



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT

Introduction

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

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants, JM and NM attended the hearing. The Corporate Landlord was represented at the hearing by DDC, the Landlord's Agent (the "Landlord"); SE, the Controller; HA, the Property Manager; and TC, the General Contractor. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The parties were cautioned that recordings of the hearings were not permitted pursuant to Rule 6.11 of the *Residential Tenancy Branch Rules* (the "**Rules**"). Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence each party provided to the Residential Tenancy Branch (the "RTB") was exchanged. No issues with respect to service or delivery of documents or evidence were raised. The tenants provided a Canada Post tracking number confirming the mailing of the Notice of Dispute Resolution Proceedings and the evidence. The tracking number is reproduced on the cover of this decision. The landlord's evidence was posted to the tenant's door. I find that all parties have been served with the required documents in accordance with the *Act*.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issues to be Decided

Are the tenants entitled to:

- 1) an order that the landlords comply with the Act; and
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims, and my findings are set out below.

The parties entered into a written fixed term tenancy agreement starting December 1, 2017 ending November 30, 2018 converting to a periodic month-to-month tenancy thereafter. On November 15, 2021, the tenants moved from a two-bedroom rental unit to a three-bedroom rental unit. The parties entered into a second fixed term tenancy agreement starting November 15, 2021 ending November 30, 2022 converting to a periodic month-to-month tenancy on December 1, 2022. Current monthly rent is \$2115.00 payable on the first of each month. The tenant paid the landlord a security deposit of \$1042.50. The landlord still retains this deposit.

The parties agreed that the landlord undertook renovations of the residential property. The scope of the project involved the following:

- demolition of brick upstand walls
- scaffolding of building for access
- concrete delamination repairs to the walls, deck and slab edges
- new privacy walls
- new concrete topping
- painting of the building
- new handrails with glass paneling.

The building is 60 years old and the bricks on the balconies were cracking and falling off and needed replacement. A total of fifty-one (51) balconies were renovated.

The parties agree that the project began March 2022 and is expected to complete in December 2022. TC, the General Contractor, testified that as of the date of the hearing, the glass panels were on site and ready for installation over the next two (2) weeks. After installation, the City Inspectors must complete and sign off on the inspection. All tenants will then have access to their balconies as the project is complete.

In his written submission, the tenant seeks compensation from the landlord in the amount of \$7808.00. Although he did not request a monetary order in his application, he did submit a monetary order for alleged damages resulting from loss of his quiet enjoyment of the rental unit to the RTB and to the landlord. The landlord disputes the tenant's claim for damages and came prepared to present evidence demonstrating the landlord's mitigation efforts and evidence countering the tenant's claims. The claim was amended to include the monetary order.

The tenant set out the section of the Act on which his claims are based.

Section 62 (3) – order for the Landlord to comply with the Act, regulation, and/or the tenancy agreement.

The tenant explained that the renovations impacted his right to privacy and quiet enjoyment of the rental unit. In his application the tenant wrote:

The renovation of the building started on March 2022, and it is yet finished up to present. No access to patio. Patio door is closed since March 2022. Privacy and quiet enjoyment is being compromised.

The tenant has applied for the following compensation from the landlord in this matter:

Limited area of enjoyment (March 2022-October 2022)	\$2400.00
Party Hosting (March 2022-October 2022)	\$ 400.00
Partial loss of income (March 2022-October 2022).....	<u>\$5008.00</u>
TOTAL	<u>\$7808.00</u>

Tenant

Although the application identified a total of five (5) tenants; JM primarily testified to the impact the construction had on him personally.

In his written submission titled “Tenant’s Inconvenience”, the tenant writes:

INCONVENIENCE DUE TO EXTENDED ON-GOING CONSTRUCTION

1. Construction started March of 2022 and there is no specific date when the project is finished, instead the notice of construction is always extended.
2. Small gravel and dust came through our window and possibly asbestos while doing construction.
3. Poor ventilation due to patio door locked, house becoming smelly from cooking.
4. Limited space of enjoyment in the living room because all the stuffs from the patio were moved to the living room, as well we cannot invite friends over and cannot host a party.
5. Deprived of nap and rest during daytime due to construction noise.
6. The street parking where we regularly park our cars were closed since March due to construction causing us a parking tickets.

In the supporting document attached to the monetary order, the tenant identifies three (3) issues underpinning the monetary order:

1. Limited space of enjoyment.
2. Party hosting expenses.
3. Partial loss of income.

The tenant spoke to these points in his oral testimony and in his written submission.

At the hearing, the tenant testified that he works evening shift as a food delivery driver. His shift starts at 5 p.m. The tenant testified that the noise from the renovations and construction prevented him from having a daytime nap. Unable to nap, the tenant alleges that he couldn’t work a full evening shift and estimated he lost an average of 1 hour per shift throughout the summer. The tenant submitted into

evidence a notice alerting the tenant to jackhammering starting October 19, 2022 posted on his door that reads:

Balcony railings
Starting Wednesday October 19, 2022

[XX] will be starting to install the new railings, they will be starting with the units on the ground level. Once they get their system in place they will start doing stacks.

They will be drilling in to the concrete it will be noisy.

In Document 3, the tenant, in support of his request for \$5008.00 in compensation, writes:

Document 3. PARTIAL LOSS OF INCOME

My job is food delivery driver contractor, since the construction started i do not get the same sleep the way i used to and having lack of sleep affects my driving that i cannot pick that much shifts like i used to. An estimate of 2 hours per day of my job was reduced, for this i would like to request a deduction of \$626.00 per month based on a minimum wage of \$15.65/hour as a claim. [reproduced as written]

The tenant estimated a loss of \$5008.00 in wages between March 2022 and October 2022. When asked if the tenant had cheque stubs to prove loss, the tenant stated that he is a contractor and does not have pay stubs.

The tenant testified that the balcony doors were sealed and blocked shut from the outside, preventing the tenants from opening the patio doors. The reduced ventilation made the rental unit smelly from cooking. There are opening windows in each of the three (3) bedrooms and one (1) in the living room/dining room. Those windows provided insufficient ventilation to circulate out the cooking odors.

The tenant also testified that the ongoing construction made living conditions inside the rental unit uncomfortable from the dust created by the construction that would blow into the rental unit when the windows were open. The tenant also alluded to possible asbestos exposure but did not provide details. In his written statement the tenant writes:

Small gravel and dust came through our window and possibly asbestos while doing construction.

In Document #2 to support of his claim for compensation in the amount of \$400.00 the tenant writes:

Document 2. PARTY HOSTING EXPENSES

Because of disorganized and limited space of the living room, we cannot invite friends over and cannot host a party hence we go to restaurant instead, and sometimes we go to friends house causing us more money and time. For this i would like to request a deduction from my rent the amount of \$50 per month as a claim.[reproduced as written]

The tenant stated that the renovations affected the family's social life preventing them from inviting guests over because the items from the balcony were stored in the living room. He estimated a loss of \$400.00 associated with the alleged lost capacity to entertain friends in the rental unit and travel costs to visit friends at their residence.

The tenant alleges the patio items were stored in the living room because he had nowhere to store the items thereby reducing the inside living space. The tenant referred to a photo uploaded into evidence showing various patio belongings piled in the living room.

The tenant stated that he has one storage locker, but his locker was full, so he was unable to store the patio items in the locker. The tenant disputes the landlord's testimony that he has two lockers assigned to him. He confirms he owns a cargo trailer, but it also is "too full" to store any additional items.

In the supporting Document #1 for compensation in the amount of \$2400.00, the tenant writes:

Document 1. LIMITED SPACE OF ENJOYMENT

Since the patio is closed, all stuffs like tables, chairs, and others were moved to the living room limiting our space and not being able to invite friends over and host a party since then. I would like to request a deduction from my rent the amount of \$300.00 per month as a claim which is based on the area of the patio 6x9 feet equals 56 square feet. That same occupied the living room which 112 square feet in total.

[reproduced as written]

In his written statement, the tenant further stated the construction resulted in parking restriction causing a further expense and inconvenience:

The street parking where we regularly park our cars were closed since March due to construction causing us a parking tickets.

The tenant expressed frustration at not knowing a completion date for the project. He believed the construction would be short term but is still ongoing.

The tenant writes:

Construction started March of 2022 and there is no specific date when the project is finished, instead the notice of construction is always extended.

The tenant stated there was 'some confusion about the painting' but did not explain what that confusion was. The tenant submitted into evidence several pictures of the scaffolding around the building.

The tenant concluded by stating, 'it is not the construction that is a concern' but rather knowing when they can access the balcony to put the contents of the balcony back and open the balcony door. The tenant acknowledged that the balconies needed replacement for the safety of all the tenants.

Landlord

The landlord provided a detailed chronology of the sequence of events that resulted in the renovation. The landlord referred me to the evidence package. In her written submission, the landlord writes:

[X] was hired in 2016 to install sheet metal on all the balconies that had bricks cracking and in danger of falling off to prevent them from falling off and potentially damaging property or hurting someone. All the balconies had sheet metal installed on them; some balconies had as many as 2 to 4 areas that were covered by sheet metal. Engineering firm [X] was retained to assess the condition of the balconies, design and prepare tender documents. [X] applied for Permits to the City [X] in August of 2021, and City [X] issued our permit on April 6, 2022. [reproduced as written]

In addition to the balconies, the landlord testified that concrete repairs from delamination needed to be done for the safety of the residents. The repairs were extensive, involving 51 balconies with multiple delamination on the concrete slabs on the balconies and on the walls. Since the scaffolding was already in place, the Corporate Landlord decided to re-caulk the windows and paint the buildings as part of the same project. The painting and re-caulking did not extend the project. The delays resulted from supply chain issues, for example, obtaining the glass panels, permit backlogs, and scheduling inspections.

The landlord testified that the tenants were aware at the time they signed the initial tenancy agreement in 2017 as well as when they signed the 2021 tenancy agreement, that the balconies required repair and the landlord was in the process of reviewing bids for the restoration project. The landlord testified she showed the metal sheeting on the balcony and explained to the tenants that this was a temporary fix until the repairs started.

The landlord testified on February 10, 2022 a notice was sent to all tenants advising that construction would begin soon and the scope of the construction.

On March 3, the tenants were notified that Company [X] would need access to their unit on March 10 to measure the balcony and the door to the balcony would be secured to prevent access for safety and security reasons. Balconies must be emptied of contents.

Initially Company [X] planned to start brick removal shortly after they condemned them but had to postpone the start date due to permit delays. Permits were issued April 6, 2022. Actual construction started in mid-June.

The landlord stated the residential property is 60 years old. The Corporate Landlord is required under s. 32 to maintain the property in a state of repair. The Corporate Landlord did everything 'by the book' from applying for and waiting for permits to be issued prior to starting construction to inspections at each stage of the construction. The Corporate Landlord ensured that each stage of the construction complied with code before moving onto the next phase.

The landlord argues it would create an unfair precedent to award the tenant damages for construction disruption since the Corporate Landlord undertook the project to comply with the Act at a cost of about

\$3 million dollars. Further, the landlord stated damage was mitigated to the best extent possible and delays were the result of municipal backlog and supply chain issues, no fault of the Corporate Landlord.

The landlord also testified that the tenants have two (2) storage lockers assigned to them and provided the locker numbers and stated the tenants also have a cargo trailer. The landlord argues it was unnecessary for the tenants to store the patio belongings in the living room and the picture was for dramatic effect. The tenants could have stored the items in one of the two storage lockers and provided a picture of one of the tenants' lockers that had sufficient space to store additional goods.

Testimony of the General Contractor

TC testified that he is the General Contractor overseeing the renovations to the building. The renovations were not superficial and required deconstruction of 51 balconies. TC states that the project was initially scheduled to start January 15 but was delayed due to a building permit backlog; thus, the project did not start until the late Spring of 2022.

Undertaking a project of this magnitude involves coordinating with various municipal departments as well as ensuring compliance with WSBC requirements. For example, when a delamination area is identified and exposed, City engineers are required to complete an inspection and sign off prior to the construction company starting the next phase of the repair. Inspections are scheduled based on Inspector availability.

TC stated that all construction was completed in compliance with municipal bylaws. Monday through Friday, construction hours were 7:30-3:30 although the bylaw permits construction between the hours of 7 a.m. through 8 p.m. Occasionally the crew worked on Saturdays between the hours of 9 a.m. and 6 p.m. Saturday work was limited to 'quiet' work such as painting and stuccoing. No work was done on statutory holidays.

In an email dated December 1, 2022 to the Controller, TC writes:

- On an average week we had crews on site 4 out of 5 days pe week. There were 51 balconies to be repaired over the entire project.
- Most of the noise generated work was the following
 - Demolition of existing bricks commenced in May. And was completed with 8 days
 - After that over the 7 months we had 2 weeks of scaffolding installation – limited noise (not too disruptive)
 - Then we had a week or 2 of concrete evaluation – limited noise
 - Concrete repairs commenced and it occurred on and off for a few months. It was not a daily occurrence
 - After that all the other scopes were not too disruptive
 - Installation of the handrails is disruptive but would only occur for 2 to 3 hours a deck
 - The further away the repair the less disruptive.
 - The deck in question is at the corner of the building and would probably have the least amount of disruption.
 - (please see plan provided – Page 3 of the document above)

[reproduced as written]

In an email dated November 28, 2022 to the Controller, TC provides a breakdown of the scope of the work done on the tenant's deck.

Chipping of concrete repairs – 1 corner repair 7" x9" and 2 repairs at 9" and 11"

3 hrs	Concrete Chipping and saw cutting
1.5 hrs	We also have perimeter topping to remove (saw cutting-chipping)
2 hrs	Forming concrete (minimal drilling)
1 hr	Pouring concrete (mixing drill)
30 min	Stripping forms (minimal noise)
30 min	Grinding Perimeter
15 min	Install bonding material in cracks – no noise
2 hr	Painting – minimal noise
4 hr	<i>Handrail installation and drilling</i>
2 hr	Installation of glass (minimal noise)

Please note this is over a 4-month period. Se would be most of the building. Then coming back a few weeks later to form and pour. The painters would follow behind. Handrails were installed after scaffolding was removed over a month ago.

[reproduced as written]

TC further explained that the work was done in vertical stacks along the face of the building, starting at the top and moving down the building. He stated that the tenants' unit represented about 3-4% of the concrete work of the building. Most of the noise resulted from the jackhammering of the concrete. TC acknowledges that concrete work anywhere in the building would cause some noise as it is transmitted through the rebar and the concrete itself. As the work moves further away from the unit, the less audible the noise becomes. The drilling and handrail installation for the tenant's balcony in October 2022 lasted about 4 hours.

TC states that in concert with the municipal permit backlog, supply chain issues from COVID also created delays resulting in a domino effect. For example, a glass shortage resulted in delays in obtaining the glass panels that resulting in delayed installation. The glass panels arrived last week, and TC estimates the panels should be installed in the next one to two weeks. Once the City completes final inspection, tenants will have access to their balconies. Again, TC reiterated he has no control over the scheduling of inspections as inspections are predicated on the schedules and availability of the City Inspectors.

Testimony of the Controller

The Controller testified that the Corporate Landlord has invested over \$3 million dollars in this project. The repairs were necessary, not cosmetic. The Corporate Landlord went to extreme to ensure the health and safety of the tenants. The tenants will enjoy the benefits of the new balcony.

Analysis

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

At the start of the participatory hearing, I explained that the party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. *Residential Tenancy Policy Guideline 16* (the “Guideline”) sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Tenant must prove:

1. That the landlord violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the Tenant to incur damages or loss as a result of the violation;
3. The value of the loss; **and**
4. That the tenant did whatever was reasonable to minimize the damage or loss.

[the “Test”]

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.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence **over and above their testimony** to establish their claim.

Guideline 16 also provides:

B. DAMAGE OR LOSS

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- loss of access to any part of the residential property provided under a tenancy agreement; ‘loss of a service or facility provided under a tenancy agreement;
- loss of quiet enjoyment (See Policy Guideline 6);
- loss of rental income that was to be received under a tenancy agreement and costs associate; and
- damage to a person, including both physical and mental.

.....

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.

Guideline 6, “Right to Quiet Enjoyment”, states:

A landlord is obligated to ensure that the tenant’s entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means **substantial interference** with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord 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.

[emphasis added]

Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). 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.

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or the tenancy agreement must compensate the other for damage or loss. The party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Section 67 of the *Act* gives the director the authority to determine the amount of compensation that is due and order that the responsible party pay compensation to the other party.

Section 32 of the *Act* requires that a landlord maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and having regard to the age, character, and location of the rental unit, which makes it suitable for occupation by the tenant.

A tenant's right to quiet enjoyment is protected under s. 28 of the *Act*.

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.

It was evident from the landlord's testimony and from the evidence submitted that the landlord understood the requirement of s 32 of the *Act* that requires maintaining the residential property to comply with health, safety, and housing standards.

A landlord is required to maintain a residential property, while ensuring to respect and protect tenants' legislated right to quiet enjoyment of the residential property. I must determine if what the landlord did was reasonable in all of the circumstances; I must determine if this work unreasonably disturbed the tenant, and if so, what would be appropriate compensation from the landlord to the tenant.

The tenant seeks an order for the landlord to comply with the *Act*. The tenant's testimony and written submission aligned with a loss of quiet enjoyment of the rental unit due to construction and compensation for the alleged impact. In their application, the tenants make a threefold request for monetary compensation. These are:

1. Limited space of enjoyment.
2. Party hosting expenses.
3. Partial loss of income.

I will address each issue separately.

Party Hosting Expenses

The tenant stated he was required to clear the patio in preparation for the balcony repairs and had to store the patio items in the living room. The tenant testified he had no other place to store the items cleared from the patio. The tenant testified he was unable to host parties or invite friends over because the items, stored in the living room, took too much space. The tenants met friends at restaurants or visited friends' homes incurring extra expenses. The tenant estimated this loss at \$400.00. The tenant provided no itemized list and receipts of any additional costs incurred.

The landlord disputes the tenant's need to store balcony items in the living room testifying that the tenants have two storage lockers and testified to the location of those lockers. The tenant also has a

cargo locker. The landlord states these items could have, at minimum, been stored in one of these locations and referred to a photo of a partially empty storage locker assigned to the tenants.

The tenant disputed having two (2) assigned lockers acknowledging the one (1) locker in the photo and a cargo trailer. The tenant stated the cargo trailer was full but did not dispute the landlord's evidence that the storage locker in the photo had space.

The landlord undertook repairs pursuant to s. 32 of the *Act*. The tenant provided insufficient evidence showing the landlord failed to comply with the *Act* either prior to or after undertaking these repairs. The request to remove items from the balcony prior to the start of the project was both a necessary and a reasonable request. The tenant, as the party making the claim has the burden to provide sufficient evidence ***over and above their testimony*** to establish their claim and failed to do so. I accept, as fact, the landlord's evidence that the tenants had alternative storage available to them and did not need to store the items in their living room. Regarding the storage requirement, I find that the tenants did not take steps to minimize the loss claimed.

Moreover, the cost of eating out and travel expenses to friends' residences is not established. The \$50.00 per month is not sourced by any authentic guide. Compared to actual proof of costs incurred, what the tenant provided as evidence for this portion of the claim is, in his own words, just a very rough estimate. The tenant did not submit receipts to show expenses. Further, I find eating out does not show any steps to mitigate the damage or loss.

Since the tenant provided insufficient evidence to support his claim of an alleged \$400.00 loss resulting from an inability to host guests in the rental unit, I dismiss this portion of the tenants' monetary request for compensation, without leave to reapply.

Partial Loss of Income

The tenant alleged ongoing noise from the construction disrupted his afternoon naps, impacting his work schedule. Deprived of sleep, he was unable to work a full shift and estimated that he lost one hour per shift for an overall estimated value of \$5008.00.

The tenant also provided conflicting information about the alleged wage loss. In his affirmed oral testimony, the tenant estimated he missed one (1) hour per shift over the summer. In supporting Document #3, the tenant alleged a loss of two (2) hours per shift throughout the construction

The landlord disputes the tenant's testimony of ongoing and excessive noise. The General Contractor in his report writes:

Jackhammering would normally occur between 8 a.m. until 2 p.m. Painting and concrete patching would occur later in the day so tenants would not be disturbed.

Please note that the unit in question represented 3-4% of the concrete work of the building. This would cause the most noise during the jackhammering of the concrete. Concrete work anywhere in the building would cause some noise as it is transmitted

through the rebar and the concrete. The further away the repair the less audible the noise would be.

The general contractor stated the noise level varied, was temporary, and intermittent. While I accept that some rental units were in close proximity to the tenant's unit and acknowledge the building is sixty (60) years old and that sound may travel easier, I am unable to conclude based on the evidence that the tenants were *significantly disturbed* by the construction. The tenant states he was deprived of his afternoon nap because of the construction noise. The landlord stated jackhammering stopped at 2 p.m. As stated previously, the burden is on the party making the claim to provide sufficient evidence ***over and above their testimony*** to establish their claim. The tenant provided no date and time stamped audio or video evidence of the alleged ongoing and excessive noise from the construction.

Further, even if I found the tenant was significantly disturbed by the construction, the tenant provided insufficient detail to establish loss resulted from the actions or inactions of the landlord. The tenant did not provide evidence of missed hours from work including the dates and time correlated with significant construction noise. The tenant did not provide pay records showing previous pay as compared to pay received during the renovations. It is also important to note, as a contractor, the tenant can set his own hours.

In sum, I am not satisfied that an actual loss or damage exists where the evidence presented is insufficient or not detailed. I award no compensation for this claimed item as the tenant failed to provide compelling and persuasive evidence to support his claims of income loss in the amount of \$5008.00.

I dismiss the tenants claim for lost wages in the amount of \$5008.00, without leave to reapply.

Limited space of enjoyment.

In an argument similar to that used in "Party Hosting Expenses" the tenant stated:

Since the patio is closed, all stuffs like tables, chairs, and others were moved to the living room limiting our space and not being able to invite friends over and host a party since then. I would like to request a deduction from my rent the amount of \$300.00 per month as a claim which is based on the area of the patio 6x9 feet equals 56 square feet. That same occupied the living room which 112 square feet in total.

The tenant seek compensation in the amount of \$2400.00 for the inconvenience of storing balcony items in his living room. The tenant estimated the loss based on the square footage of the balcony and the estimated space the balcony items occupied in the tenant's living space.

When determining if monetary compensation is merited, I rely on Guideline 16 which sets out specific criteria the applicant is required to provide to prove loss: "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss" and that "the value of the damage or loss is established by the evidence provided".

In other words, to establish if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed to put the party who suffered the damage or loss in the same position as if the damage or loss had not occurred.

After evaluating the tenant's submissions and evidence, I find the dollar amount the tenant listed in the monetary order worksheet, based on the tenant's calculations, are not quantified. The tenant estimated a \$2400.00 "loss" based on the size of the balcony and storing the balcony contents inside the rental unit over the span of the construction.

As previously determined, the tenant had other options for storing the items and if, the tenant did not have sufficient storage, it was incumbent upon him to provide sufficient evidence **over and above his testimony** to establish his claim. I find the tenant failed to present evidence of steps taken to minimize loss.

I am not satisfied that a loss exists where the evidence presented is insufficient. This carries over to the tenant claim for \$2400.00 in compensation for monetary loss. I find the tenant did not present sufficient evidence to establish each of the four points listed above. Since the tenant did not meet the burden of proof; I therefore find it difficult to prove damage or loss or the value thereof based on the estimated calculation without additional supporting evidence. Stated thus, the tenant has failed to establish that a damage or loss resulted from the action or inaction of the landlord, in violation of the Act or the agreement. I dismiss the tenants claim for limited space enjoyment in the amount of \$2400.00, without leave to reapply.

In sum, I dismiss the tenant's monetary claim for \$7808.00 in damages in its entirety, without leave to reapply.

Loss of Quiet Enjoyment/Infraction of a Legal Right

Notwithstanding the above findings, the tenant did argue a violation of a legal right: loss of access to his balcony and the inability to open the sliding glass door resulting in a loss of quiet enjoyment of the rental unit, separate and apart from the above referenced relief sought. As per *Guideline 16*, damage or loss is not confined to physical property only but includes less tangible impacts such as loss of access to any part of the residential property provided under a tenancy agreement.

Guideline 6 also states when determining the amount by which a tenancy is devalued, the arbitrator will consider the serious 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.

On the basis of undisputed testimony, I find the tenants had no balcony access for 9.5 months. I find this does constitute an impact and represents a loss of use to a part of the rental unit provided for under the tenancy agreement. *Guideline 6* states I must balance the tenant's loss of a portion of the property against the landlord's need to make the repairs to the residential property; the repairs, which in and of themselves, disrupted the tenants' use of all of the rental unit and resulted in an infraction of a legal right.

I have balanced the tenant's loss against the landlord's effort to minimize disruption, despite delays outside the landlord's control, and the scope of the work project in a 60-year-old building of 51 units. Despite the landlord's best efforts, I find the project was disruptive and resulted in a breach to the tenants right to quiet enjoyment. Although the tenant failed to prove a "*significant loss*", an arbitrator may award "nominal damages" in situations where establishing the value of the damage or loss is not as straightforward.

Although the tenant provided insufficient evidence of the overall importance of the balcony in their daily routine, I note the photos of the balcony items in the living room show two (2) propane tanks, a bistro set, and a clothes rack. Since balcony usage is usually seasonally dependent; I assigned 5% loss for the spring and fall and 10% loss for summer. I find that the tenancy was devalued and award the tenants nominal damages calculated as follows:

Month	Percentage	Dollar Value	Total
March 10-31, 2022	$\$2115.00/31 \times 22 = \1501.00 $\$1501.00 \times 5\% = \75.04	\$75.04	\$ 75.04
April 2022	5% = \$105.75	\$105.75	\$ 180.79
May 2022	5% = \$105.75	\$105.75	\$ 286.54
June 2022	10% = \$211.50	\$211.50	\$ 498.04
July 2022	10% = \$211.50	\$211.50	\$ 709.54
August 2022	10% = \$211.50	\$211.50	\$ 921.04
September 2022	10% = \$211.50	\$211.50	\$1,132.54
October 2022	5% = \$105.75	\$105.75	\$1,238.29
November 2022	5% = \$105.75	\$105.75	\$1,344.04
December 2022	5% = \$105.75	\$105.75	\$1,449.79
	TOTAL	<u>\$1,449.79</u>	<u>\$1,449.79</u>

As the tenant was partially successful in his application, I also award the tenant recovery of \$25.00 of the filing fee for a total award of **\$1,474.79**.

Conclusion

The tenants' claim for monetary compensation for damages in the amount of \$7808.00.00 is dismissed, without leave to reapply.

I find the tenants have established a claim for an infraction of a legal right and award **\$1474.79** in nominal damages. Pursuant to s. 67 of the Act, I order the landlord to pay the tenant \$1474.79 in nominal damages. Pursuant to s. 72 of the Act, the tenants may deduct \$1474.79 from one future rent payment on a one-time basis in fulfilment of this order.

In the event this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$1474.79, and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: January 4, 2023