss of quiet enjoyment/restriction of services (during stop work period minimal construction))	\$522.22
Mar 2017 – Aug 2017	<ul style="list-style-type: none"> <li>• Loss of access to balcony</li> <li>• Loss of airflow and light</li> <li>• Loud noise from renovations</li> <li>• Unfinished and bare hallways</li> <li>• Security concerns; building doors left open</li> <li>• Reduced elevator availability</li> <li>• Parking obstructions</li> <li>• Dirty windows</li> <li>• Water shut-offs</li> </ul>	25% (20% loss of balcony & 5% general loss of quiet enjoyment/restriction of services)	\$1,566.66
Sep 2017 –	<ul style="list-style-type: none"> <li>• Construction noise</li> </ul>	50% (30% general loss of quiet	\$3,229.92

Feb 2018	<ul style="list-style-type: none"> <li>• Loss of airflow and light</li> <li>• Lack of access to common areas (e.g.: lobby)</li> <li>• Dirty windows</li> <li>• Construction materials in common areas</li> <li>• Dirty windows (duplicated)</li> <li>• Lack of building security</li> <li>• Reduced elevator availability</li> </ul>	enjoyment/restriction to services & 20% loss of access to balcony)	
Mar 2018 – Oct 2018	<ul style="list-style-type: none"> <li>• Loud noise from suite demolitions during the week</li> <li>• Common areas poorly maintained</li> <li>• Construction materials in common areas</li> <li>• Reduced parking availability</li> <li>• Lack of building security</li> </ul>	35% (30% general loss of quiet enjoyment/restriction to services & 5% periodic loss of parking spot)	\$3,047.79
Nov 2018 – Mar 2019	<ul style="list-style-type: none"> <li>• Construction noise</li> <li>• Unfinished common areas (ex.: lobby)</li> <li>• Lack of maintenance on site</li> <li>• Lack of access to some common areas</li> </ul>	25% (20% general loss of quiet enjoyment/restriction to services & 5% periodic loss of parking spot)	\$1,408.00
<b>TOTAL</b>			<b>\$16,416.25</b>

In addition to the above, the tenant is also seeking an ongoing rent abatement of 15% until renovations are completed.

#### *Tenant's evidence*

Tenant's counsel submits that the tenant's claim is based on a long-standing construction project that has spanned over three years and involves four different buildings. Tenant's counsel requested that if the ongoing rent abatement could not be considered, that the tenant be granted liberty to reapply for further remedy if the construction project continues.

Tenant's counsel made reference to previous decisions in the Table of Contents and stated that in previous decisions when the noise was most intense the applicant was granted a 30% rent reduction if they had a balcony an additional 20%. Tenant's counsel stated that page 1-5 of the Table of Contents relates to the same building as the tenant, as does page 6 and page 30. The tenant's counsel was unsure if that decision related to the same building as the tenant. Tenant's counsel stated that the tenant lives in one building out of a four-building complex. Tenant's counsel also submitted media articles.

In addition, tenant's counsel referred to section 3, which refers to a third party report and specifically an affidavit of the site superintendent dated March 10, 2019.

Tenant's counsel describes the building as a 13-storey apartment complex built in the 1960s, with 10 suites on 12 floors and 2 suites on the first floor. The building common areas are described as the main floor entrance and foyer, hallways, the laundry facility, and outdoor space, including a pool. The tenant's counsel submits that on December 3, 2015, the previous owners, QPPC, sold the property to SI and retained LPM to manage the building. There is no dispute that in December 2015, the landlord started renovations in the building and to the three other similar buildings in the vicinity.

Tenant's counsel submits that as a result of the renovations, the tenant began to experience significant disruptions to his quiet enjoyment due to both interior and exterior renovations, including the presence of what is described as noisy work crews. The tenant testified that as his unit was on the top floor, work crews would gather outside of this door as a muster station each morning they worked. The tenant stated that his unit faces south and west and is located beside a staircase that leads to the roof. The tenant testified regarding his personal experience as follows during the hearing:

- Workers would come to work 7:00 – 7:30 a.m. and congregate outside my door and take all the staging and ropes up to the roof.
- The metal doors leading to the roof would slam against the metal frames and this was daily Monday to Friday from 7:30 a.m. to 4:30 p.m.
- Once the workers were on the roof, they would assemble their gear by dropping it from the roof, which was directly above my kitchen and dining room, depending on which side they were working.
- The workers would move metal staging equipment, ropes, pulleys, and it was a very slow process and they would be talking all the time which I could hear and it was difficult for me to focus on my studies or do yoga and meditation. I felt intimidated by it as it was very noisy and was an invasion of privacy.

- As the roof area was for only workers and management and not tenants, I was having constant interaction on both sides and I am 60 years old and retired so I was home most of the time of the construction.
- My balcony was locked from the outside for at least one year so I could only open it 2 inches to get clean air and could not open it at all when there was dust from the jackhammering etc.
- The cement walls on my balcony took 4 months or more, although I can't remember, for them to jackhammer, and the entire time the staging would go up and down and the workers would use grinders to level flooring and would put windows in from the exterior and do interior trim work on the windows too.
- In addition, the workers removed stucco around the interior window trim and there was dust from it (which the tenant referred to photos of in evidence) and the windows did not get installed for 6-12 months after the trim was removed so there was a long period of dust.
- The hallways were a disaster with stucco dust all over the hallways and the elevator.
- The painters would have their radios loud and would be talking loud over the loud radio too and would start at 7:30 a.m. usually and go until 4:30 p.m. and sometimes the inside work would continue until 10:00 p.m. for example in the unit across the hall from me where I would hear them hammering away on the flooring and this interrupted my studies.
- Some workers lived in the building and were having parties until 2:00 a.m.
- There was no on-site manager for some time and when the manager came by they were not around much as there were several other buildings to manage.
- I complained to L and then eventually L was fired and DP took over managing the property.
- When DP took over they picked up the slack and started to clean up the place.

Landlord's counsel did not ask the tenant any questions when given the opportunity for cross-examination. The tenant confirmed that he did not have any contact with the company that owned the building, but did have contact with the management company. The tenant claims that he never knew when the water would be shut down so he always had a bucket or two in the bathtub for flushing the toilet and the elevator service was infrequent as the workers would use both elevators at the same time. The tenant stated that he had to walk 13 flights of stairs up and down sometimes with groceries and that he has a back condition.

The tenant testified that during the stop work order, he would have to go and pick up his mail from the post office, which would take ½ hour to 1 hour to get his mail, taking time

out of his day and that he lost a cheque in the mail. The tenant was unsure how many months he was without mail service.

The tenant stated that his parking space was beside the dumpster and that the overfilled garbage in the dumpster from the construction project spilled over towards his car. In addition, the tenant testified that birds would rip through bags and the tenant saw rats scurrying away as he walked to his car and that sometimes the tenant would have to move garbage to get to this car.

Many colour photos were referred to by the tenant and tenant's counsel during the hearing. In one photo the dining room window showed trim removed and parts of the ceiling removed. Another photo the tenant stated that his personal items were condensed into one main room to avoid dust near the dining room window. The tenant also explained in another photo that the ropes and staging gear were visible directly outside of this window and explained how the workers would be lowered down from his roof and balcony area. The tenant referred to another photo and stated that wall damage and another area in the corner were not fixed for one year so could not use that area while it was not fixed due to dust.

In terms of correspondence from the tenant to landlord, in care of the property management company, there were two letters from the tenant and neither are dated. In the first letter the tenant writes in part:

SINCE YOUR CONSTRUCTION PROJECT AT THE [name of building] BEGAN, I HAVE BEEN EXPERIENCING, AND WILL EXPERIENCE UNTIL COMPLETION, A DIMINISHED AND SUBSTANTIAL REDUCTION OF MY ABILITY TO ENJOY A SECURE, PEACEFUL, AND QUIET ENVIRONMENT AT HOME AND ON OR IN THE PREMISES.

TENANT SERVICES IN THIS BUILDING HAVE DECLINED SINCE YOUR APPROPRIATED IT, AND HEALTH, SAFETY AND SECURITY ARE ON GOING.

I AM WRITING TO YOU TO REQUEST ON THIS BASIS A 50% RETROACTIVE MONTHLY RENT RATE EFFECTIVE FROM 3 DECEMBER 2015 WHEN YOUR PROJECT BEGAN, UNTIL COMPLETION.

[Names anonymized]

In the second letter, the tenant writes in part:

SINCE YOUR CONSTRUCTION PROJECT BEGAN AT [name of building] I HAVE BEEN EXPERIENCING , AND WILL BE EXPERIENCING UNTIL COMPLETION A DIMISHED AND SUBSTANIAL REDUCTION OF MY ABLILITY TO ENJOY A SECURE, PEACEFUL, AND QUIET ENVIRONMENT AT HOME AND ON OR IN THE PREMISES...

...

A GREAT DEAL OF NOISE WHICH DISTURBS ME DURING MY SLEEP, MEDITATION + STUDY PERIODS. IT IS AT TIME IMPOSSIBLE TO TELEPHONE BECAUSE OF NOISE FROM WORKERS ON THE ROOF AND INTERIOR RENOVATIONS...

MY PRIVACY HAS BEEN TAKEN AWAY BECAUSE OF WORKERS WORKING ON MY BALCONY. ALSO WITH THE EXTERIOR ELEVATORS ON THE SIDE OF BUILDING WORKERS ARE GOING UP AND DOWN THESE ELEVATORS AND HAVE APPEARED LOOKING IN MY DINING OR LIVING ROOM WINDOWS WITHOUT ANY PRIOR NOTICE. THIS IS VERY UNNERVING AND STRESSFUL. CURTAINS WERE REMOVED AND NEVER REPLACED

ON OCTOBER 27, 2016 ALL NEW WINDOWS WERE INSTALLED IN MY APARTMENT EXCEPT THE DINING ROOM WINDOW WHERE THE WORKERS STRIPPED AWAY THE STUCCO...AND WAS LEFT BARE WITH NO PLASTIC COVERING OVER WINDOW AREAS TO PROTECT ME FROM ASBESTOS CONTAINED WITHIN THE STUCCO. THIS AREA WAS LEFT UNCOVERED UNTIL DEC 7, 2017 WHEN THE WINDOW TRIM WAS PUT IN TO COVER EXPOSED AREAS WHERE ASBESTOS LAIDEN STUCCO WAS LOCATED. I WAS LIVING IN THIS EXPOSED ASBESTOS DUST FOR APPROXIMATELY 13½ MONTHS. IN FRONT OF THE 14<sup>TH</sup> FLOOR ELEVATOR ENTRANCES A HOLE HAS BEEN CUT INTO THE CEILING SINCE FEB 1, 2017. THIS HOLE IS STILL NOT COVERED NAD IS A HEALTH HAZARD BEAUSE OF ASBESTOS DUST...

RENOVATIONS IN 2016 ON APT [across hall] ALLOWED ASBESTOS DUST TO ENTER HALLWAYS WHICH IS ACROSS THE HALLWAY FROM MY APT [unit number]...

I WISH RENT REDUCTION FROM DECMEBER 1, 2015 WHEN CONSTRUCTION BEGAN UNTIL THE PRESENT

[Names anonymized]

In a different colour pen the dates "Dec 2015 – Dec 2016" and below that "Dec 2016" are listed. As a result, the tenant was asked if he could recall when the letters were submitted to the landlord. The tenant stated 2017 for the first letter then stated he was not sure, and then for the second letter the tenant said 2018 and then stated that he did not have that information with him during the hearing.



Tenant's counsel referred to the tenant's statement, which reads in part:

Since your construction project began at [name of building] I have been experiencing and will be experiencing until completion a diminished and substantial reduction of my ability to enjoy a secure, peaceful, and quiet environment at home and on or in the premises.

Being on the top floor of [name of building], the roof is directly above my apartment. Also, the staircase going to the roof is beside my apartment. Consequently, there is noise from workers going up and down these stairs from 7:30 am to 4:30 pm during the work week. The door to the stairway to the roof is beside my apartment. Workmen opening and closing this door slam it causing a loud noise that startles, distracts, and annoys me at random times throughout the entire day. If I am reading a book, this makes it hard for me to concentrate.

Once the workers are on the roof, they put up rigging every morning to set up their staging, which is directly above my apartment. This makes a lot of noise, which disturbs my sleep, meditation, yoga, and study periods. Sometimes it is impossible to talk on the telephone because of the noise caused by workers on the roof and others doing interior renovations on apartments in [name of building] is so loud.

#### **RTA S. 27 – Terminating or restricting services or facilities**

##### **Elevator**

During construction hours, from 7:30 am to 4:30 pm, both elevators were being used by workers to bring materials in and out of the building. I have had to wait up to 10 minutes before an elevator would arrive at my 14th floor. Sometimes I would have to walk down 13 flights of stairs to get out of my building so I would not miss my appointments. The elevators were always a mess due to all the work occurring in the building and the heavy worker traffic, but were never cleaned. I was forced to walk down and up the stairs when the elevator was not in use. I am on the 14th floor, and a senior with back problems, therefore this was not easy to do.

##### **Water**

There have been water pipes breaking causing flooding in apartments and the laundry room, so there have been instances in which I have not been able to do my laundry because of flooding.

There were frequent unscheduled water stoppages due to renovation construction. The unpredictability of water shut offs to my apartment has meant that I have to keep buckets of water in my apartment at all times so that I can flush my toilet, cook and brush my teeth when the water is turned off. The water stoppages happened without notice to tenants. I had to keep a bucket of water in my apartment at all times to use if water was cut off. These water stoppages would sometimes last from 9 am to 4 pm, a total of 7 hours. The shut off notices below weren't the only times. There were I think at least a couple dozen other times when the water was off without warning.

### **Parking**

Parking has been a real problem. Three to four times a week worker's trucks were parked in my designated parking space. As a result I had to park on the street. Also, I had to purchase a No Parking sign and install it at my parking space.

## **S. 28 – Protection of tenant's right to quiet enjoyment**

### **Loss of Balcony**

I was not allowed to use my balcony from shortly after renovations started until balcony completion. While I did not have access to my balcony I couldn't sit outside on my balcony and enjoy my view, the sunshine, and fresh air with my friends.

### **Noise**

The noise level was very high in the [name of building] because of jackhammers working to take down cement balcony walls. There is a great deal of vibration from the operating of these tools that I could feel while sitting in my dining room chair trying to read my book. It was often so loud that I had to leave my apartment and building for the day. The noise was so loud in the apartment that I could hardly think and it was impossible to talk on the phone or carry on a

conversation. Reading, listening to music or the radio, studying or even cooking was impossible.

Also, there was noise from painters painting in the hallways with loud music blasting from their radios. Noise was also caused by different companies hired by S. The workers from these companies were living in vacant apartments and having parties and loud music until 2 or 3 am. There weren't any managers here to stop these workers from making all this noise. Noise from workers renovating apartments was very loud, and sometimes they would work until 9 pm. These workers were also working on weekends installing new floors in apartments from 9 am to sometimes 10 pm, causing great deal of noise.

The apartment directly across the hall from me was renovated. This took several months. During this time work sometimes went late into the night and took place on weekends. The work was frequently noisy, disturbed my meditation practice, my reading and general concentration.

As stated above, when the apartment across the hall from me was being renovated there was frequent noise during quiet hours.

The fans for the kitchens and bathrooms of all of the apartments on my side of the building are located above my top-floor apartment, [unit number]. These fans, one located above my apartment on the roof of [name of building], were on for 24 hours a day for one year. These fans are supposed to be from approximately 7 am to 9 pm. This made it difficult for me to sleep at night, so I had to take sleeping pills.

### **Scaffolding (airflow & light)**

I was not able to open the sliding door on my apartment more than 2 inches for quite a number of months. During the day time it was not possible to open the sliding door or apartment windows at all because of all the construction dust surrounding the exterior of the building. The door is the main way to get outside air into my apartment. In the summer my apartment, which faces south, gets very hot because of sun coming through the windows (I do close the curtains). During the day I was unable to cool the apartment down. At night, I was able to open the door a little but this was not sufficient to adequately cool the apartment even with the other windows open.

### **Privacy & Security**

I live on the top floor of the building. The staging for the exterior elevator for the workers was directly above my balcony. Workers had to use this elevator when they started work, went on break, went to lunch, needed supplies and finished work. This meant that they were constantly going past my apartment windows. I was frequently surprised by workers looking in my windows while I was dressing, doing my yoga exercises etc. This was extremely unnerving, stressful and was an invasion of my privacy. This happened at all times of the day. This led me to keep my curtains closed during the day so that I had some privacy. I was deprived of my view and light that would normally have been coming in my windows.

For many months in 2017 and at other times from 2016 through 2018, the workers were daily outside my windows every morning and repeatedly through the day. For months it was on the west side outside my living room or bedroom windows, and for several months straight it was outside the south outside my dining room windows or balcony. Since I am on the top floor, they had to pass my windows every morning on their way down, and every time they took a break or finished work when they had to get off the suspended stage back onto the roof. I do a lot of meditation and yoga in the mornings. I would prefer to do these activities with open views, morning sunlight and quiet, of course. It was very uncomfortable having strangers appear both at the predictable morning time and random other times outside one or another window many times per day. I needed to keep my curtains closed all the time if I wanted privacy.

Being a senior I was very nervous especially at night time not knowing if a criminal could be walking around in our building when the front door was left open.

I have reviewed all the images attached below. I haven't commented on each image, but I have observed the doors to be open like this most of the time.

The front door has been open and is still open most of the time during construction hours ever since renovations began. These premises are therefore not secure.

The intercom frequently does not work when friends come to visit and I have to go down 13 floors to the lobby to let them into the building. I find myself having to monitor the parking lot for the arrival of my friends so that they do not have to

wait too long to get into the building. At times this can take 15 minutes. This is time consuming, frustrating and a little humiliating.

### **Indoor common areas**

I find moving through the lobby stressful and difficult. When I enter the building or exit the elevator I frequently have to navigate around workman who are either holding up construction materials or standing on ladders. I have to be constantly alert to avoid them and their materials. I do not find the lobby inviting or safe and when friends come to visit they get a very bad impression of my home.

I have reviewed all the images for this issue and agree this is how it has looked, with construction materials stored there through most of 2016 and then flooding in 2017 and then more renovations started in 2018. I have run out of time to add comments to each image.

The unfinished hallways made my home look dilapidated. For quite a while there were no floor numbers on the walls so I have to insure that my visitors got off at the correct floor by going down the hall to the elevator to meet them. The unfinished hallways were dirty and this meant that more dirt was tracked into my apartment, which in turn meant more cleaning for me.

Some of these images are mine, some are not but I have reviewed all and they are all accurate to how my hallway has looked at different dates over the past few years.

### **Outdoor common areas**

I often used to use the pool deck to sun tan. There were sometimes construction materials on the pool deck. Mostly the pool was available but I wasn't comfortable using it with all the work happening all around, especially when the work was jackhammering and other construction right above the pool on both sides.

This is yet another impact of living in a construction site for so many years. The enjoyment I got from coming home to a nice building which was properly landscaped with lawns and gardens has been taken away. It is hard to quantify this but it affects my spirit.

I've checked all the attached images and agree these are what I have observed here.

I have lived in [name of building] for 21 years. The first seventeen years were enjoyable with nice lawns, garden and swimming pool. The last four years I have seen the lawns disappear into mud where there are construction buildings and company trucks parked. The gardens were abandon and over grown for at least two years. The deck of the swimming pool was piled with windows which I considered a safety hazard. In addition, workers were constantly around the pool so I did not feel comfortable swimming in the pool. It was depressing driving home to this construction site with debris strewn around parking lot and dumpster. I was too embarrassed to have friends over for a visit.

I have checked all the files attached to this issue but have run out of time to add comments to each.

I keep my bike in the bike shed. The shed is not adequately secured. The shed has been broken into numerous times and I have had my bike seat, bike tools, bike helmet, bike pant clips, bike lights stolen on different occasions. I have also had to comfort a friend of mine who lives in the building when her bike was stolen. My girlfriend is afraid to leave her bike in the shed due to the frequent thefts.

### **Exposure to hazardous materials**

Hearing that I was probably exposed to asbestos dust was and is very disturbing and continues to worry me. In addition, my girlfriend has been very upset by this. It feels like a real betrayal that my landlord would expose me to such a toxic substance. I am a senior and my lungs are one of the weaker areas of my body. I constantly worry that I have shortened my life by continuing to live at [name of building].

On October 27, 2016, all new windows were installed in my apartment except for the dining room window. The workers stripped away the stucco around the windows and did not install interior trim around the windows until December 7, 2017. This open space around the edge of my windows was not covered with anything to protect me from asbestos dust contained within the stucco.

In front of the 14th floor elevator entrances a hole had been cut into the ceiling since February 1, 2017. This hole was not covered for approximately a year and was a health hazard because of asbestos dust. Workers renovating apartments during 2016 transported hazardous materials containing asbestos dust down hallways, into elevators, through the lobby, and dumped it into the dumpster where the tenants put their garbage. These materials were not wrapped in plastic, and tenants were exposed to asbestos dust in hallways, elevators, the lobby, and near the dumpster.

Renovations in 2016 on apartment [neighbouring unit number], which is directly across the corridor from my apartment, [unit number], allowed asbestos dust to enter the hallway in front of my door.

### **Mail disruption**

When the mail was not being delivered to our building I had to go down to the main post office to pick up my mail. This took time and money for parking. A cheque from one of my investments which was sent to me in the mail went missing during this time. Once I noticed this I had to arrange for the cheque to be cancelled and another reissued. This process took at least a month.

### **Loss of use of balcony**

Before the balcony front was removed I used my balcony many times every week. The view and balcony was the reason I paid more to move up to this suite about seventeen years ago. With the balcony locked off for more than a year I wasn't able to open the door for air (I could open it about two inches, but with all the work outside I needed to keep it closed to stop the dust), have meals out there to enjoy the sunset, socialize with my girlfriend, sit in the sunlight in the summer, etc. I do value my balcony significantly so it was a frustrating loss for so long.

### **Loss of resident manager**

There were no on-site building managers. One night I lost my apartment keys and had to wait over one hour before someone came to let me in to my apartment. This was frustrating and annoying.

### **Window replacement**

My windows were dirty so I really couldn't enjoy a clear view of the mountains, ocean, and city from my fourteenth floor apartment. Also there was less sunshine entering my apartment. This made it depressing living in my apartment. It was also embarrassing to have people over, particularly my girlfriend.

Around October 2016 they came in to remove the trim from around my windows, and they stripped the ceiling texture above the windows. In the fall of 2017 they replaced the windows but did some more damage in the process. It was a few months, around December 2017, before they fixed the damage and added new window trim.

These photos are from my dining room. I was concerned about the damaged surfaces and that dust might be falling from the vibrations of all the work in the building. I stopped eating there for that year as I didn't want that dust possibly in my food. I ate in the living room instead. It was an eyesore and frustrating to see it unrepaired for so long, I wondered why they had torn the trim and ceiling texture out so long before they were going to replace it.

### **Contractor behaviour**

I have frequently been disturbed by loud music from ghetto-blaster radios that painters were using in the hallways. In addition, noise from apartment renovations has gone on late into the evening. Some of the workers who lived in the building would party until 2 am and the noise from this prevented me from sleeping.

### **RTA, s. 32 – Landlord and tenant obligations to repair and maintain**

#### **Failure to maintain cleanliness**

Since the construction began to the present there has been much more dirt and dust in the building. This has passively entered my apartment and I have tracked it in. This has meant that I have to clean my apartment about twice as much as I used to. This unnecessarily takes up my time and cost me more in cleaning products.

After walking down hallway from elevator to and into my apartment I track white dust and caulking glue into my apartment. I would then have to wash my floors



and bottom of my shoes. This constant cleaning up was time consuming and annoying.

The garbage containers were not cleaned out to schedule because garbage trucks couldn't get to the garbage containers because construction trucks would be blocking the driveway. The containers would overflow with garbage, and the birds would rip bags apart. Thus garbage was strewn all over the parking lot. My car is parked right next to dumpster. I would have to clear food, plastic bags, and other refuse away to get to my car. On several occasions there were rats running through the garbage and running away as I entered my car.

### **Tenant's Closing Statement**

As a tenant of [name of building] I feel that the owners have not shown any concern for my wellbeing and that they have put my health in jeopardy by exposing me to dust containing asbestos, silica and lead. I have been stressed living there since [former management company S] took over worrying about my safety, having my privacy invaded, putting up with unreasonable volumes and frequency of noise, dealing with construction dirt and debris and losing the use of many amenities including water, my parking space, my view, sunlight entering my apartment, my balcony, proper garbage disposal and fresh air, and never being able to be sure that [former management company S] will not find a way to evict me so they can rent to someone else for more.

[Names anonymized]

The tenant also seeks the recovery of the cost of the filing fee under the *Act*.

### **Landlord's evidence**

The landlord did not have an agent or witnesses attend the hearing to provide direct testimony. Landlord's counsel attended on behalf of the corporate landlord and stated that the landlord is relying on documentary evidence and Affidavits submitted prior to the hearing.

Landlord's counsel submits that the tenants were informed of the construction project via a notice that the project would take between 24 and 36 months and that the tenant has the burden to prove under section 23 of the *Act* that there was more than a minor inconvenience. Landlord's counsel referred to a December 3, 2015 "NOTICE TO ALL RESIDENTS" ("notice") and in that notice is reads in part as to timeframes:

[name of new owner] intends to proceed in the short term with the following maintenance, repairs and capital work to the residential complex:

- Corridor, lobby and entrance refurbishment, security upgrades, elevator modernization, painting building envelope, balconies, windows & doors, unit renovations, energy efficient systems and mechanical equipment replacement.

This work is intended to ensure the long term physical and structural integrity of the building(s) and improve the quality and safety of your physical surroundings. The work is expect to take 24 months to complete....

[Names anonymized]

Landlord's counsel also raised the issue of mitigation and that the tenant must notify the landlord and give the landlord a chance to rectify any concerns. Landlord's counsel referred to a letter dated January 19, 2017, which is addressed to the landlord agent DP at that time and is very similar to the undated letter referred to above presented by the tenant.

In a second letter, the landlord agent ES of DP wrote a letter to the tenant dated January 26, 2018. In that January 26, 2018 letter, landlord agent ES thanks the tenant for their letter dated January 11, 2018, regarding the tenant's concerns regarding building conditions and issues with units. In a subsequent letter from landlord agent to the tenant dated February 19, 2018, the tenant was offered a one-time, 15% rent reduction for the past 12 months, which would give the tenant a credit on their account of \$1,949.54. There is no evidence to support that the tenant accepted that offer from the landlord agent.

The landlord submitted several affidavits and a project assessment for consideration in evidence, which indicated that repairs must be completed. The landlord submits that a two-year Statute of Limitations should apply and that the tenant should only be permitted to go back 2 years from the first occurrence.

Landlord's counsel submitted in terms of reduced elevator availability that while the elevators may have been restricted and inconvenient and that the tenant would have to wait longer for an elevator, the tenant did not state that the elevators were closed. Landlord's counsel also submits that the tenant failed to provide any medical evidence regarding the impact the loss of quiet enjoyment had on the tenant.

In terms of water shut-offs, counsel submits that the tenant failed to break down the loss and quantify how the shut-offs impacted the tenant. I note that the tenant provided direct testimony indicated above on how the various water shut-offs impacted him by having to be prepared with buckets of water in their bathtub in case of a water shut-off.

Landlord's counsel submitted that regarding the tenant's claim for reduced parking, that the landlord was not notified and that those who did complain received compensation. I note that the tenant did mention parking issues in the two letters addressed to the management company in 2017 and 2018.

Regarding the balcony, counsel submits that the outside is worth less than the inside of the rental unit and that there was a small percentage of the overall space that was not available to the tenant. Landlord's counsel states that the tenant did not make any noise complaints after January 2017 and that the tenant's focus in the letters was regarding the main floor, lobby and yard areas.

Landlord's counsel submits that the tenant could have submitted parking receipts during the time the mail service did not deliver to the building, but did not do so. Regarding the window trim, counsel submits that the landlord responded one week after the tenant's complaint in the fall of 2017.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 67 of the *Act* provides the authority for me to order one party to pay compensation to the other party if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Section 65(1)(f) of the *Act* provides authority to the director to reduce past or future rent by an amount that is equivalent to a reduction in the value of a tenancy agreement. In the matter before me, I find the renovation and repair project (“project”) undertaken by the landlord, was estimated to take 24 months from December 3, 2015, as per the landlord’s Notice to Residents dated December 3, 2015, which I find does not include a term of 36 months as claimed by counsel during the hearing. I also find that I have insufficient evidence before me to support that the project was completed by the time the tenant made their application on January 1, 2019. However, I find the tenant provided insufficient evidence to support that the tenant wrote to the landlord to formally complain about project-related issues including noise, dust, etc. in the building that were impacting his quiet enjoyment until the first letter, which I find to be dated on January

19, 2017. I have made this finding by cross-referencing a similar letter submitted by the landlord dated January 19, 2017 and addressed directly to landlord agent DP. In addition, I find the second letter that the tenant presented was more likely than not dated January 26, 2018, as the landlord makes reference in their submitted correspondence to a letter from the tenant dated January 26, 2018.

Given the above, I find the tenant failed to meet part four of the test for damages and loss described above prior to January 19, 2017, as I find the tenant has provided insufficient evidence to satisfy me that the tenant attempted to minimize the damage or loss by advising the landlord of the impact to the tenant's right to quiet enjoyment before January 19, 2017. Therefore, I dismiss all portions of the tenant's claim prior to January 19, 2017, due to the tenant failing to satisfy the fourth part of the test for damages or loss.

I will now deal with the remainder of the tenant's claim for the time period between January 19, 2017, and the date the application was filed on January 1, 2019. I find the renovation and repair project ("project") undertaken by the landlord, far exceeded the estimated timeframe of two years as indicated on the Notice to Residents dated December 3, 2015 and I find that on the balance of probabilities, that the landlord has failed to sufficiently address the concerns raised by the tenant in the two letters from the tenant, which I have found to be dated January 19, 2017, and January 26, 2018.

I accept the evidence of the tenant with respect to the disruptions and impact on the tenant's right to quiet enjoyment described in detail above, which includes but is not limited to:

- Landlord's lack of concern for tenant's in terms of dust containing asbestos, silica and lead.
- Safety concerns surrounding project, dealing with unreasonable volumes and frequency of noise.
- Dealing with construction dirt and debris and losing the use of many amenities including water, parking space, view, sunlight entering apartment, use and enjoyment of balcony.
- Loss of proper garbage disposal and fresh air, etc.

These findings must, according to the *Act*, be balanced with a landlord's obligation to repair and maintain rental property. Section 32 of the *Act* requires landlords to "provide and maintain residential property in a state of decoration and repair that...complies with the health, safety and housing standards required by law, and...makes it suitable for

occupation by a tenant.” I find that based on the totality of the evidence before me I find the landlord, via the affidavits and assessments submitted, fulfilled the landlord’s obligation to repair and maintain property as required by section 32 of the Act.

In consideration of all of the above evidence before me, I find the renovation and repair project disrupted the tenant and reduced the value of the tenancy as follows:

<b>Time Period</b>	<b>Details</b>	<b>Amount of reduction</b>
Dec 2015 – Jun 2016	<ul style="list-style-type: none"> <li>• Construction noise and jackhammering</li> <li>• Dust and construction materials in common areas</li> <li>• Lack of building security</li> <li>• Loss of access to balcony</li> <li>• Loss of airflow and light; extreme heat in unit</li> <li>• Water shut-offs</li> <li>• Landlord failure to maintain cleanliness</li> </ul>	Dismissed
Jul 2016 – Jan 18, 2017	<ul style="list-style-type: none"> <li>• Construction noise and jackhammering</li> <li>• Dust and construction materials in common areas</li> <li>• Lack of building security</li> <li>• Loss of access to balcony</li> <li>• Reduced elevator availability</li> <li>• Water shut-offs</li> <li>• Parking obstructions</li> <li>• Loss of airflow and light; extreme heat in unit</li> </ul>	Dismissed
Jan 19, 2017 – Feb 2017	<ul style="list-style-type: none"> <li>• Mail interruptions</li> <li>• Loss of access to balcony</li> <li>• Loss of airflow and light</li> <li>• Unfinished and bare hallways</li> <li>• Construction noise</li> <li>• Dust and materials in common areas</li> </ul>	25% (20% loss of balcony & 5% general loss of quiet enjoyment/restriction of services (during stop work period minimal

	<ul style="list-style-type: none"> <li>• Water shut-offs</li> <li>• Lack of building security</li> </ul>	construction)
Mar 2017 – Aug 2017	<ul style="list-style-type: none"> <li>• Loss of access to balcony</li> <li>• Loss of airflow and light</li> <li>• Loud noise from renovations</li> <li>• Unfinished and bare hallways</li> <li>• Security concerns; building doors left open</li> <li>• Reduced elevator availability</li> <li>• Parking obstructions</li> <li>• Dirty windows</li> <li>• Water shut-offs</li> </ul>	25% (20% loss of balcony & 5% general loss of quiet enjoyment/restriction of services)
Sep 2017 – Feb 2018	<ul style="list-style-type: none"> <li>• Construction noise</li> <li>• Loss of airflow and light</li> <li>• Lack of access to common areas (e.g.:lobby)</li> <li>• Dirty windows</li> <li>• Construction materials in common areas</li> <li>• Dirty windows (duplicated)</li> <li>• Lack of building security</li> <li>• Reduced elevator availability</li> </ul>	50% (30% general loss of quiet enjoyment/restriction to services & 20% loss of access to balcony)
Mar 2018 – Oct 2018	<ul style="list-style-type: none"> <li>• Loud noise from suite demolitions during the week</li> <li>• Common areas poorly maintained</li> <li>• Construction materials in common areas</li> <li>• Reduced parking availability</li> <li>• Lack of building security</li> </ul>	35% (30% general loss of quiet enjoyment/restriction to services & 5% periodic loss of parking spot)
Nov 2018 – Jan 1, 2019	<ul style="list-style-type: none"> <li>• Construction noise</li> <li>• Unfinished common areas (ex.: lobby)</li> <li>• Lack of maintenance on site</li> <li>• Lack of access to some common areas</li> </ul>	25% (20% general loss of quiet enjoyment/restriction to services & 5% periodic loss of parking spot)

Section 64(2) of the *Act* applies and states:

The director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

Given the above, I find the decisions referred to by the parties are not precedential. Furthermore, I accept that there was regular jackhammering and construction-related noise, including muster meetings outside of the tenant's unit, and the sound of installing equipment above the rental unit, during this lengthy project. I also accept that the tenant has a unique location in the building, being a top floor unit with the roof directly above the tenant, and with views in both the south and west directions.

I find that the tenant has provided sufficient evidence that their quiet enjoyment, views and right to privacy has been negatively impact more than compared to someone living on the first floor of the building, for example. Accordingly, I find the reduction in the value of the tenancy is more significant for the tenant, as compared to if the rental unit was on the bottom floor of the building. In reaching this finding, I accept that the gear assembly and impact from being lowered from the roof would be significant to the tenant, as compared to if the rental unit was on the bottom floor of the building. I also accept the tenant's testimony that the work crew would use the outside area in front of the rental unit as a muster station and would be loud as a result and disruptive.

Section 28 of the *Act* applies and states:

**Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

**(a) reasonable privacy;**

**(b) freedom from unreasonable disturbance;**

(c) 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*];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

[Emphasis added]

Given the above, I find the landlord has breached section 28(a) and (b) of the *Act* in relation to the tenant and that the tenant's privacy has been negatively impacted due to



the more than 36 months the project has continued, and I find that the impact on the tenant is not reasonable given the scope of the project.

Therefore, I grant the tenant a rent reduction as claimed and as follows for the period of January 19, 2017 to January 1, 2019, as follows:

<b>Time Period</b>	<b>Details</b>	<b>Amount of reduction</b>	<b>Amount awarded</b>
Jan 19, 2017 – Feb 2017	<ul style="list-style-type: none"> <li>• Mail interruptions</li> <li>• Loss of access to balcony</li> <li>• Loss of airflow and light</li> <li>• Unfinished and bare hallways</li> <li>• Construction noise</li> <li>• Dust and materials in common areas</li> <li>• Water shut-offs</li> <li>• Lack of building security</li> </ul>	25% (20% loss of balcony & 5% general loss of quiet enjoyment/restriction of services (during stop work period minimal construction) [13 days in January (19 <sup>th</sup> -31 <sup>st</sup> ) @ \$33.70 per day when \$1,044.44 is divided by 31 days=\$438.10, plus \$1,044.44 for February 2017 for total of \$1,482.54 x .25 = \$370.635]	<b>\$370.64</b>
Mar 2017 – Aug 2017	<ul style="list-style-type: none"> <li>• Loss of access to balcony</li> <li>• Loss of airflow and light</li> <li>• Loud noise from renovations</li> <li>• Unfinished and bare hallways</li> <li>• Security concerns; building doors left open</li> <li>• Reduced elevator availability</li> <li>• Parking obstructions</li> <li>• Dirty windows</li> <li>• Water shut-offs</li> </ul>	25% (20% loss of balcony & 5% general loss of quiet enjoyment/restriction of services)	<b>\$1,566.66</b>
Sep 2017 – Feb 2018	<ul style="list-style-type: none"> <li>• Construction noise</li> <li>• Loss of airflow and light</li> <li>• Lack of access to common</li> </ul>	50% (30% general loss of quiet enjoyment/restriction to services & 20% loss of	<b>\$3,229.92</b>

	areas (e.g.:lobby) <ul style="list-style-type: none"> <li>• Dirty windows</li> <li>• Construction materials in common areas</li> <li>• Dirty windows (duplicated)</li> <li>• Lack of building security</li> <li>• Reduced elevator availability</li> </ul>	access to balcony)	
Mar 2018 – Oct 2018	<ul style="list-style-type: none"> <li>• Loud noise from suite demolitions during the week</li> <li>• Common areas poorly maintained</li> <li>• Construction materials in common areas</li> <li>• Reduced parking availability</li> <li>• Lack of building security</li> </ul>	35% (30% general loss of quiet enjoyment/restriction to services & 5% periodic loss of parking spot)	<b>\$3,047.79</b>
Nov 2018 – Jan 1, 2019	<ul style="list-style-type: none"> <li>• Construction noise</li> <li>• Unfinished common areas (ex.: lobby)</li> <li>• Lack of maintenance on site</li> <li>• Lack of access to some common areas</li> </ul>	25% (20% general loss of quiet enjoyment/restriction to services & 5% periodic loss of parking spot) [Nov 2018 rent of \$1,126.40 + Dec 2018 rent of \$1,126.40 + one day of Jan 2019 rent which is \$1,126.40/31 days=\$36.34=\$2,289.14 x .25=\$572.285]	<b>\$572.29</b>
<b>TOTAL</b>			<b>\$8,787.30</b>

In addition to the above, as the tenant's application was partially successful, I find the tenant is entitled to recover the \$100.00 filing fee pursuant to section 72 of the *Act*. I find the tenant has established a total monetary claim of **\$8,887.30**, which is comprised of \$8,787.30 plus the \$100.00 filing fee. I grant the tenant a monetary order pursuant to section 67 of the *Act*, in the amount of **\$8,887.30**.

In addition, and pursuant to section 62(3) of the *Act*, I order that the tenant is at liberty to apply for further relief relating to the construction project after January 1, 2019, if applicable.

Conclusion

The tenant's application is partially successful.

The tenant is granted a monetary order in the amount of \$8,887.30. The tenant is entitled to withdraw that amount from future rent until the full amount has been used in its entirety or, the order may be served on the landlord and filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 16, 2019

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Residential Tenancy Branch