



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

### **Dispute Codes:**

RR, OLC, FFT

### **Introduction:**

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a rent reduction, an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, and to recover the fee for filing this Application for Dispute Resolution. On the basis of the information provided in the Application for Dispute Resolution, I am satisfied that the application for an Order requiring the Landlord to comply with the *Act* is directly related to the request for compensation for loss of quiet enjoyment.

The Tenant stated that on September 27, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in September of 2022 was personally served to the Agent for the Landlord. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On January 20, 2023 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was posted on the Tenant's door on January 20, 2023. The Tenant acknowledged receiving this evidence on January 20, 2023 and it was accepted as evidence for these proceedings.

On January 30, 2023 the Tenant submitted a Monetary Order Worksheet to the Residential Tenancy Branch. The Tenant stated that this document was not served to the Landlord. Rule 3.14 of the Residential Tenancy Branch Rules of Procedure requires an Applicant to serve all evidence to the Respondent. As this document was not served to the other party, I find it would be procedurally unfair for me to consider this document and it was not accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

#### Preliminary Matter

In the Monetary Order Worksheet submitted to the Residential Tenancy Branch on January 30, 2023, the Tenant increased the amount of the monetary claim from \$6,300.00 to \$7,785.32.

Rule 4.1 of the Residential Tenancy Branch Rules of Procedure permits an Applicant to amend a claim by completing an Amendment to an Application for Dispute Resolution form and by filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence on the Dispute Access site or with the Residential Tenancy Branch directly or through a Service BC Office. An amendment may add to, alter or remove claims made in the original application.

Rule 4.6 of the Residential Tenancy Branch Rules of Procedure requires an Applicant to serve an Amendment to an Application for Dispute Resolution to the Respondent as soon as possible.

As the Tenant did not file an Amendment to an Application for Dispute Resolution for Dispute Resolution with the Residential Tenancy Branch and the Tenant did not advise the Landlord that they wished to amend their Application for Dispute Resolution, I find that the Application for Dispute Resolution has not been amended.

Specifically, I find that the Tenant has not amended the Application for Dispute Resolution to:

- Decrease the amount of the monthly compensation for loss of use the balcony from \$180.00 to \$155.22;
- Decrease the amount of the monthly compensation for loss of use of a portion of the living room from \$360.00 to \$282.22 ;
- Change the claim of monthly compensation of \$54.87 for being unable to open windows to a claim of monthly compensation of \$54.87 for “quiet enjoyment”, although those are essentially the same claims; and
- Change the claim of monthly compensation of \$100.00 for health issues and hardships relating to drilling and noise to claim of monthly compensation of \$100.00 for health issues relating to not being warned about asbestos.

I find it reasonable to amend the Application for Dispute Resolution, pursuant to Rule 4.2 of the Residential Tenancy Branch Rules of Procedure, to increase the number of months for which the Tenant is claiming compensation. I find it reasonable for the Landlord to conclude that the Tenant would be seeking compensation for disturbances that continued after the Tenant filed this Application for Dispute Resolution and, where appropriate, I will be granting compensation for disturbances that occurred after the Application for Dispute Resolution was filed.

Issues to be Decided:

Is the Tenant entitled to compensation as a result of construction work in the residential complex?

Background and Evidence:

The Landlord and the Tenant agree that:

- This tenancy began on April 01, 2016;
- In December of 2022, the monthly rent was \$1,778.00;
- Rent increased to \$1,813.00, effective January 01, 2023;
- In April of 2022 the Landlord began renovating the exterior of the residential complex;
- The renovation involved repairing concrete, removing brick from the balconies of 63 units, and installing new handrails/glass;
- Occupants of the building were advised that their access to their balconies would be blocked in February of 2022;

- The Tenants' ability to access the balcony was terminated on March 10, 2022;
- The Tenants still do not have access to their balcony;
- The rental unit is 1,260 square feet in size;
- The balcony is 110 square feet in size;
- Similar renovations are currently taking place in another building of the same residential complex, which is approximately 50 feet from the Tenant's building; and
- The Tenants have not been offered any compensation for the impact the construction has had on their tenancy.

The project Manager stated that the renovations to the exterior of the building were necessary because the concrete was failing due to corrosion and the bricks were falling off the balconies, which was a hazard.

The Agent for the Landlord stated that tradespeople began removing the bricks from the exterior of the building in April of 2022. The Co-tenant stated that he does not recall when this deconstruction began.

The Agent for the Landlord stated that the tradespeople finished removing bricks from the exterior of the building on May 12, 2022. The Co-tenant stated that he does not recall when this portion of the construction package ended.

The Tenant is seeking compensation, in part, because they have been regularly disturbed by noises associated to the renovation project.

The Project Manager stated that the construction noise in the building included sounds typically associated to jack hammering and grinding for approximately 2-3 months. He stated that these noises would have been sporadic and ranged for between 5 minutes and 2 hours each day. He stated that the jack hammering and grinding occurred in various locations of the building. The Co-tenant does not dispute this testimony.

The Project Manager stated that the construction noise in the building included sounds typically associated to drilling. He stated that this type of noise would occur for approximately 2 hours on each balcony, as drilling was required to install the railing on the balconies. The Co-tenant does not dispute this testimony.

The Project Manager stated that the construction noise in the building included noise associated to removing the bricks. This included using a hammer or jack hammer to

remove the bricks and that the noise lasted approximately one week. The Co-tenant does not dispute this testimony.

The Co-tenant stated that they were also disturbed by general construction noises throughout the project, including loud and offensive language. He stated that these noises began in March of 2022 and that they are on-going. The female Tenant stated that these general construction noises occurred daily during typical working hours.

The Project Manager agrees that the general construction noises occurred, but they did not occur every day and that, on one occasion, construction on the project stopped for approximately one month.

The Co-tenant stated the on an unknown date they were informed that they could not open their windows and that they were unable to open their windows unit November of 2022.

The Agent for the Landlord states that the occupants were told that they should not open their windows from 7:30 a.m. to 5:30 p.m. for the period between July 10, 2022 and July 15, 2022 due to potential contamination associated to removing caulking.

The Tenant is seeking compensation, in part, because they have been unable to use their balcony for many months. The Tenant is also seeking compensation, in part, because they were unable to use a portion of their living room due to the need to store items in the living room that were typically stored on the balcony.

The Tenant submitted a photograph of the living room which shows a large number of items stored in the living room.

The Agent for the Landlord stated that most of the items seen in the photograph should not have been stored on the balcony, as the Rules and Regulations prohibit storage on balconies.

The Tenant stated that many of those items, such as the photocopier and suitcases, were not previously stored on the balcony. The Co-tenant stated that the items previously stored on the balcony that were moved to the living room included the barbecue, the table, and patio chairs.

The Landlord and the Tenant agree that the Landlord did not provide the Tenant with

access to additional storage space until November 15, 2022. The Tenant stated that items previously stored on the balcony were stored in the living room between March of 2022 and November 15, 2022.

The Landlord and the Tenant agree that the Landlord offered to store the Tenant's barbecue in the boiler room, but the offer was declined. The Co-tenant stated that the offer to store the barbecue in the boiler room was declined because there may have been mice in that location. The Agent for the Landlord stated that there are no mice in the boiler room.

The Agent for the Landlord estimates that the Tenants will have access to their balcony in approximately one or two weeks.

The Tenant is seeking compensation, in part, because they needed to house guests in a hotel for the period between August 30, 2022 to September 04, 2022. The Tenant submitted an invoice to show they were charged \$1,165.75 for a hotel for this period.

The Tenant stated that this was necessary because the guests would have stayed in the living room, but they did not have room to house the guests there because of items from the balcony were being stored there.

The Agent for the Landlord stated that the Tenants knew in February of 2022 that there would be construction on the property, and they could have arranged for their company to come after the construction was complete.

The Tenant stated that their guests were from overseas and their visit was planned prior to the Tenants becoming aware of the renovation.

The Landlord and the Tenant agree that the Tenant pays a \$30.00 monthly fee for parking; that the Tenants were unable to park in their assigned space for "a few" months; that the Tenants were required to find parking on the street during these months; and that the Tenants were not required to pay the parking fee of \$30.00 for the time their parking space was unavailable.

The Tenant is seeking compensation, in part, because they received a parking fine of \$105.00 on September 08, 2022 and towing costs/impound fees of \$165.18 were incurred.

The Co-tenant stated that this cost was incurred when they had to park on the street due to their parking space being temporarily unavailable. He stated that they parked illegally on September 08, 2022 as no other spaces were available. He stated that there are typically no spaces available for parking on the street within a reasonable distance of the unit.

The Agent for the Landlord stated that there are parking spaces available on the street within a reasonable distance of the unit.

Analysis:

Section 27(2) of the *Act* authorizes a landlord to terminate or restrict a non-essential service or facility if the landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and 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* grants tenants the right to quiet enjoyment including, but not limited to reasonable privacy; freedom from unreasonable disturbance; 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*]; and use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline #6, with which I concur, reads, in part:

*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 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.*

*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.*

On the basis of the undisputed evidence, I find that the Landlord made extensive renovations to the exterior of the building, which involved jackhammering, noises associated to removing bricks from the exterior of the building, drilling, and general construction noises, including loud and sometimes profane talking.

On the basis of the testimony of the Project Manager, I find that the renovations were necessary because some of the exterior concrete was failing and bricks were falling from the exterior of the building.

On the basis of the testimony of the Project Manager, I find that noises associated to removing bricks from the exterior of the building lasted approximately one week. I find that noise associated to this type of construction is typically loud, although the noise levels likely decreased as the workers moved away from the rental unit.

On the basis of the testimony of the Project Manager, I find that noise associated to jack hammering and grinding lasted for approximately 2-3 months and that these noises occurred for between 5 minutes and 2 hours each working day. I find that noise associated to jack hammering and grinding is typically very loud and can reverberate through a building.

On the basis of the testimony of the Project Manager, I find noise typically associated to drilling lasted for approximately 126 hours for the duration of the project. This is based on the Project Manager's estimate that it approximately two hours of drilling occurred when the railing was installed on each of the 63 balconies of this building. I find that noise associated to drilling in concrete is typically loud and can reverberate through a building.



On the basis of the undisputed testimony, I find that the Tenant was disturbed by general construction noises after the project began in March of 2022 and they continue to be disturbed by such noises. As the Tenant contends that they were disturbed by such noises on a daily basis during working hours and the Project Manager contends there were long periods of time when such construction noises of this nature did not occur, I am unable to determine how often these disturbances occurred. Suffice to say that the Tenant was disturbed by general construction noise for a significant period of time.

On the basis of the undisputed evidence, I find that scaffolding was erected around the building for approximately 4.5 months.

I find that the noises associated to a construction project of this nature and the presence of scaffolding would disturb the average person and that they constitute a breach of the Tenant's right to the quiet enjoyment of the rental unit. As such, I find that the Tenant is entitled to compensation for these disturbances.

Determining the amount by which the value of this tenancy has been reduced as a result of the noise disturbances is highly subjective. After careful consideration I find that the noise disturbances reduced the value of this tenancy by \$100.00 per month, for the period between April 01, 2022 and January 31, 2023, and that the Tenant is therefore entitled to compensation of \$1,000.00 for these disturbances. After careful consideration I find that the presence of the scaffolding reduced the value of this tenancy by \$100.00 for the entire time the scaffolding was present.

In determining that the Tenant is not entitled to greater compensation for the noise disturbances, I was influenced by my conclusion that the loudest noises, which would be the jack hammering and brick removal, did not occur during the entire 10 months and there were likely periods of time when the noise level was minimal, such as when caulking was being removed or when the exterior was being painted.

In determining that the Tenant is not entitled to greater compensation for the noise disturbances, I was also influenced by my conclusion that the construction noises occurred during typical work hours, so the Tenant was not disturbed by noise for over 50% of the day.

On the basis of the undisputed evidence, I find that the Tenant has been unable to use

the balcony since March 10, 2022 and they will not likely be able to use the balcony again until early to mid-February of 2023. Although I find that it was reasonable, in these circumstances, for the Landlord to restrict the Tenant's access to the balcony during construction, I find that the inability to use the balcony constitutes a breach of the Tenant's right to quiet enjoyment of the rental unit.

As has been previously stated, determining the reduction in value of a tenancy is highly subjective, however after careful consideration I find that being without a balcony reduces the value of the tenancy by \$100.00 per month. I therefore find that the Tenant is entitled to compensation of \$1,100.00 for the period between March 10, 2022 and February 10, 2023. This award reflects the loss of use of the balcony space and the inability to open the balcony door.

In determining that the Tenant is not entitled to greater compensation for being without a balcony, I was influenced by the fact that some of this construction occurred during the winter months when use of a balcony is less common.

In determining that the Tenant is not entitled to greater compensation for the noise disturbances and the loss of use of the balcony, I attempted to balance the rights of the Tenant against the Landlord's duty to properly maintain the residential complex. In determining that the Tenant is not entitled to greater compensation for the noise disturbances/loss of balcony, I recognize that the Tenant will benefit from the renovations, as the balconies are being upgraded and will be more aesthetically pleasing.

I find that the Tenant has submitted insufficient evidence to establish that they were unable to open all of their windows for an extended period of time.

On the basis of the testimony of the Agent for the Landlord and the document located at "L47" in the Landlord's evidence package, find that the Tenant was told they should not open their windows from 7:30 a.m. to 5:30 p.m. for the period between July 10, 2022 and July 15, 2022 due to potential contamination associated to removing caulking. In the absence of any other evidence that corroborates the Co-tenant's testimony that they could not open their windows on other dates, I find that the Tenant has failed to establish that they could not open their windows for an extended period of time.

While I accept that not being able to open windows for 5 days during the daytime in the summer is an inconvenience, I find this is a relatively minor inconvenience that does not

reduce the value of the tenancy.

I note that the Tenant was unable to open her balcony door for since March 10, 2022. Compensation for that inconvenience was included in the \$100.00 compensation for not being able to use the balcony.

On the basis of the undisputed testimony of the Co-tenant, I find that since March 10, 2022 the Tenant stored items typically stored on the balcony in the living room and that they did so because they did not have anyplace else to store those items.

The Tenant submitted a photograph of a large number of items piled in the living room. On the basis of the undisputed testimony and the photograph, I find that one of the items stored in the living room was a barbecue.

On the basis of the undisputed evidence, I find that the Landlord offered to store the barbecue elsewhere in the building and that the Tenant declined the offer. I find that by declining the offer of alternate storage, the Tenant did not take reasonable steps to mitigate the inconvenience of storing the barbecue. In the absence of evidence that supports the Tenant's concern that there were mice in the storage area offered by the Landlord, I find that the decision to decline the offer was unreasonable.

As the Tenant had been offered alternate storage for the barbecue, I find that the Tenant did not mitigate the inconvenience of storing the barbecue, as is required by section 7 of the Act. I therefore find that the Tenant is not entitled to compensation for any inconvenience the Tenant experienced as a result of storing the barbecue in the living room.

As the Tenant was not offered alternate space to store other items typically stored on the balcony, such as a table and outdoor chairs, I find that it was reasonable for them to store them in their living room.

On the basis of the photograph submitted in evidence, I find that the Tenant has a large number of items stored in the living room that the Tenant acknowledges were not stored on a balcony, such as luggage and a photocopier. As these items were not previously stored on the balcony, the Tenant cannot receive compensation for storing them in the living room.

On the basis of the same photograph, I find that the Tenant was storing numerous

plastic totes in the living room. Even if the Tenant had been storing those totes on the balcony, I find that the Rules and Regulations prohibit storage of such items on the balcony. (Landlord evidence L-17) As the Tenant did not have the right to store such items on the balcony, the Tenant cannot receive compensation for subsequently storing them in the living room.

I find that the Tenant was inconvenienced by having to store a table and folding outdoor chairs in the living room, which were previously stored on the balcony. I find that the space taken by storing unrelated items in the living room is significantly greater than the space taken by the table/chairs. I therefore find that storing the table/chairs did not significantly reduce the value of the tenancy and I find that compensation is not warranted.

In determining that compensation is not warranted for storing the table/chairs in the living room, I was influenced by my conclusion that storing the table/chairs did not reduce the aesthetic quality of the living room. The living room was already used for storage and the addition of the table/chairs did not, in my view, make it less aesthetically pleasing.

On the basis of the Tenant's undisputed submission, I find that the Tenants housed guests in a hotel for the period between August 30, 2022 to September 04, 2022 and that they did so because they could not house the guests in their living room due to the number of items being stored in the living room.

As has been previously stated, I find that the vast majority of items stored in the living room were not related to the Tenant's inability to access the balcony and, if they were previously stored on the balcony, they should not have been stored in that location. As previously stated, the Tenant had declined an offer to store the barbecue in a different location. I therefore find that the inability of the Tenant to house their guests in the living room was related to storage issues that were not the direct result of them being unable to access their balcony and I therefore find that they are not entitled to compensation for housing their guests elsewhere.

On the basis of the undisputed evidence, I find that the Tenants pay a monthly fee for a parking space; that their ability to use that parking space was revoked for a period of time due to the construction; and that the Tenants did not pay the monthly fee for the months they could not use the parking space. I therefore find that the Landlord complied with section 27(2) of the *Act* by waiving the parking fee for the months the Tenants were

unable to use the parking space.

Although I accept that the Tenant needed to park on the street while the Tenant did not have access to a private parking space, I find there is insufficient evidence to establish that the Tenant needed to park in a space that would result in the Tenant receiving a ticket or being towed. I find that the Landlord is not obligated to compensate the Tenant for the Tenant's decision to park illegally. I therefore dismiss the claim to recover a parking fine and an impound fee.

I find that the Tenant's Application for Dispute Resolution has some merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of \$2,300.00, which includes:

- \$1,000.00 in compensation for construction noise;
- \$100.00 for living with scaffolding outside their unit;
- \$1,100.00 in compensation for being without the use of the balcony; and
- \$100.00 as compensation for the cost of filing this Application for Dispute Resolution.

I grant the Tenant a monetary Order for \$2,300.00. In the event the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

In the event the Tenant does not wish to enforce this monetary Order, the Tenant has the right to withhold this amount from any rent due, pursuant to section 72(2) of the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 01, 2023

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Residential Tenancy Branch