



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding IMH POOL XIX LP C/O METCAP LIVING MANAGEMENT  
INC and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      RR, 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; and to recover the filing fee from the landlord for the cost of the application.

One of the named tenants attended the hearing, gave affirmed testimony, and represented the other named tenant. An agent for the landlord also attended, who gave affirmed testimony, and was assisted by Legal Counsel. The parties, or Legal Counsel 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, and more specifically for loss of use of an elevator?
- Should the tenants recover the filing fee from the landlord?

### **Background and Evidence**

**The tenant** testified that this fixed-term tenancy began on July 1, 2021 and reverted to a month-to-month tenancy after June 30, 2022, and the tenants still reside in the rental unit. Rent in the amount of \$2,924.00 was originally payable on the 1<sup>st</sup> day of each month, which has been increased and is now \$3,228.16 per 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 \$1,462.00 which is still held in trust by the landlord,

and no pet damage deposit was collected. The rental unit is an apartment suite. A copy of the tenancy agreement has been provided for this hearing.

The tenants claim \$3,000.00 due to elevator construction noise. The elevator was taken out of service for 58 days between August and October, 2024. When this application was filed, construction was on-going. The tenant asked the landlord for 30% of the rent to be returned for that period, and the \$3,000.00 claim was made in case the construction ran on longer.

The tenant told the landlord that the tenants are decreasing the claim to \$1,872.33, being 30% for 58 days. The inconvenience and decrease of enjoyment of the rental unit is hard to put a number on, but the tenants discussed it and tried to decide the amount for having to walk upstairs and downstairs from the 5<sup>th</sup> floor rental unit.

The landlord provided a survey to the tenants, but the tenants did not sign it, and told the landlord that they wouldn't unless some rent abatement was provided. The tenants' request has always been 30% and reiterated that to the landlord and followed up many times.

**The landlord's agent** testified that July 15, 2024 was the start date of construction. The elevator was marked as out of service on August 26, 2024, and fully taken out of service on August 29, 2024, however no signage was posted about elevator availability between those dates. October 22, 2024 was the completion of the elevator repair, and earlier the landlord had told tenants it would be October 15, 2024, so was 7 days beyond the time estimated.

The landlord had security guards in the lobby, whose job was to assist tenants with carrying laundry and other items.

A survey was sent to all tenants setting out whether tenants elect to remain in the rental units or will be staying with friends or family during the construction, or whether or not the tenants require other accommodations.

#### SUBMISSIONS OF THE TENANTS:

The tenants have been very consistent with the request for compensation since early this year for the period of time the elevator was not in service. It was inconvenient and difficult to walk up and down stairs, and the tenants claim \$1,872.33 in addition to the \$100.00 filing fee. The tenant believes that is a reasonable request due to the inconvenience, which is \$107.61 per day, times 58 days, calculated at 30 days per month.

#### SUBMISSIONS OF THE LANDLORD'S LEGAL COUNSEL:

The landlord understands compensation for loss of use. Most of the equipment was at the end of its service life and the landlord had to replace it. The tenants were given an opportunity to get alternate accommodation, and additional help. While doing repairs, the tenancy was devalued, but the landlord submits that 30% was too much of a claim. The 5<sup>th</sup> floor is not that high, and the Residential Tenancy Branch has decided in the past that it's not as high as 10 or 11 floors, or does not require the same rent reduction. Other Decisions of the Branch state 10% or 20% depending on the floor that the tenants reside in, or \$700.00 to \$1,300.00 which includes the filing fee for those tenants. Copies of such Decisions have not been provided for this hearing.

#### Analysis

The landlord does not disagree that the tenancy has been devalued, and Legal Counsel submits that it should be 10% or 20% of the rent depending on which floor the tenants reside in. I have searched the data base and I cannot locate any of the Decisions referred to by the landlord's Legal Counsel, and copies have not been provided.

I have also reviewed the survey provided to the tenants by the landlord, and I accept the undisputed testimony of the landlord's agent that the tenants were given the opportunity to get alternate accommodations, and had security guards on site to assist with moving laundry and other items to and from the rental units. The survey asks that tenants circle one option of:

- A. I/we choose to remain in my unit throughout the elevator service disruption.
- B. I/we will be staying with friend/family for the duration of the elevator service disruption.
- C. I/we will require accommodations for the during of the elevator service disruption.

I have also reviewed the emails exchanged between the parties, and I agree that the tenants have stood fast on their claim of a rent reduction of 30% and the tenant explained in an email to the landlord that the tenant has back issues and is in and out of therapy, which is a risk that the tenant may struggle to leave the apartment, and the landlord's response was that the landlord is not considering reducing rents.

The tenant has not provided any evidence, nor did the tenant testify to loss of quiet enjoyment, but only with respect to inconvenience.

Given that the landlord has offered assistance and alternate accommodations, and although a tenant is not required to accept alternate accommodations, I find that the landlord has agreed to mitigate any damage or loss that the tenants may suffer or may

have suffered. In the circumstances, I agree with Legal Counsel for the landlord that 10% of the rent is a reasonable amount.

I order that the rent be reduced by 10% over 58 days, being August 26, 2024 to October 22, 2024. That equates to \$62.48 for 6 days in August and \$322.82 for 30 days in September, and \$229.10 for 22 days in October, 2024, for a total of \$614.40.

Since the tenants have been successful with the application the tenants are also entitled to recover the \$100.00 filing fee from the landlord.

I grant a monetary order in favour of the tenants as against the landlord in the amount of \$714.40. The landlord must be served with the order, and I order that the tenants be permitted to reduce rent for 1 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.

### 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 \$714.40, and I order that the tenants be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

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: November 11, 2024

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Residential Tenancy Branch