# Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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

**DECISION**

Dispute Codes **RR, PSF, OLC, FFT**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "*Act*") for:

- An order for a reduction of rent for repairs, services or facilities agreed upon but not provided pursuant to section 27;
- An order that the landlord provide services or facilities required by the tenancy agreement pursuant to section 27;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both tenants attended the hearing and the landlord was represented by property manager JE and counsel, VR. Counsel acknowledged service of the tenants' Notice of Dispute Resolution Proceedings package and evidence; the tenants acknowledged service of the landlord's evidence package. Neither party took issue with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issues

The tenants named their daughter as an applicant in their application for dispute resolution but acknowledged she is not a signatory to the tenancy agreement. I have removed their daughter's name as an applicant as she is not a tenant as defined under

the Act. Only the two tenants who signed the tenancy agreement appear on the cover page of this decision.

The tenants uploaded a form #RTB-42T [Tenant Request to Amend a Dispute Resolution Application] increasing their monetary claim to $16,800.00 to include the 3.5 months since the application was initially submitted up until the date of the amendment (Nov. 2, 2022 - Feb. 14, 2023). The landlord acknowledges receiving the amendment. The amendment is allowed as it can be reasonably be anticipated by the respondent landlord.

Issue(s) to be Decided

Should the tenants be compensated for services and facilities agreed upon but not provided?
Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?
Can the tenants recover their filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

I note that both parties filed an extraordinary amount of evidence. During his testimony, the tenant referred my attention to various pieces of his evidence by item number, however there was no such organization of documents by item name in the evidence provided to me. On several occasions, I asked the tenant to provide me with the name of the particular document he was referring to in testimony; however the tenant could not do so because the tenant named my copy of documents with numeric dates at the front of them and did not do that to his own, making it difficult for the tenant to adequately present his evidence. Although the tenant made a "compendium of evidence" for some additional items sought in his amendment, no such organization of evidence for the original claim was provided. In accordance with rule 3.7, I exercised my discretion to not consider much of the evidence referred to by the tenant in his testimony as I found it to be not readily identifiable, organized, clear and legible.

The tenants broke down their claim into 5 parts, as noted on their monetary order worksheet.

| | | | | |
|---|---|---|---|---|
| 1 | Loss of quiet enjoyment | Sep 2021 to Feb 14, 2023 | $800.00 x 18.5 months | $14,800.00 |
| 2 | No swimming pool access in 2022 | | $1,000.00 for 1 year | $1,000.00 |
| 3 | Loss of dependable elevator | June 16, 2022 to August 11, 2022 | $100.00 x 2 months | $200.00 |
| 4 | Loss of mail service | April to December 2022 | $100.00 x 8.5 months | $850.00 |
| 5 | Filing fee | | | $100.00 |

The tenant testified that their building has been under renovations for the past 2 years. In mid January 2022, they had to move out for a sprinkler installation and a window replacement. Construction continued throughout the year and during this time, there was a lack of information being provided to them such as the duration of the renovations and the health and safety risks to the tenants.

The tenant testified that one day Canada Post put up a notice advising the building's tenants that their mail had to be picked up at a post office due to the building having asbestos removal construction going on. The tenant testified that this was the first time they had been made aware of asbestos being an issue in their building and that the landlord never notified them of the danger to their health.

Other issues affecting the tenants' quiet enjoyment includes the construction workers leaving entrance open, access to the tenants' unit open and general safety concerns such as live electrical wires being exposed to water. The tenants also complained of a debris chute installed directly outside their window which caused intermittent loud noise when debris passed through it. The view, for which they chose this unit, was impeded and they could not use their outdoor deck area. During the demolition, sledgehammers were used and the sound of the sledgehammers transmitted throughout the building and was disruptive. The landlord never told the tenants when the noise would be made or how long it would continue. Other issues include not being able to access the ground floor during thanksgiving and a loss of the library and lobby. Most irritating to the tenants was the constant noise of the construction and the tenants provided video proof of the construction noise during an average weekday into evidence.

On August 31, 2021, the landlord compensated the tenants with $2,500.00 "*in recognition of any inconvenience which [the tenants] may have endured from April 1, 2021 to August 31, 2021".* The tenants seek an additional 18.5 months compensation

for the ongoing loss of quiet enjoyment at a rate of $800.00 per month which they argue would be more appropriate.

In 2021, the city shut down the pool due to being in contravention of sections 5 and 6 of the Pool Regulations B.C. Reg 296/2010. The landlord compensated the tenants for loss of the pool's use in 2021 with $1,000.00. In 2022, the pool was shut down a second time for the same reasons and the landlord has refused to provide compensation.

The tenants testified that the elevator went out and after it was repaired, it continued to be unreliable, trapping people inside it. They stopped using the elevator until it was fully operational, and they seek 10% of their rent back from June 16 to August 11, 2022, a total of $200.00.

Due to the construction, mail continued to be interrupted from April to December, 2022. The tenants had to make arrangements to pick up their mail and the closest mail centre was 30 minutes away, leading to inconvenience for them. The tenants feel that a 5% reduction of their rent for this period would adequately compensate them, $850.00.

The landlord's counsel gave the following submissions. Throughout the construction, the landlord acted reasonably. Some of the issues identified by the tenants was unavoidable and the landlord compensated the tenants and accommodated their needs. In March of 2021, the landlord met with the all the tenants of the building and provided estimated timelines after getting permits to do the work. The landlord communicated forecasts to future impacts to their quiet enjoyment in August of 2021 and set up a dedicated phone line to address the tenants' concerns.

Although they could have sought to end the tenancy with the tenants with a 4 Month Notice to End Tenancy for Demolition or Conversion to Another Use, the landlord chose to keep tenants in their units and provide compensation during the renovations. During the sprinkler installation, the landlord paid for a fully furnished hotel room and even extended the days to allow more time for the tenants to move back in and to rectify a mold issue identified by the tenants. The landlord also hired movers to assist with moving, paid for storage of the tenants' belongings, and moved and stored the tenants' piano using the tenants' choice of movers. Their first offer of compensating the tenants for the inconvenience was rejected, so the landlord compensated them with $2,500.00 which is reasonable. Counsel submits that the highest disruption was completed by September 2021.

Landlord's counsel submits that much of the work to the building was done during the Covid pandemic and the construction completion timelines were disrupted. There were unexpected supply chain delays, staff and tenants were sick, and due to Covid protocols, the number of workers in a closed space was limited. These were inevitable delays that were beyond the control of the landlord and could not be predicted. However, throughout the process the landlord remained in communication with the tenants and responded to their concerns.

Counsel submits that the landlord tried to open the swimming pool in April or May of 2022, but the health authority requested additional never before sought permits in June. The landlord tried to find an engineer to sign off to open the pool however they couldn't find one for such a small project. By the time it was ready for use, the pool season was over.

Regarding the elevator, the tenants were compensated for the loss of the elevator with a 10% rebate on rent until the work was completed. Afterwards, there were some "glitches" outside the landlord's control and the landlord recognized them. Instead of rebating the tenants with the 10% rebate until June 10th, they extended the rebate for the entire month of June. The tenants were offered to take over a ground floor unit temporarily while the elevator was being fixed, but this offer was declined.

Regarding the loss of mail service, the landlord submits that they adequately compensated the tenants for the time when Canada Post stopped delivering the mail to their individual unit during the elevator modernization process. The tenants were presented with 3 options for mail delivery during this time: have the property manager drop off their mail regularly; the landlord would pick up the mail on the tenants' behalf; or be reimbursed for mail forwarding and a PO box service. The tenants opted for the last option and the landlord paid for the tenants' mail box rental.

Analysis

Section 7 of the Act states: If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim and that the standard of proof is on a balance of probabilities.

Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states at Part C:

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. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.
    - [the 4-point test]

I note once again that the tenants provided an extraordinary amount of evidence for this hearing which I found to be not readily identifiable, organized, clear or legible. While the tenant tried to direct my attention to various documents during his testimony, those documents could not be easily identified by name or page number. I have exercised my discretion to not consider some of the evidence that was referred to during testimony pursuant to Rule 3.7 of the Residential Tenancy Branch Rules of Procedure.

The tenants seek compensation for the landlord's breach of section 28 of the *Act* for failing to provide quiet enjoyment of the property. This entitlement is discussed in Residential Tenancy Branch Policy Guideline PG-6 [Entitlement to Quiet Enjoyment].

> **B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT**
> 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.
>
> …
>
> **Compensation for Damage or Loss**
> 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.

The tenants seek compensation for a breach of quiet enjoyment for the 18 month period from Sep 2021 to Feb 14, 2023. I reviewed the video evidence supplied by the tenants and I accept that the tenants were disturbed by the sound of renovations taking place in the building. I also accept that they were inconvenienced by the construction going on, in not being able to access the lobby and having to navigate to their unit amidst construction debris.

Although the landlord has provided evidence to show they made reasonable efforts to minimize the disruption to the tenants in making the repairs or completing renovations, I find that the tenants' quiet enjoyment was nonetheless compromised.

The tenants seek a 40% reduction in their rent for the 18 month period. In evidence and during testimony, the tenants did not elaborate on how they arrived at the figure of 40%, simply justifying it as reasonable in their opinion. My attention was not drawn to any previous similar decisions where 40% was granted. As such, I find that the tenants have not been able to prove the value of the loss, point 3 of the 4-point test. The 40% estimate for their loss is arbitrary at best. Given this, and keeping Policy Guideline 6 in mind, I determine that their loss of quiet enjoyment should be compensated at 25% or $500.00 per month for the 18 month period. The tenants are awarded **$9,000.00**.

Section 27(2)(b) of the Act states that a landlord may terminate or restrict a service or facility <u>if the landlord reduces the rent</u> 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. The landlord has established that the reduction in rent would be $1,000.00 for not providing pool access for 2019,. The reason for not providing the swimming pool for the year 2022 may have been beyond the landlord's control however that does not eliminate the landlord's obligation to compensate the tenants for the loss of its use. For the loss of the pool, I find the landlord must compensate the tenants with the same established amount of **$1,000.00.**

The tenants seek $100.00 per month for the 2 months the elevator was intermittently not working. Turning again to section 27, subsection (1) states that a landlord must not

terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or providing the service or facility is a material term of the tenancy agreement. I find that dependable, reliable elevator service is a material term of the tenancy agreement and that the tenants should not be required to take chances on whether it would be fully operational. The second option to temporarily move to the ground floor unit is an insufficient compromise. The 10% rent rebate of $100.00 per month is reasonable compensation for the 2 months of unreliable elevator service. The tenants are awarded **$200.00**.

The tenants seek $100.00 per month for the 8.5 months they were inconvenienced by having to go to the post office to retrieve their mail. In the landlord's submissions, the landlord notes that the tenants were offered 3 options: to get a PO box service paid for by the landlord; have the mail delivered to the landlord's office and have the property manager drop it off for them; or have the landlord pick up mail for the tenants with their permission. In choosing the first option, the tenants have made a choice as to how they wanted to retrieve their mail. Before me, I have insufficient evidence to indicate to me that they sought to take a different option once the first one became too inconvenient for them. I find that the tenants failed to mitigate their claim, Point 4 of the 4-point test and I dismiss this portion of their claim.

As the majority of the tenants' claim was successful, the tenants may recover the filing fee of **$100.00.**

Conclusion

I award the tenants a monetary order in the amount of **$10,300.00.**

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: March 22, 2023

Residential Tenancy Branch