



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

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

## DECISION

Dispute Codes      RR, OLC, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order reducing rent for repairs, services or facilities agreed upon but not provided; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

One of the tenants and an agent for the landlord attended the hearing and the tenant also represented the other named tenant. The tenant and the landlord each gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions. The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided?
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?
- Should the tenants recover the filing fee from the landlord?

### Background and Evidence

**The tenant** testified that this month-to-month tenancy began in mid-July, 2014 and the tenants still reside in the rental unit. A copy of the tenancy agreement has been provided for this hearing, however the first page is missing. The tenant is not sure how much rent was at the beginning of the tenancy, however rent has been increased during the tenancy and is now \$1,124.38 payable on the 1<sup>st</sup> day of each month, and there are

no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$450.00 as well as a pet damage deposit in the amount of \$450.00, both of which are still held in trust by the landlord. No move-in condition inspection report was completed at the beginning of the tenancy. The rental unit is an apartment on the first floor of an apartment complex.

The tenant further testified that the balcony space is unusable, and construction noise has been at an extreme level. The tenant works from home, and endured several months of construction noise which also disrupted meetings that the tenant had with clients, and loss of quiet enjoyment. The tenant was not able to attend virtual meetings online due to the noise. The tenant is a project manager for construction development. The tenant is aware that the building requires asbestos abatement, so the landlord had to replace the stucco siding and balcony windows, using power tools, and noise went into the tenants' living space and bedroom starting from March 26, 2024. The noise was loudest from April to August and still hasn't finished. The landlord is trying to make a studio unit next to the tenants' unit. Construction has taken place even after 5:00 p.m. and almost every weekend.

The tenant sent several emails to the landlord asking when the construction would be finished. It is necessary for the landlord to do the work, but there is no reason that the tenants should be victims of a loss of quiet enjoyment. Numerous photographs have also been provided for this hearing.

To complete the asbestos work, the contractors had to cut out a part of the wall, which has been open for almost 2 years. The tenants had to move their balcony furniture into the living space. The tenants could open the door and go onto the balcony, but the poor condition and exposed asbestos material has made that very limited, and the tenants' furniture is still in the living room and has been for more than 7 months. Sometimes contractors had to use a very strong smelling membrane which seeped into the rental unit for 3 days, causing illness and headaches. It's hard to stay during the day because of the noise. The tenant's wife was taking online classes but couldn't stay home due to the noise.

The tenants claim a rent reduction of \$500.00 or compensation in that amount in addition to recovery of the \$100.00 filing fee. The landlord's evidence shows 13 days of the balcony being closed, but that's only the construction dates, and the remaining days are for the unusable balcony. It has now been 76 days, not 13 days. The claim also includes the construction noise.

**The landlord's agent** testified that there were 13 days that the tenants could not access or use the balcony. Evidence from the contractor indicates from April 3 to 9,

which is 7 days, and July 2 to 7 which is another 6 days. There was no asbestos and abatement notice was given to the tenants on March 22, 2024. A sample testing was done prior, which was completed last year, and there is no gaping hole. Notice was given to all tenants affected, starting March 26, 2024 and 11 more notices were given for the balcony upgrade which details the work. Notices were sent to the tenants September 20 to October 7, 2024, and because of unforeseen delays, the project should be completed by October 31, 2024.

The landlord's agent went to the rental unit a few weeks back and on September 25, 2024 took photographs showing items in the rental unit. There are limits of what can be on the balcony; planters, kitty litter, recycling bins, snow rakes, shelving, BBQ grills and garbage bags are not permitted, and those are the items that the tenants took inside.

The landlord's agent asked the tenants if they wanted a storage space but the tenants declined. Just because the items were on the balcony, the landlord is not required to pay for it; the claim is not justified. The landlord has also provided a calculation of the size of the balcony.

There is no evidence to support unreasonable noise or that the tenants were not able to use the balcony. Noise should be expected, but the tenants' video evidence is not significant or unreasonable. Other tenants affected have not complained.

The landlord has also provided copies of numerous rent increases, the latest of which shows that rent is currently \$1,124.38 effective January 1, 2024.

#### SUBMISSIONS OF THE TENANTS:

The closure date of the balcony is not 13 days, and the time to be able to use it is 7 ½ months. The square footage provided by the landlord is incorrect, and constant noise should also be considered. Photographs were taken every time there was a violation. Asbestos has fallen down from the wall and was left abandoned for 3 or 4 days.

#### SUBMISSIONS OF THE LANDLORD'S AGENT:

The balcony measurement is correct, and was measured by the landlord's agent. If different, then the tenants should have provided those measurements. There was no exposure except for abatement of the outside wall. Balcony dates provided by the landlord are accurate.

#### Analysis

I have reviewed all of the evidence. The landlord's position, in part, is that the work was necessary and the tenants were given notice in writing. That does not mean that the

tenancy has not been devalued. The dated photographs provided by the tenants show that construction commenced in March, 2024 and continued into September, 2024. The landlord has also provided a calculation of the loss of space from the balcony, which the tenants dispute.

The landlord agrees that the tenants lost access to the balcony, albeit only for a 13 day period, which the tenants also dispute. Whether the tenants could actually walk out onto the balcony may be one thing, but being unable to enjoy it with the construction debris and items was for a longer term.

I have also reviewed the tenancy agreement and the Rules provided by the landlord, and I disagree that there is anything prohibiting BBQs on the balcony. However, the Rules do indicate that certain items that the tenants apparently had on the balcony are not permitted by the Rules.

Temporary discomfort or minor inconvenience does not give rise to monetary compensation owed by the landlord. I have also reviewed the video and audio evidence provided by the tenants, and I agree with the landlord that some of the audio is not significant, but others are very significant.

I have also reviewed the photographs provided by the landlord, and I accept that the construction work is necessary and the landlord has a duty to complete the work. However, where it impacts the quiet enjoyment of the tenants, then the tenancy has been devalued.

The tenants' application seeks monetary compensation of \$500.00, and rent is currently \$1,124.38 per month. The tenants' application also states that the construction noise has been occurring for 5 months, however the audio and video evidence commences on July 13, 2024.

Considering the evidence, I am satisfied that the tenants have established a claim of \$500.00. Since the tenants have been successful with the application the tenants are also entitled to recover the \$100.00 filing fee from the landlord.

The tenants' application regarding an order that the landlord comply with the *Act* or the tenancy agreement refers to the monetary claim. Having found that the tenants have established a monetary claim totalling \$600.00, I order that the tenants be permitted to reduce rent for a future month by that amount as full recovery, however I dismiss the tenants' application for an order that the landlord comply with the *Act* or the tenancy agreement without leave to reapply.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$600.00. The landlord must be served with the order, and I order that the tenants be permitted to reduce rent for a future month by that amount, or may file the order in the Provincial Court of British Columbia, Small Claims division and enforce it as an order of that Court.

The tenants' application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

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 17, 2024

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Residential Tenancy Branch