



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMH 415 & 435 Michigan Street Apartments
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant: MNDC RR
Landlord: MNDC FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on August 27, 2019 and October 24, 2019. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlord was represented at the hearing by counsel, and an agent (collectively referred to as the “Landlord”). One of the Tenants was present at the hearing with counsel, collectively referred to as the “Tenants”. Both parties confirmed receipt of each other’s application and evidence and neither party took issue with the service of these documents.

All parties provided testimony and were provided the 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 submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Tenants

- Are the Tenants entitled to compensation for money owed or damage or loss under the Act (reduction in rent paid)?

Landlord

- Is the Landlord entitled to compensation for money owed or damage or loss under the Act?

Background and Evidence

Both parties provided a substantial amount of testimony during the hearing. Both parties also provided large volumes of documentary evidence. I reminded both parties to present evidence which is relevant and explain why it is important. In my decision set out below, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings, or unless it was specifically pointed out by the parties. Documentary evidence uploaded but not referred to or addressed by the parties will be given less weight than those directly referred to and explained in the hearing.

The Tenants stated that they moved in on December 27, 2017, and rent was set at \$1,580.00, as per the tenancy agreement in evidence. Parking fees were extra. Rent remained at this rate for all of 2018, then went up to \$1,619.50 as of January 1, 2019, and remained at that until the Tenant moved out sometime in May 2019. A security deposit was paid. However, the deposit has already been dealt with at a previous hearing.

Tenant's Application

The Tenants' claim is for a rent reduction from the day they moved in, December 27, 2017, to when they moved out in May of 2019 (17 months). The Tenants' claim is broken down into specific time periods and the Tenants are seeking different levels of compensation, as laid out below, depending on the level of disruption during these periods.

On the Tenants' application, they laid out her request for these periods for loss of quiet enjoyment, loss of use, and restrictions to services. They are also seeking damages for a few specific items which will be addressed after the rent reduction.

During the hearing, the Tenants spoke to a series of issues, each of which spanned a different length of time. The Tenants spoke to these issues generally (numbered below 1-8), then explained which of these issues impacted them for certain periods of time.

In this decision, I will first summarize and number the issues (generally, as they were presented orally), then, in keeping with the Tenant's presentation of their claim, will lay out the amounts the Tenants are seeking, for which months, and based on which issues, since this is how it was explained during the hearing. Since the Tenants modified their claim, reduced some percentages, and changed what they were seeking during the hearing, I will rely on the explanation provided during the hearing with respect to these amounts, rather than what was in their initial application and written submission. They will be laid out below under the relevant time periods. It was explained in the hearing that, given the evolution of the initial claim, I would rely on the issues and the amounts as they were specifically presented in the hearing.

The issues presented at the hearing were as follows:

General issues

1) Kitchen Sink

The Tenants stated that when they moved in, there was no functioning kitchen sink and there were issues with the handle which prevented it from working. The Tenants stated that they asked for it to be fixed, but it was not repaired until the end of January 2018.

The Landlord pointed to the condition inspection report which shows that the tap needed to be repaired, and this was a known issue at the time of move-in. However, the Landlord claims the sink was not actually missing and the issue was shortlived.

2) Jackhammering and construction noise

The Tenants stated that there was constant jackhammering and construction noise from early in the morning, until around 5pm, 5 days a week. The Tenants stated that the workers were always shouting, and playing loud music all day. The Tenants stated that they tried to speak to the workers and to management. However, they were yelled at by the workers on one occasion. The Tenants stated the biggest impact with respect to noise was for:

Jackhammering, grinding, and drilling while all of the balconies were being dismantled.

Loud, quaking, alarming thuds as balcony slabs are tipped over or dropped off the building from the scaffolding

Renovation noise while neighbouring interior suites are being renovated, sometimes many at a time. Noise reverberates through the building shell and it was difficult for the Tenant to differentiate between work happening directly adjacent to his unit and work happening elsewhere in the building.

Demolition with sledgehammers, grinding, sanding, sawing, drilling, and hammering

Loud work crews yelling, swearing, and blasting music.

The jackhammering lasted from the beginning of the tenancy until April, 2019.

[reproduced as written]

The Landlord expressed that most of the jackhammering was done between the hours of 9-3, on Monday through Friday. However, the area surrounding the Tenant's unit was done before she even moved in. The Landlord stated that by the time the Tenant moved into the unit, the railings were being attached, and most of the jackhammering was completed.

The Landlord stated that the Tenant signed "schedule A" as part of her initial tenancy terms and conditions, which specified that work would be ongoing, with respect to:

Corridor, lobby and entrance refurbishment, security upgrades, elevator modernization, painting building envelope, balcony repairs/replacements, in suite 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 detailed is expected to take 24 to 36 months to complete. As a result of this construction activity at the property, there will be noise, vibration, dust and inconvenience to access and egress at the property. Steps will be taken to minimize inconvenience where possible and status updates on the work will be posted as the work progresses.

The Landlord stated that since the Tenants signed this document prior to moving in, they were aware that there would be some disruptions, and should have expected a certain amount of this. The Landlord feels the Tenants claims regarding noise are excessive. The Landlord argues that some of the noise is akin to an inconvenience rather than a breach of quiet enjoyment.

3) Dust/hazardous materials

One of the Tenants stated that after she moved in, she immediately got sick, and thought it was bronchitis. The Tenant stated that she started coughing up phlegm. The Tenant acknowledged that she was previously asthmatic and that she did not seek medical attention until later that year, in 2018. The Tenants stated that they had to clean up dust almost every other day, and to manage the dust, they bought an air purifier on May 5, 2018. The Tenant provided photos of some dusty surfaces, as well as the large space under the entry door (leading to a hallway where there was more construction dust). The Tenant sought medical imaging part way through 2018 due to breathing issues. The Tenant stated she is still waiting for advice and information from her medical specialists.

The Tenants also expressed that one of them developed “contact dermatitis” due to the dust.

The Landlord stated that there is no evidence to show that the dust from construction directly caused any of her issues. The Landlord provided documentation to show they engaged with appropriate contractors (Asbestos testing company, VIHA, WorkSafeBC, cleaning companies). The Landlord stated that they followed the proper protocols and even though some materials in the building contained asbestos, the correct protocols were followed at the time the Tenants lived in the building. The Landlord feels the Tenants have failed to support that any construction dust can be attributed to the Tenants health outcomes. The Landlord feels that the Tenant is speculating as to the fact she may have been exposed to hazardous dust over the time she lived there. The Landlord provided a daily task list for staff, showing that the common areas were routinely cleaned and kept up as best they could.

During the tenancy, the Tenants had a toilet paper holder come off the wall, and in the process of fixing this, the Tenant became concerned that the drywall dust that came from the drywall (due to the toilet paper holder) contained hazardous materials. The Tenant asked the Landlord to stop fixing this and further disturbing the holes/drywall. The Landlord complied with this request, and had the drywall *retested* for asbestos, which came back negative.

The Tenants also stated that they saw many different workers coming and going with hazmat suits, right around their unit. The Tenants also pointed to the previous stop work order to show that there were in fact issues with asbestos, which warranted the project to be halted.

The Landlord stated that the stop work order was prior to the start of this tenancy, and they have since complied and engaged with all appropriate authorities, and followed the appropriate steps to ensure hazardous materials are dealt with properly. The Landlord reiterated that they continued to take samples, and minimize any risk, over the course of the renovation.

4) Balcony Loss of Use and Loss of Privacy

The Tenants stated that they lost the use of their balcony because of all the dust, debris and noise. The Tenants stated that the Landlords had ongoing work on all the balconies, railings, flashing, and other exterior work on the whole building, which prevented them from being able to go outside and enjoy this space. The Tenants stated that they did not have proper use of the balcony for the majority of the tenancy because of the noise, scaffolding, work crews, dust outside.

The Landlord stated that the Tenants could have used their balcony after about a month of not being able to use it, although they acknowledged that there was still work being done on some of the balconies and the exterior of the building. The Landlord stated that the Tenants signed and acknowledged schedule A, which explains that they understood there would be some loss of use.

5) Messy Common Areas/lack of building security

The Tenants stated that the Landlord used some of the common areas to store construction materials, and this made accessing the suite more difficult. The Tenants provided some photos of different piles of equipment and materials (stored in hallways, and in the lobby). The Tenant alleges it violated fire code. However, they did not explain this further. The Tenants also explained that the doors to the building were left open almost daily, due to construction access, and that safety is non-existent. The Tenants stated that with the quantity of work crews coming and going, that the security was routinely breached, as there was almost no way to determine who was supposed to be in the building.

The Landlord stated that, although they used the common areas to store some materials, it was never unsafe, and they cleaned regularly. The Landlords feel that an unfinished hallway or common area does not materially affect the Tenant. The Landlord submits that any outdoor common areas are not actually for use under the tenancy

agreement, and it is not an amenity. The Landlord stated that the materials stacked around were done so neatly, and in a way as to minimize impact on all.

The Landlord also asserted that although work crews were coming and going frequently, that only authorized people were permitted in the building. The Landlord denies that the doors were left open in the manner described by the Tenants.

6) Elevators

The Tenants stated that the elevators would often be turned off, and access to the suite was limited off and on.

The Landlord stated that the building has 2 elevators, and they didn't close out the elevators at the same time for construction. The Landlord acknowledged that there may have been delays in using the elevator, due to the active construction. However, they stated that there was always at least one elevator operational. The Landlord stated that this amounts to more of a temporary inconvenience, rather than a basis for her monetary claim.

7) Leaking bathtub

The Tenants expressed that the bathtub was missing a gasket, and shortly after they moved in, it started to leak. The Tenants stated they informed the Landlords right away but it took them weeks to fix.

The Landlord stated that they fixed the leak as soon as they found the source of it. The Landlord also explained that there was a pinhole leak in a plumbing pipe, which impacted a few floors, although it initially appeared to be from the Tenants' bathtub.

8) Water Shut-offs

The Tenants stated that the Landlord would frequently shut off the water to the rental unit, sometimes with warning, and sometimes without warning. There were a few formal notices provided into evidence. The Tenants stated that water was shut off intermittently, although the water shut offs increased from May 2018 until May 2019. The Tenants also allege that the construction impacted the water quality but did not provide any evidence to support this.

The Landlord stated that the water shut off did occur, as part of the renovation process. However, they were never for extended periods of time, or for days, as the Tenants are suggesting. The Landlord stated that if the water quality was an issue, the Tenants should have informed the Landlord when it was happening.

During the hearing, the Tenants provided the following breakdown with respect to which of the above issues were impacting them during which period of time:

Time Period	Amount of reduction requested
January 2018	<p>75% rent reduction for January 2018 (Rent = \$1,580 x 75%) = \$1185 <i>Jackhammering and period of greatest noise/disruption, no kitchen sink which is broken down as follows:</i> 40% loss of quiet enjoyment 10 % for loss of use of the balcony 5% for restrictions to water/services/elevator 10% for lack of kitchen sink 10% for failure to maintain common area</p>
February 2018 – April 2018	<p>65% rent reduction February 2018 – April 2018: (Rent = \$1,580 x3 x 65%) = \$2,844 <i>Jackhammering and period of greatest noise/disruption which is broken down as follows:</i> 40% loss of quiet enjoyment 10 % for loss of use of the balcony 5% for restrictions to water/services/elevator 10% for failure to maintain common area</p>
May 2018 – May 2019	<p>45% rent reduction May 2018 – May 2019: (Rent: \$1,580/month for May to December, \$1,619.50 for January – May 2019) = \$19,118 x .45 = \$8,603.10 <i>which is broken down as follows:</i> 20% for loss of quiet enjoyment 10 % for loss of use of the balcony 5% for restrictions to water & elevator 10% for failure to maintain common area</p>

	Total claimed for this portion: \$14,287.35

The Tenant also is seeking a few additional monetary items as follows:

- \$152.00 - Early Move in fee

The Tenants stated that they paid a fee to move in early and they want this fee back because of all the issues with the unit.

The Landlord stated that this wasn't really a fee, but rather the amount of monthly rent, divided by the number of days they moved in early. Since the Tenants only moved in a few days early, this amount was only \$152.00, which was rent for the last few days of December 2017.

- \$292.31 – Air Purifier

The Tenants stated that they bought an air purifier in May of 2018, and provided a receipt for this item. They bought this item to help clear some of the dust from the air due to all the construction debris, and due to the Tenants' poor health.

The Landlord stated that they should not be responsible for this, as it was the Tenants' choice to buy this item.

- \$100.00 – unpaid reimbursements

The Tenants stated that they had to move their car a few times to accommodate the construction and the Tenants stated that the manager promised to compensate them. Also, as part of this item, the Tenants stated that they bought their own toilet paper holder which was freestanding because the one that was mounted to the wall was ripped out. The Tenants stated they were promised to be reimbursed for these items but weren't.

The Landlord stated that they never made any promises for any of the above reimbursements, and deny that they owe any money to the Tenants for these items. The Landlords stated that there was always parking available to the Tenants, and the Tenant was always provided with alternative parking.

- \$109.94 – Asbestos Inspection

The Tenants stated that they had an environmental company come by in the Spring of 2018. The Tenants stated that they were concerned about the dust that was present, and no sampling was taken. The company only gave opinions.

The Landlords stated that they were always testing and re-testing as renovations progressed, and they took steps to ensure they were compliant with regulations. The Landlords also stated that they re-tested the Tenant's bathroom at their request, just to be safe, and it came back negative.

- \$1,000.00 – Stolen Items

The Tenants stated that when they were moving in, they stored and unloaded a few of their items into the lobby of the building. The Tenants stated that these items were stolen, and they feel it is the Landlord's responsibility because they often left the door unlocked for the lobby. The Tenants claim they had the following items stolen: Printer, drawer from dresser.

The Landlord stated that the doors were not left unlocked, and stated there is no evidence to show this is their fault. They pointed out that the Tenants chose to leave these items unattended in a common area.

- \$475.00 – Tenant's Daughter's Lost wages

The Tenants did not speak to this item at all in the hearing, and did not explain what its based upon. As such, it will not be addressed further.

One of the Tenants stated that she is disabled and works only small amounts, which means she was at home a large part of the time, and had to deal with the issues almost full-time.

Landlord's Application

The Landlord cross-applied to recover the money they paid to fix damages and clean the unit, prior to be able to re-rent it. The Landlord stated that the Tenants abandoned the rental unit, and did not tell them prior to doing so. The Landlord stated that they had a hearing on May 16, 2019, where they became aware the Tenants had vacated the rental unit. The Landlords stated they put the rental unit up online as "available for rent" within 24 hours of finding out. The Landlords stated that they had to complete some repairs and do some cleaning, but they managed to sign on a new Tenant on June 16, 2019. The new Tenants were able to move in on June 25, 2019.

The Landlord stated that the Tenants did not give any formal written Notice to End Tenancy, nor did they provide a forwarding address in writing. Since the Tenants abandoned the unit, the Landlords proceeded to conduct the move-out inspection without the Tenants. The Landlords stated they never got the keys back. The Landlord took photos of the rental unit at the move-out inspection, and these photos were uploaded into evidence, as was a copy of the condition inspection report. The Landlord pointed to section 35 of the Act to show that since the Tenant abandoned the rental unit without notice, it is acceptable for them to complete the move-out inspection in their absence.

The Tenants do not dispute that they failed to give Notice to the Landlord that they would be moving out. They also did not dispute that they failed to give a forwarding address in writing. The Tenants stated they dropped the keys into the office mailbox in the building, but did not have any proof of doing so. The Tenants stated they did this on May 10, 2019, and they never returned after this date. The Tenant took some photos of the unit before she left on May 10, 2019. They stated that the condition was not great at the start of the tenancy. The Tenants do not feel they were given 2 opportunities for doing the move out inspection, which is required under the Act.

The Landlords provided a monetary order worksheet speaking to the following items:

- \$50.00 – Stove Vent Cleaning

The Landlord pointed to the condition inspection report to show that the stove vent was very dirty and required special cleaning. The Landlord stated that it took a couple of hours to clean this fan, so they are seeking this nominal amount.

The Tenants stated the fan was not that dirty, and pointed to the lack of photos. The Tenants feel they sufficiently cleaned the unit.

- \$160.11 – Re-Keying of the locks

The Landlord stated that the Tenants never returned the keys and they had to have the doors rekeyed. A receipt was provided into evidence. The condition inspection report lists that keys were received, but it is not clear by who, and when. Further, it does not clearly specify what occurred at the end of the tenancy.

The Tenants stated they dropped the keys in the office mailbox on May 10, 2019, which is the date they left the unit with the remainder of their belongings.

- \$706.65 – Painting, general repairs

The Landlord provided a copy of this invoice into evidence which shows that they paid a contractor the above amount to do some touch up painting, repair the bathroom wall, re-install smoke detector, install new toilet paper holder.

The Landlord pointed to photos of the unit, in addition to the move-out inspection report, which shows that there were scuffs and marks on the walls and trim in several spots, such that the unit needed selective repainting. The Landlord also stated that the Tenant removed the smoke detector. A photo was provided into evidence showing that it was sitting on the window ledge, uninstalled.

The Tenants stated that the condition of the unit was not great at the start of the tenancy. The Tenants did not deny that the smoke detector was removed, but stated they did not cause any unreasonable damage to the walls, such that they would require repainting. The Tenants also do not feel they should be responsible for the toilet paper holder and the wall damage in the bathroom because it was damaged upon move-in, and they tried to get it fixed for many months.

The Landlord acknowledged that there was an issue with the toilet paper holder, and that it had detached from the wall, early on in the tenancy, but that the Tenants asked them to stop repairs due to their concern over asbestos in the drywall. The Landlord appears to have stopped working on this due to the Tenants concerns.

- \$100.00 – Cleaning – Nominal Fee

The Landlords stated that the unit was left dirty. Photos were uploaded into evidence of a few problematic areas (behind appliances), including stains on walls, and trim. The Landlord stated that it took 3-4 hours to clean up, but they are only seeking a nominal amount of \$100.00.

The Tenants stated that they left the unit clean, and they provided their own photos, of different areas. However, they do not dispute that they did not clean behind the appliances, nor do they dispute the Landlord's photos showing wall stains and spill marks. The Tenants only pointed out that it was not very clean when they moved in.

- \$1,295.60 – June Rent

The Landlord stated that they suffered a loss of rent from June 1 – June 24, 2019. This amount was calculated by taking the Tenants' monthly rent, and dividing it by 30, then multiplying it by the number of days the unit sat empty for. The Landlord stated that due to the Tenants leaving without Notice, they were unable to re-rent right away because they had to inspect the unit, clean it, fix it, and show it to prospective tenants. They signed new Tenants on June 16, 2019, commencing on June 25, 2019.

The Tenants do not dispute that they left without Notice but feel the Landlord could have re-rented the unit sooner.

Analysis

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 in sections 7 and 67 of the *Act*. Accordingly, 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 whatever was reasonable to minimize the damage or loss.

Condition inspection report

A copy of the condition inspection report was provided into evidence. I note the Tenants feel they were not given the two opportunities for a move-out inspection, which is required under the *Act*. However, I find they abandoned the rental unit when they left, without notice in early May 2019. I note the following portion of the *Act*:

Condition inspection: end of tenancy

35 (5) *The landlord may make the inspection and complete and sign the report without the tenant if*

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

Section 21 of the Residential Tenancy Regulation states:

in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the Landlord or the Tenant has a preponderance of evidence to the contrary.

I find the condition inspection report was completed in accordance with the Act, and the Landlord was not required to offer the Tenants 2 opportunities for inspection, given they abandoned the unit, without notice, and without giving a forwarding address in writing.

Landlord's Application

Next, I will turn to the Landlord's claim. It will be addressed in the same order as laid out above:

- \$50.00 – Stove Vent Cleaning

I find the Landlord has sufficiently demonstrated that the stove vent required cleaning. I do not find the Tenants have provided a preponderance of evidence to the contrary to dispute what is listed on the condition inspection report. I find this is a reasonable amount to claim for this item. I award this amount, in full.

- \$160.11 – Re-Keying of the locks

The Landlord stated that the Tenants never returned the keys and they had to have the doors rekeyed. A receipt was provided into evidence. However, I note that the condition inspection report is unclear with respect to what keys were received and when. It only vaguely refers to keys being received. I find the condition inspection report does not sufficiently detail this issue in a reliable manner. The Tenants stated they dropped the keys in the office mailbox, and the Landlord denies getting them. However, the burden of proof rests on the Landlord for this item, and I find they failed to clearly fill out the condition inspection report such that I could find tenants are responsible for this item. I dismiss this item, in full.

- \$706.65 – Painting, general repairs

The Landlord provided a copy of this invoice into evidence which shows that they paid a contractor the above amount to do some touch up painting, repair the bathroom wall, re-install smoke detector, install new toilet paper holder.

I have considered the evidence and testimony, and I do not find most of the scuffs or marks on the trim, walls, or shelves go beyond what would be considered reasonable wear and tear. I am not satisfied that most of these marks would not have come off with cleaning (more on the cleaning issue below).

I further note that the hangers left in the walls, and the holes, are very minor. Further, I note the issue with respect to the toilet paper holder was ongoing, and I am not satisfied it was without issues at the start of the tenancy. In fact, it shows that it “needs fixing” on the inspection report near the move-in portion of the form. It is unclear, based on the invoice and the testimony, how long it took the contractor to re-install the smoke detector, and I am not satisfied the Landlord has proven the value of their loss on this item. Ultimately, I dismiss this item on the Landlord’s application, in full.

- \$100.00 – Cleaning – Nominal Fee

I note the Tenants feel they cleaned the unit before they left, and that they left it in better shape than when they arrived. However, I find the photos, and the move-out inspection depicts a different story. I find the stains on the walls, the scuffs, the debris behind the appliances, and general dirt on windows and mirrors warrants this item. I find this is a reasonable amount for 3-4 hours of cleaning, considering the mess. I award this item in full.

- \$1,295.60 – June Rent

I note the Tenants failed to give any notice that they were moving out. I find it important to note that Section 45(1) of the *Act* requires a Tenant to end a month-to-month tenancy by giving the Landlord notice to end the tenancy the day before the day in the month when rent is due. I find the Tenants breached the *Act* when they left without notice. Although the Tenants feel the Landlord could have re-rented the unit sooner, I do not find the amount of time it took for the Landlord to find a replacement tenant is unreasonable. I note the Landlord did not realize the unit had been abandoned until part way through May 2019, and was able to find a new tenant to move in before the end of June. I find they sufficiently mitigated their losses in this regard. I award the Landlord the full amount of this claim, which is for 24 days’ worth of rent, in the amount listed above.

In summary, the Landlord is entitled to recover \$1,445.60 for their application, as laid out above.

Tenant's Application

Section 65(1)(f) of the *Act* provides me the authority to reduce past or future rent by an amount that is equivalent to a reduction in the value of a tenancy agreement. The Tenant is seeking this remedy due to several factors (mainly loss of quiet enjoyment, restricted facilities and loss of use). However, this must be balanced with a landlord's obligation to repair and maintain rental property.

There are several pertinent portions of the *Act* and the Policy Guidelines, which I have included here for convenience:

First, is the Landlord's responsibility to repair and maintain the building:

- 32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that*
- (a) complies with the health, safety and housing standards required by law, and*
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

Section 27 of the *Act* sets out a landlord's obligations in relation to services and facilities and states:

- 27 (1) A landlord must not terminate or restrict a service or facility if*
- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or*
 - (b) providing the service or facility is a material term of the tenancy agreement.*
- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord*
- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and*

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Section 28 of the Act outlines a tenant's right to quiet enjoyment and states:

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.*

Policy Guideline 6 states:

A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

In relation to compensation for a breach of the right to quiet enjoyment, this guideline further states:

In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

Policy Guideline 16 addresses the issue of compensation as follows:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;*
- loss or damage has resulted from this non-compliance;*
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and*
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.*

I note the Landlord is taking efforts to renovate and repair the building under section 32 of the Act. However, I find some of these renovations went beyond simply maintaining an acceptable state of decoration and repair. I note the Landlords took steps to warn the Tenants, prior to moving in, that there were major renovations, with potential impacts (schedule A). However, I find the renovation and repair projects undertaken by the Landlord were significant, extensive, disruptive, and resulted in a loss of value of this tenancy agreement. The actual impact in this particular case was guided by the Tenants' testimony and evidence, and the degree to which their tenancy was impacted.

In making my determinations, I find it important to note the Tenant who was at the hearing had limited employment, was frequently at home, and was likely

disproportionately exposed to the negative aspects of the renovations when compared with someone who was frequently absent from their unit for travel, school or work.

I accept that both Tenants were impacted by the renovations, overall. However, the Tenant who was present at the hearing focused her presentation on the impact it had on her.

I am satisfied that the duration of the planned renovations by the Landlord evolved, and expanded as issues were discovered. It appears the renovations started in late 2015, or early 2016. I note this tenancy did not start until December 27, 2017, and that some of the issues with the stop work orders (for asbestos) happened prior to the Tenants moving in. I accept that this was a large scale renovation to both the exterior of the building and different aspects of the common spaces (flooring, utilities, etc). I accept that there was, on numerous and prolonged occasions, large piles of materials and debris left in common areas. I find this largely did not completely block access. However, it appears to be frequent and ongoing and impacted the use of some of those spaces.

I accept that the Tenants would have been exposed to increased levels of dust, given the scope and duration of the construction. However, I find there is insufficient evidence to show the Tenants were exposed to asbestos containing dust. I note the Landlord specifically engaged specialty contractors to test and manage for hazardous materials. The Landlord also took steps to re-check the content of the drywall in the Tenants' suite, even though they knew it didn't have asbestos. It appears the Landlord was making efforts to reduce fear and concern for the Tenants, as well as taking steps to ensure hazardous materials were not inadvertently disrupted. I also note the Landlord took steps to clean the common areas very frequently, and tried to stay on top of the mess. However, I also accept that the extent of the renovations, the piles of materials, open ceilings, open walls, and unfinished flooring would likely have contributed to an inability to properly clean up the dust and debris.

I further note that the Tenants both suffered some health challenges, which they assert is due to the dust and poor living environment. One Tenant complained of contact dermatitis. However, based on the evidence provided, I find there is insufficient evidence to show this was caused by the dust or the renovations. With respect to the other Tenant's issues, I note she stated she had asthma prior to moving into the building. She has complained of a substantial worsening of symptoms while she lived in the unit. Although I find there is minimal evidence showing that the Tenant's asthma was actually *caused* by her living environment (dust), given she already had this

condition to some extent, I find it is reasonable to conclude she would have had an exacerbation of asthma symptoms, with the increased dust present in and around the rental unit, and the common areas for such a prolonged period of time.

I accept that the Tenants did not have a functioning kitchen faucet for the first part of their tenancy, and the Landlord were aware of this issue. Although the Landlord fixed the issue within a few weeks, I find this issue would have reduced the value of the tenancy for the material time.

I acknowledge that the Landlord took steps to keep Tenants apprised of the construction project, including potential utility outages. However, I also accept that the noise from some of the projects would have been significant, and impactful. I note the Tenants refer to constant jackhammering noise over many months, while the balconies were being upgraded. The Landlord refutes that there was any jackhammering while the Tenants were there and stated that this part of the work was done by the time the Tenants moved in. However, the Landlord acknowledged that there was still substantial work being done on the balconies and/or the exterior of the building. Regardless of whether this was an actual Jackhammer, or whether it was a rotary drill, a hammer drill, an impact driver, or some other specialized tool for working with the railings and the balcony materials, I find it more likely than not that this sound would have penetrated walls, floors, and windows, in a similar manner.

Given the quantity of crews, materials, and tools on site, I find it likely that there would have been voices penetrating walls and windows, particularly given some of this work was being done on balconies that were attached to the building. Some of this work was also being completed in and around common areas and the rental unit. I accept that there would have been an overall reduction in building security, in an ongoing manner, since there were many workers coming and going throughout the day. However, I find there is insufficient evidence to show that there was any direct tangible loss that resulted from the increased traffic to the building. I find the Tenants assertion that the Landlord is responsible for some of their belongings going missing is not sufficiently proven.

I note there were also issues with loss of use of the balcony and lack of privacy due to the work being done on the building envelop/balconies. I note the Landlord asserts that most of the jackhammering and heavy work was done by the time the Tenants moved in. However, they also acknowledged that work did continue to some degree on those balconies into this tenancy. The Landlord directly acknowledged that the Tenants would have had at least one month where they were unable to use their balcony. I accept that

there was a loss of use of the balcony, which likely spanned beyond the one month period suggested by the Landlord. I find that, even if the jackhammering was complete, it would have been difficult to enjoy and use the space with crews and tools running to complete the finishing work on the exterior of the building.

I accept that it would have, to some degree, been more difficult to use the elevator, due to the increase in construction related traffic. However, I also accept the Landlords testimony that they always had at least one elevator running, and did their best to ensure any disruptions were short lived. Ultimately, I find this would have been more of an inconvenience, than a material item, which would have significantly impacted the value of the tenancy.

I accept that there was a bathtub leak at the start of the tenancy, and that it took a couple of weeks to properly locate and fix the leak. However, I find the Tenants were not clear on what impact this leak had on their use of the bathroom. It appears they were still able to use the facilities. The Landlord expressed that the leak was mainly into the hallway outside the unit.

The Tenants presented evidence to show that there were at least 9 *planned* water shut off notices over the duration of their tenancy. Each of these were for multiple hours during the day, if not the majority of the day. I accept this would have materially impacted the Tenants use of the unit, particularly given one of the Tenants was home a large portion of the time. I also accept that there were some unplanned water shut offs, as the Tenants testified. However, I do not find the evidence sufficiently supports that it was as bad as the Tenants have asserted (that it was off for “days” at a time).

The Tenant has requested a specific rent reduction amount for specific periods. I find there was clearly a reduction in the value of the tenancy. I accept that the above issues breached the Tenant’s rights under sections 27, 28 and 32 of the *Act*.

However, I find some of the Tenants amounts sought are disproportionate with the severity of the issues. I have adjusted the Tenants requested amounts accordingly:

Time Period	Amount of reduction requested	Amount awarded
January 2018	<p>75% rent reduction for January 2018 (Rent = \$1,580 x 75%) = \$1185</p> <p><i>Jackhammering and period of greatest noise/disruption, no kitchen sink which</i></p>	<p>50% rent reduction for January 2018 = \$790.00</p>

	<i>is broken down as follows:</i> 40% loss of quiet enjoyment 10 % for loss of use of the balcony 5% for restrictions to water/services/elevator 10% for lack of kitchen sink 10% for failure to maintain common area	
February 2018 – April 2018	65% rent reduction February 2018 – April 2018: (Rent = \$1,580 x3 x 65%) = \$2,844 <i>Jackhammering and period of greatest noise/disruption which is broken down as follows:</i> 40% loss of quiet enjoyment 10 % for loss of use of the balcony 5% for restrictions to water/services/elevator 10% for failure to maintain common area	35% rent reduction February 2018 – April 2018: (Rent = \$1,580 x3 x 35%) = \$1,659.00
May 2018 – May 2019	45% rent reduction May 2018 – May 2019: (Rent: \$1,580/month for May to December, \$1,619.50 for January – May 2019) = \$19,118 x .45 = \$8,603.10 <i>which is broken down as follows:</i> 20% for loss of quiet enjoyment 10 % for loss of use of the balcony 5% for restrictions to water & elevator 10% for failure to maintain common area	20% rent reduction May 2018 – May 2019: (Rent: \$1,580/month for May to December, \$1,619.50 for January – May 2019) = 12640 \$20,737.50 x .20 = \$4,147.50
		Total awarded for this portion: \$6,596.50

Next, I turn to the remaining items on the Tenants' request for compensation. I note an arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

- \$152.00 - Early Move in fee

I accept that the Tenants moved in a few days early. The Tenancy was set to start in January 2018. However, they moved in around December 27, 2017. I accept the Landlord's submission that this was not a move-in fee, but rather rent for the extra few days. I note the Tenants had possession and use of the rental unit during that time. However, I award the Tenants a nominal amount for this item, since it is adjacent to the above noted periods (where rent was reduced), and was similarly impacted by the issues which reduced the value of the tenancy. The above noted rent reductions did not factor in the last few days of December 2017. To reflect the reduced value of this short portion of the tenancy, I award a nominal amount of \$25.00.

- \$292.31 – Air Purifier

I accept that there would have been an increased amount of dust in and around the rental unit, and in the common areas, given the extent of the renovations in the building. I find it more likely than not that some of this dust could and would have made its way into the Tenants' living space. However, it is not clear how much. Further, one of the Tenants stated she had a pre-existing condition (asthma), which likely contributed to her need for the air purifier. Given some of the need for this device was directly a result of the Landlord's renovations, and some was not the Landlord's fault (the Tenant's pre-existing asthma), I find a nominal award for this item is more reasonable. I award the Tenant \$50.00 for this item.

- \$100.00 – unpaid reimbursements

I find there is insufficient evidence to show the Landlord promised to pay the Tenant for parking related matters or that they ought to be responsible for the toilet paper holder cost. I accept there were issues with the toilet paper holder, but I also note the Landlord, out of respect for the Tenants' concerns regarding dust and drywall, stopped working on the toilet paper holder. I do not find the Tenants have sufficiently demonstrated the Landlord is responsible for this item.

- \$109.94 – Asbestos Inspection

I accept the Tenants consulted an environmental testing company, because they feared there was asbestos in some areas in the suite. However, I find this was the Tenants' choice to obtain these services. There is insufficient evidence to show that there was a basis to believe there was a hazardous material concern within the unit. The evidence presented by the Landlord suggests the materials did not contain asbestos.

- \$1,000.00 – Stolen Items

I find the Tenants failed to sufficiently demonstrate that the Landlord ought to be responsible for items they lost, or had stolen. The Tenants assert that building security was compromised, which may have caused their items to be stolen. However, I note they specifically stated they left a few items in common areas of a large building, and then they went missing. I find it is equally likely that someone who lived in the building took these items, thinking they were free, as opposed to an unauthorized entry and theft by an outsider. In any event, there is insufficient evidence to show the Landlord is responsible for any of these missing items. I dismiss this item.

- \$475.00 – Tenant's Daughter's Lost wages

The Tenants did not speak to this item at all in the hearing, and did not explain what it's based upon. As such, I dismiss this item, in full.

Since both parties were partly successful with their application, I summarize the amounts owing as follows:

As laid out above, the Landlord is entitled to \$1,445.60 for their application.

As laid out above, the Tenants are entitled to \$6,671.50 for their application.

After setting off the above amounts, I find the Tenants are entitled to a monetary order in the amount of \$5,225.90. This does not impact the monetary order issued at the

previous hearing. It is up to the parties to settle or account for those individually. This monetary order only pertains to the issues in this application.

Since both parties were partly successful, I decline to award the recovery of the filing fees they paid.

Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$5,225.90**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: October 29, 2019

Residential Tenancy Branch