



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      RR   FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on September 10, 2018, and amended by an Amendment to an Application for Dispute Resolution received at the Residential Tenancy Branch on February 15, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order reducing rent for repairs, services, or facilities agreed upon but not provided; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing and was assisted by P.M., an advocate. The Landlord was represented at the hearing by N.A., legal counsel. All giving oral testimony provided a solemn affirmation.

During the hearing, neither party raised any issue with respect to service or receipt of the Application package or the evidence to be relied upon. The parties or their representatives were in attendance and were prepared to proceed. Pursuant to section 71 of the *Act*, I find these documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

During the hearing, P.M. made reference to a 115-page summary document. The document includes evidence and submissions that were not necessarily referred to during the hearing. However, P.M. suggested the document should be considered. N.A., counsel for the Landlord, agreed that the document may be considered. However, she cautioned against reliance on evidence that was not directly related to the Tenant's experience or her rental unit. For example, the video recording referred to below was taken in a different building on a different floor. However, P.M. suggested it was representative of the Tenant's experience.

Having carefully considered the submissions of the parties, I have elected to consider the summary document submitted with the Tenant's evidence. However, for the reasons outlined above, and as the parties were advised during the hearing, evidence not directly related to the Tenant's experience or her rental unit has been given less weight.

In addition, N.A. requested that the name of the Landlord be amended to reflect the correct legal entity. Both N.L. and P.M. agreed. Therefore, pursuant to section 64(3) of the *Act*, I amend the name of the Landlord to reflect the correct legal entity.

Finally, during the hearing on May 27, 2019, P.M. advised he was feeling unwell and suggested an adjournment may be appropriate. Although N.A. agreed to an adjournment, N.L. indicated she preferred to proceed with the hearing despite P.M.'s health status. P.M. agreed to proceed.

### Issues to be Decided

1. Is the Tenant entitled to an order reducing rent for repairs, services, or facilities agreed upon but not provided?
2. Is the Tenant entitled to an order granting recovery of filing fee?

### Background and Evidence

The Tenant testified the tenancy began on September 1, 2015, at which time rent was \$775.00 per month. From September 1, 2016 to August 31, 2017, rent was \$797.48 per month. From September 1, 2017 to August 31, 2018, rent was \$826.99 per month. Effective September 1, 2018, rent increased to \$860.07 per month. The Tenant paid a security deposit of \$387.50, which the Landlord holds. Legal counsel for the Landlord did not dispute the rental rates as stated by the Tenant.

The Tenant's claim is for a rent reduction from December 1, 2015 to present. The claim is broken down into specific periods. Depending on the level of disruption during these periods, a percentage reduction is requested. During the hearing, P.M. provided the following breakdown:

December 2015 – June 2016:	35%
July – December 2016:	50%
January – February 2017:	20%
March – August 2017:	35%
September 2017 – February 2018:	50%
March 2018 – present:	25%
Ongoing:	15%

The Tenant testified that during the tenancy she has worked as a server in a restaurant in a customer service role, and in an office. Hours of work have been variable but she has worked regular business hours since April 2018.

The Tenant testified that the Landlord commenced a significant renovation and repair project in December 2015. She provided testimony with respect to the impact the repair and renovation project has had, and continues to have, on her tenancy. The Tenant testified that she chose to live in the building because it was clean, safe, and quiet. She also stated she appreciates that her unit has a view of the ocean and that the building has a pool available for use.

The Tenant testified that once the renovation and repair project began, work would begin as early as 7:00 a.m. and would frequently extend into the evening. In written submissions included with the Tenant's summary document, the Tenant stated she was interrupted by construction-related activity as late as 8:45 p.m. She indicated the noise would "reverberate" through the building. According to the Tenant, it became "nearly impossible to spend time in my suite due to the noise".

Further, in her written submissions, the Tenant stated "our building has been dirty, loud, dangerous, and nearly unlivable at many times." Photographs of broken glass, overflowing garbage bins, and building supplies stored in a parking area and in a hallway were submitted in support. Photographs including images of hallways and elevators during construction were submitted with the Tenant's summary document. Although where these photographs were taken is unclear, the Tenant's written submissions confirmed the photographs were representative of the common areas in the building.

The Tenant's written submissions also addressed the behaviour of the building manager from Spring 2016 to October 2016. The Tenant indicated she "was almost never to be found on the property, thus making it very difficult to reach him with any concerns or questions...[and] was extremely flirtatious and made me...very uncomfortable. He often called me names such as 'sweetie, honey, pretty' etc." The Tenant advised that interactions with current property manager "have mainly been unpleasant...dismissive and uncaring".

In addition, the Tenant described jackhammering activity from July 2016 to December 2016, and from September 2017 to February 2018. She testified the noise from jackhammering and balcony repair interfered with her ability to engage in everyday activities such as watching television, having guests over, reading, and using a computer. The Tenant also testified that she could not sleep in the afternoons to recover from her early morning shifts. In her written submissions, the Tenant indicated the noise caused anxiety and "felt torturous". She had to spend time at her ex-partner's house to escape the noise. In support, the Tenant referred to a video taken on the sixth floor of another building in the complex. P.M. submitted the noise in the video was an example of the disruption that occurred in all buildings due to jackhammering. In support, P.M. referred to a report by an occupational hygienist, who suggested noise from jackhammering reverberates through concrete structures.

The Tenant also described issues with workers in and around the building. She testified that cat-calls were directed at her, and yelling in the halls was not uncommon. Further, the Tenant testified that although the outdoor pool was available for use, she felt uncomfortable doing so because construction workers were frequently in that area. In written submissions provided with the Tenant's summary document, she indicated the loss of use of the pool has been "one of the worst parts about the construction for me".

In addition, the Tenant expressed security concerns and feelings of fear because the building doors were frequently propped open between December 2015 and July 2018. In written submissions, the Tenant indicated this was "one of the most impactful concerns for me". The Tenant described one incident that occurred after she asked the construction crew not to keep the building door propped open. She subsequently found herself in an elevator with a construction worker who repeatedly asked her if she was scared and called her "sweetie". This was unnerving for the Tenant. Photographs of doors propped open were submitted in support. The Tenant also submitted a copy of a notice posted by the Landlord confirming a theft occurred in the building in or about July 2018.

The Tenant also testified that construction workers were provided with vacant rental units as housing during construction and that various areas in the building became a place for workers to "hang out".

The Tenant also testified that the condition of the exterior of the rental property deteriorated during construction. The Tenant stated that her windows have not been cleaned since the tenancy began, although the windows were replaced in early 2018. In support, the Tenant relied on photographs of dirty windows. In her written submission, the Tenant stated the photographs depict "almost exactly what my windows looked like before the new ones were installed". In addition, the Tenant testified that tenants were asked to keep their windows closed, reducing air flow and increasing the temperature inside the rental unit. In her written submissions, the Tenant stated the requirement to close her windows exacerbated the odour of paint in her rental unit. A copy of a notice from the Landlord, dated July 2, 2018, was submitted with the Tenant's summary document. Further, the Tenant relied on a notice from the Landlord, dated January 23, 2019, which asked tenants to keep windows closed from January 24 to February 19, 2019, while work was completed.

The Tenant also testified that a grassy area outside could not be used because it was instead utilized to store construction materials and became muddy. Photographs depicting the exterior of the building during construction were submitted with the Tenant's summary document in support.

The Tenant also raised concerns about the lobby. In written submissions, she described it as a "massive construction zone", the aesthetic and use of which has been impacted by construction workers "hanging out on the couch in their dirty work clothes". The Tenant also testified she and guests have been unable to use the drop-off zone, and that she has been embarrassed by having to explain she lives in "that asbestos building". Photographs of the lobby area were submitted with the Tenant's summary document.

The Tenant also testified that the intercom system was replaced in or about November 2017. However, she testified that it "barely works" and that she often has to go downstairs to let guests into the building. Included with the Tenant's summary document was a photograph of a notice from the Landlord, dated July 3, 2018, confirming that the intercom was not working due to an electrical issue.

As significant aspect of the Tenant's testimony was related to the presence of hazardous materials, including asbestos and silica dust, in and around her building. In terms of the impact on the Tenant, she stated that seeking signs around the building warning of potential issues was a concern. This concern was exacerbated by the presence of white construction dust and plastic coverings in and around the rental property.

On behalf of the Tenant, P.M. referred to reports from an occupational hygienist. In a report dated November 12, 2018, submitted into evidence by the Tenant, the writer confirms the presence of asbestos and suggested worker training and supervision was inadequate to address the concern. The writer concluded tenants may have been exposed to asbestos.

In addition, a further report completed by the same occupational hygienist, dated January 8, 2019, elaborated on his earlier findings. The report confirmed the presence of lead, asbestos, and silica in the materials disturbed by the renovation and repair project, and repeated that there was inadequate monitoring and control of contaminants. The writer expressed concern about possible exposure to these contaminants. In any event, P.M. and the Tenant confirmed she has not experienced any negative health effects.

The Tenant also noted that Canada Post discontinued mail service to the property from December 2016 to March 2017 after a stop-work order related to asbestos concerns was issued. In the Tenant's summary document, she indicated the mail pick-up location during this period was a 25 minute walk away.

The Tenant also stated that plumbing issues have caused inconvenience. She stated there have been repeated water shut-offs and fluctuations in water temperature. The Tenant submitted several photographs of water shut-off notices posted by the Landlord with the summary document.

Finally, the Tenant testified she has experienced a loss of privacy in her rental unit. She stated scaffolding was regularly used by construction workers outside her unit, preventing her from changing or being naked in the rental unit. In written submissions included with the Tenant's summary document, she stated she heard "loud conversation peppered with sexual jokes and swears, and the music is always blasting on this lift. I have smelled cigarette and marijuana smoke through my window when they were on the lift a few floors below me." The Tenant would also have to keep her windows closed, reducing air flow and increasing the temperature inside the rental unit.

Other issues raised in the Tenant's written submissions include use of the swimming pool by non-residents at night and people rummaging through recycling bins for returnable items. The Tenant suggested these occurred because the new owners did not provide sufficient security.

A closing statement was provided with the Tenant's summary document, which reads as follows:

*Living in this building has been a major challenge for me emotionally over the last 3 years. I absolutely love my suite, despite how horrible the construction has been, and though I refused the monetary offer to move out when it was acquired by [the Landlord], it isn't fair to say that we should live through it without a rental cost reduction because of that. It's my home. I shouldn't have to suffer through this incredibly poorly managed construction without reduced rent to accommodate for the loss of quiet enjoyment. It has been terrifying stepping forward against this company, and I constantly live in fear they will try to push me out to renovate my home and charge more money for it to someone who can afford \$1400 for a bachelor suite - the going rate on their website right now for bachelor suites in my apartment building.*

*We were never offered a reduction on our monthly rent for the major disturbances to our plumbing, our common spaces, the exterior of our building, and in fact, my rent was increased each year! Even though the work was SO intensely loud, involving a full twelve months of jack-hammering, and has stretched out into four years, I have still had my rent increased each year to the maximum allowed! Our health has been compromised with unsafe work practices in handling of hazardous materials. I have been sexually harassed by workers, and I have been made to feel unsafe in my home. I feel that I truly deserve to be compensated for this, and I hope that the Arbitrator agrees with me today. Thank you again for hearing my complaints!*

[Reproduced as written.]

The Tenant also seeks to recover the filing fee paid to make the Application.



On cross examination by N.A., N.L confirmed that despite her concerns about security, she was not personally impacted by any theft or other security-related incident. Further, N.L. confirmed the lobby was always available for use but has been at various times in poor condition. In addition, N.L. confirmed that her rental unit has not undergone any renovations. N.L. also confirmed she has not experienced any health concerns as a result of the renovation project. N.L. acknowledged that no written complaints were made to the Landlord.

In addition, N.A. referred me to the Landlord's written submissions and arguments. These suggest the Landlord undertook the renovation and repair work in accordance with its obligation to do so under section 32 of the *Act*. N.A. referred to 2 affidavits of made by building managers on August 29, 2018. The building managers deposed that understood the renovation and repair project would include: corridors, lobby and entrance refurbishment, security upgrades, elevator modernization, painting building envelope, balconies, windows and doors, unit renovations, energy efficiency improvements. The project was expected to take 36 months.

Further, N.A. referred me to a Baseline Property Condition Assessment, dated October 13, 2015 (the "Assessment"). The Assessment noted that balconies were generally in "serviceable condition". However, the Assessment recommended repairs to address concrete deterioration, hardware corrosion, and deterioration of liquid membranes.

Referring to notices submitted into evidence, N.A. also advised that the Landlord tried to inform all tenants of anticipated disruptions in advance. Copies of numerous notices to advise tenants of disruptions caused by the work being completed at various stages were submitted into evidence.

Although not binding on me, the Landlord also submitted copies of previous decisions relating to this rental property.

On behalf of the Tenant, P.M. made closing submissions at the end of the hearing. He specifically referred to sections 28 and 32 of the *Act*, and Policy Guideline #6. In addition, P.M. stated that the report referred to by N.A. did not refer to the cosmetic renovations completed by the Landlord. He further submitted that I should consider the "cumulative impact" of the disruptions experienced by the Tenant. Finally, he requested that I specifically grant the Tenant leave to reapply for further relief in the future, if necessary.

### Analysis

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

Section 67 of the *Act* empowers me to order one party to pay compensation to the other 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 this case, I find the renovation and repair project undertaken by the Landlord resulted in a loss of value of the tenancy agreement. Specifically, I accept the evidence of the Tenant with respect to the disruption she experienced, which generally conformed to the time periods described in the Tenant's submissions, and included:

- Interruptions caused by construction-related activity, reducing her ability to spend time in and enjoy her rental unit;
- The overall condition of the rental property during construction, including broken glass, overflowing garbage bins, and stored building supplies;
- Jackhammering activity and noise from July to December 2016, and from September 2017 to February 2018;
- Disruption caused by the presence of workers in and around the rental property;
- Inability to use a grassy area on which construction materials were stored;
- Inconsistent functioning of the intercom system;
- Disrupted mail service;
- Intermittent water shut-offs; and
- Loss of privacy.

The Tenant's summary document described the loss of use of the pool and concerns about security as significant issues for her. However, the Tenant acknowledged the pool is available for use but stated she preferred not to use it due to the presence of construction workers on the rental property. In addition, on cross-examination, the Tenant acknowledged that she heard about security breaches related to other rental units in the building but was not directly impacted. Further, the Tenant acknowledged during the hearing that no work has been completed in her rental unit.

These findings must be balanced with a landlord's obligation to repair and maintain rental property. Specifically, 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."

In this case, I find the renovation and repair project undertaken by the Landlord, as described in the affidavits of building managers and the Assessment, fulfilled the Landlord's obligation to repair and maintain property as articulated in section 32 of the Act. The Assessment recommends "immediate repairs". The Tenant suggested that many of the improvements made by the Landlord were unnecessary. However, I find that the Landlord was entitled to determine what aesthetic changes were desirable at the rental property and that tenants may be entitled to compensation in accordance with the Act.

Balancing all of the above, I accept the renovation and repair project disrupted the Tenant and reduced the value of the tenancy. However, I do not accept the Tenant's submission that the renovation and repair project rendered the Tenant's unit "unliveable". Other than jackhammering noise, the disruptions complained of by the Tenant are primarily due to the condition of the rental property during construction and perceived security concerns. Accordingly, I find the reduction in the value of the tenancy is not significant. Relying upon the timeframes and evidence of the amount of rent due during the tenancy, I find the Tenant is entitled to a rent reduction for the period from December 1, 2015 to June 30, 2019, in the amount of \$4,477.12, which has been calculated as follows:

<b>Date range</b>	<b>Rent due</b>	<b>Reduction</b>	<b>Months</b>	<b>Award</b>
Dec. 2015 – Jun. 2016:	\$775.00	10%	7	\$542.50
Jul. – Aug. 2016	\$775.00	20%	2	\$310.00
Sept. – Dec. 2016	\$797.48	20%	4	\$637.98
Jan. – Feb. 2017	\$797.48	5%	2	\$79.75
Mar. – Aug. 2017	\$797.48	10%	6	\$478.49
Sept 2017. – Feb. 2018	\$826.99	20%	6	\$992.39
Mar. – Aug. 2018	\$826.99	10%	6	\$496.19
Sept. 2018 – Jun. 2019	\$860.07	10%	10	\$860.07
<b>TOTAL:</b>				<b>\$4,477.12</b>

In addition, I find the Tenant is entitled to recover the \$100.00 filing fee paid to make the Application. Therefore, pursuant to sections 65(1) and 67 of the Act, I find the Tenant has demonstrated an entitlement to a monetary order in the amount of \$4,577.12.

The Tenant remains at liberty to apply for further relief relating to the construction project after June 30, 2019.

Conclusion

I grant the Tenant a monetary order in the amount of \$4,577.12. The order may be 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: June 21, 2019

---

Residential Tenancy Branch