



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding IMH POOLL XVIII LP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RR, PSF, FFT

### Introduction

On November 19, 2022, the Tenants applied for dispute resolution under the *Residential Tenancy Act* (“the Act”), seeking a rent reduction and for the Landlord to provide services or facilities required by the tenancy agreement or law.

Both parties were present at the hearing. At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

While the parties confirmed that they had exchanged their evidence, the Landlords’ evidence was not uploaded into the RTB case management system (“the CMS”). The Landlord stated that she personally uploaded multiple documents on March 28, 2023.

Upon review of the CMS, I note that only a single one-page document of an elevator invoice was uploaded by the Landlord on March 28, 2023.

Since the parties stated they have exchanged their evidence, the Landlord was permitted to provide their evidence to the RTB. The Landlord uploaded 9 pages of evidence on April 3, 2023.

Issue to be Decided.

- Has the Landlord failed to provide a service or facility required by the tenancy agreement or law?
- Are the Tenants entitled to a rent reduction?

Background and Evidence

The parties agreed that the tenancy began in December 2022. Rent in the amount of \$1,844.16 is due to be paid to the Landlord by the first day of each month.

The Tenants stated that the building is under construction, which the Tenants were aware of when they entered into the tenancy agreement. The Tenants stated that they do not have access to laundry, elevator, fitness area and patio and they have not been able to use the things.

The Tenants state that they received a rent increase of \$36.16 which they do not agree with. The Tenants are requesting a reduction in rent in the amount of \$36.16 per month.

The Tenants stated that they did not have use of the laundry facility on two occasions. They stated that they have not had use of their balcony for half the year due to concrete repairs. They stated that they did not have use of the building lobby and had to drive two kilometers to retrieve their mail.

The Tenants stated that a reasonable Landlord would not have issued the rent increase.

The Tenants stated the loss of laundry was a couple of weeks and a small disruption. They stated that on December 15, 2022 Canada Post informed them that they have to retrieve their mail elsewhere because they could not access the lobby. Canada Post placed community mailboxes outside the building in January 2023. The Tenants provided a copy of a notice they received from Canada Post dated November 14, 2022 stating that their mail cannot be delivered to construction in the building and directed them to pick up mail at an address provided.

The Tenants stated that they are experiencing an intermittent issue with hot water to the unit and they spoke to the Landlord about it who sent someone to the unit. The Tenants stated that having to run the water for 5-6 minutes to get hot water is not reasonable.

The Tenants also stated that there is no exhaust fan above the stove. The Tenants did not provide any legal evidence that an exhaust fan is required.

In reply, the Landlord stated that they are not in agreement that the Tenants should get a rent reduction. The Landlord stated that the Tenants have raised issues such as laundry, fitness, and lobby, that are not listed on their application. The Landlord stated that the Tenants failed to provide the full particulars of their claim which makes it difficult for the Landlord to provide a response. The Landlord stated that the Landlord had no idea what the Tenants are seeking.

The Landlord questioned the Tenants. The Tenants were asked if they are currently in the rental unit, and they replied that they have been on vacation since January 10, 2023 and will be returning on April 9, 2023. The Tenants stated that they have not returned to the unit since January 11, 2023. The Tenants stated that they may not be present but their belongings are there and they pay the rent.

The Tenant stated that the residential property is a construction zone and they did not enjoy their tenancy in 2022.

The Landlord stated that a rent reduction is not applicable to the Tenants claim as it should be for an abatement of rent.

The Landlord stated that Canada Post did not deliver mail from November 14 to December 19, 2022, and that building occupants had access to a neighboring postal office. The Landlord provided a copy of a notice of lobby renovations, including a notice dated November 23, 2022 sent to tenants informing them of lobby renovations to begin on December 1, 2022. The Landlord also provided a copy of a notice dated December 15, 2022 sent to tenants informing them of a temporary change to mail delivery.

The Landlords pointed out that the building has two elevators and that one of the elevators was working.

The Landlord stated that the Tenants balcony was down for approximately 6 weeks and is useable since January 2023. The Landlord provided a copy of a construction notice directing the Tenants to remove all items from their balcony before October 12, 2022.

The Landlord stated that there is no hot water issue, and that the kitchen has a ventless fan with filter.

### Analysis

Section 28 of the Act provides that a Tenant is entitled to privacy, freedom from unreasonable disturbance use of common areas for reasonable purposes; however, section 32 of the Act provides that a Landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.

I find there needs to be a balance between the Tenants rights under section 28 of the Act and the Landlords obligations under section 32 of the Act.

With regard the Tenants rights the Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment provides that a breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises and 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.

The Residential Tenancy Branch Policy Guideline #16 Compensation For Damage or Loss provides that Damage or loss includes 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. 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.

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

With regard to the Tenants application for the Landlord to provide services and facilities by fixing the hot water and make arrangements for mail delivery and instal a working fan in the bathroom and kitchen, I find that these issues were already resolved at the time of the hearing. The rental unit receives hot water after running the tap. This is likely based on the age and character of the residential property. Canada Post now has community mailboxes outside the residential property, and the kitchen has a ventless fan. I took no testimony regarding lack of a bathroom fan.

The Tenants' claim for the Landlord to provide these services or facilities is dismissed.

With regard to the Tenants claim for a rent reduction in the amount of their recent rent increase; I find that a rent increase that does not exceed the permitted annual rent increase and complies with the timing and notice provisions cannot be disputed by a tenant. I have considered the Landlords' submission that a permanent rent reduction is not applicable and that the claim should be for an abatement of rent.

Section 27 of the Act provides that a Landlord may terminate or restrict a service or facility if the Landlord reduces the rent in an amount that is equivalent to the reduction in value to the tenancy agreement. I find that a permanent rent reduction is not warranted based on temporary construction resulting in a temporary loss of service or facility, and any compensation awarded should be a lump sum based on any temporary disruption of service or loss of enjoyment experienced by the Tenants. I find that the Landlord did not terminate or permanently restrict a service or facility.

With regard to compensation for a loss of enjoyment, or compensation for damage or loss; temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment, and the onus is on the Tenants' to provide evidence to establish that compensation is due.

I have considered the Tenants testimony and evidence regarding their specific loss. The Tenants acknowledged that the loss of laundry on the two occasions was a small disruption. I accept that the Tenants' lost use of the lobby as of December 1, 2022; however, I am mindful that their loss was minimal as they went on vacation as of January 10, 2023. Other than the temporary inconvenience of retrieving their mail elsewhere for a short period they did not provide an explanation on loss of use of the lobby. I find these issues were a temporary discomfort or inconvenience and are not a basis for compensation.

Based on the Landlords' notice regarding use of the Tenants balcony, I find that the Tenants did not have use of their balcony as of October 12, 2022, for approximately six weeks. Neither the Landlord or Tenants provided a specific date when the balcony repairs were completed. The Landlord stated that the balcony was useable since January 2023. Again, I note that the Tenants were on vacation as of January 10, 2023, and therefore have not experienced a loss of use of their balcony from January 10, 2023 to April 9 2023.

I find that the Tenants suffered a loss of use of their balcony for approximately 8 weeks and I find that this loss amounts to a loss of value in the tenancy.

I find that the Tenant are entitled to compensation for their loss; however their application did not include the specific amount of compensation they are seeking. The Tenants' application provides that for their losses they are seeking a monthly reduction in rent in the amount of \$36.16.

I award the Tenants monetary compensation of \$72.32 per month for the 8 week period of time they suffered a temporary loss of use of their balcony.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were partially successful in their application, I order the Landlord to repay the Tenants for the cost of the filing fee.

The Tenants have established a monetary claim in the amount of \$172.32. I authorize the Tenants to withhold the amount of \$172.32 from one (1) future rent payment.

### Conclusion

The Tenants established that they suffered a temporary loss of use of their balcony, and they are awarded compensation of \$72.32 and the cost of the filing fee.

I authorize the Tenants to withhold the amount of \$172.32 from one (1) future rent payment.

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: April 25, 2023

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Residential Tenancy Branch