



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding IMH POOL X1V LP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: MNDC RR FF

### **Introduction:**

Both parties attended and gave sworn testimony. The tenant said that they served the Application for Dispute Resolution by registered mail; the landlord acknowledged receipt. I find that the landlord is served with the Application according to section 89 of the Act. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 28, 65, and 67 for loss of peaceful enjoyment, for reduction in the value of the tenancy agreement and for suffering due to the landlord's delay in finishing the balconies; and
- b) Compensation for the cost of extra utilities due to inability to open doors/windows to alleviate the heat; and
- c) An order to recover the filing fee pursuant to Section 72.

### **Issue(s) to be Decided:**

Has the tenant proved on a balance of probabilities that they have suffered damages and loss due to act or neglect of the landlord? Have they suffered a loss of value of the tenancy? If so, to how much compensation have they proved entitlement? Are they entitled to recover the filing fee?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. The parties agreed that there was a response to the landlord's advertisement in May, 2017 and the tenants paid \$1362.50 for a security deposit and \$1262.50 for a pet deposit and were told the unit was in the process of renovation. It is an older building. In June 2017, the tenants were invited to view the unit and were told no money was owed. They arrived, the manager gave them a fob, a tour of the garbage facility and told them they must sign the lease and pay one month's rent before viewing the unit. They paid \$2525 for rent for July 2017. When they went to view the unit, they were shocked as the balconies were not near completion. There were only sliding doors, no windows which meant they had no means of fresh air and

ventilation. The tenants had told the agent they could stay in their old place until September but we were unable to do that. The agent said the landlord would apply the rent paid for their new unit to August, 2017, thereby losing a month's rent but they were trying to help the situation.

The tenant moved in August and could only open the sliding doors about 4 inches which could not alleviate the heat or provide fresh air for them and their pets. After asking, the landlord supplied them with an air conditioner to September 30, 2017 at a cost of \$50 a week and covered their electric bill from August 1 to 31<sup>st</sup>. They still have no solid date for finishing of the balconies. The tenant says this significantly affects their peaceful enjoyment as he barbeques all year for enjoyment and to meet his diet needs. They do not want to end their tenancy but seek the following compensation:

- \$2160 for reimbursement of unexpected rent which they had to pay to remain in their old place for July 2017.
- \$455.04 compensation for each month for loss of the use of a balcony, calculated as follows: 288 sq. ft. x \$1.58 per sq. ft. (\$910.08 for August/September 2017. Their unit is 1600 sq. ft.
- \$45 for reimbursement of electric bill for September.

The landlord said there was a construction agreement allowance signed by the parties. It provides an incentive due to balcony construction of \$1000 at the end of the 12 month lease and free parking for 6 months. Usual cost for parking is \$75 a month. They said they followed all the policies regarding lease signing and payment and offered a later move-in to August to address the tenants' concerns. In addition, they rented an air conditioner at \$50 a week and covered the tenant's electric bill for August. They communicate regularly with the contractors and have been told the balconies will be completed this year. They sympathize with the tenants but have done all they can to comply with the Act. The landlord said their advertisements had a disclaimer regarding the balconies. The tenants deny there were such disclaimers in the advertisement in May to which they responded. No advertisements are included in evidence.

In evidence are copies of the lease, contractor updates and another decision made by an arbitrator. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

### **Analysis**

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

**Director's orders: compensation for damage or loss**

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

I find section 28 of the Act requires a landlord to protect the peaceful enjoyment of the tenant which includes exclusive possession of the rental unit. Section 65 (f) of the Act also authorizes an arbitrator to order a reduction in past or future rent in an amount that is equivalent to a reduction in the value of the tenancy agreement.

I find as fact the tenants rented a 1600 sq. ft. unit for \$2525 per month. This amounts to \$1.58 a sq. ft. I find the tenants evidence credible that the balcony is 288 sq. ft. so they are paying \$455.04 monthly for a space that they cannot use. I find this is a violation of their tenancy agreement for no limitation of balcony use is noted on the agreement which they had to sign in order to view the unit. I find insufficient evidence that any disclaimers were in their advertisements. I find this is also a violation of their peaceful enjoyment for they have not had possession of the whole unit and use of the balcony to pursue their living activities. Since they have lost the use of this space indefinitely, I order the landlord to compensate them \$455.04 per month from August 1, 2017 until the balconies are completed and they are able to open the doors to them.

I find the landlord attempted to mitigate the circumstances by renting an air conditioner for \$50 a week and to September 30, 2017 and paying the electric bill for August 2017. I find this helped the tenants somewhat with the heat distress suffered by them and their dogs as they could not open the doors sufficiently and there were no windows. I find the landlord entitled to a deduction from the tenants' award of \$400 for their costs of air conditioning which is not in the tenants' lease. I find the landlord not liable to pay the electric bill for September 2017 as insufficient evidence was presented to support this. No bill is in evidence and some or most of the bill may have been for personal use. I find the construction agreement signed is related to noise and dust and does not include losing the use of their balconies indefinitely.

In respect to the tenant's claim for reimbursement of payment of rent to his former landlord in the amount of \$2160, I find this rent was for July 2017 while he was living there. I find the landlord credited the tenant with August rent for the amount, \$2525 which he paid in July so I find the tenant did not have to pay double rent due to incomplete balconies in July 2017. In fact, the evidence is the landlord lost rent of \$2525 in accommodating the tenant. I dismiss the tenant's claim for reimbursement of \$2160 for rent he paid to his former landlord for a unit which they occupied during that time.

To date, I find the tenant has lost value and peaceful enjoyment of his unit has been significantly disturbed by the loss of the balconies. The loss of the balconies, I find, resulted in only 4 inches of opening to admit fresh air as there are no windows but only sliding doors. I find the tenant entitled to 4 months x \$455.04 or \$1820.16 in compensation less the amount paid for the rental of the air conditioner to mitigate their conditions.

**Conclusion:**

I find the tenant is entitled to a monetary order as calculated below and to recover filing fees paid for this application. The monetary order may be recovered through reduction of payment of rent or as direct payment from the landlord.

**Calculation of Monetary Award:**

Loss of use of balcony to November 30, 2017 (4x\$455.04)	1820.16
Filing fee	100.00
Less landlord rental of air conditioner	-400.00
<b>Total Monetary Order to Tenant</b>	<b>1520.16</b>

Furthermore, **I HEREBY ORDER the tenant is entitled to a further rent rebate of \$455.04 per month until the balconies are sufficiently completed so that they can open their doors and use them.**

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 15, 2017

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Residential Tenancy Branch