Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Delaney Properties Ltd.
and [tenant name suppressed to protect privacy

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of $1,050.00 for damage or compensation under the Act, regulation or tenancy agreement, and to recover the cost of their filing fee.

The Tenant and an agent for the Landlord, D.D. (the "Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any orders sent to the appropriate Party.

In the Application, the Landlord claimed $1,050.00 in compensation from the Tenant for damage to the rental unit. However, the Agent submitted a Monetary Order Worksheet

in which she claimed $10,700.00 in compensation. I find that the Tenant had notice of this amendment in the documentation that he was served by the Landlord. Accordingly, pursuant to section 64(3)(c), I amend the Landlord's Application to reflect the increased costs that the Agent said she discovered after having applied for dispute resolution. I have addressed this matter further, later in the Decision

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on April 1, 2015, running to March 31, 2018, and then to be a periodic tenancy. The Parties agreed that the Tenants paid the Landlord a monthly rent of $2,200.00, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of $1,050.00, and no pet damage deposit. The Parties agreed that the rental unit was a four bedroom, three bathroom, single-family house that had been completely renovated in 2011.

The Parties agreed that the tenancy ended, because in February 2019, the Landlord served the Tenant with a Two Month Notice to End the Tenancy for Landlord's Use with an effective vacancy date of April 30, 2019. However, the Parties agreed that the Tenant moved out on April 11, 2019, and that the Landlord gave the Tenant the cash equivalent to 19 days rent, in lieu of the Tenant's right to one month free rent, pursuant to section 51 of the Act. The Parties agreed that the Landlord retained the Tenant's security deposit. The Tenant's undisputed evidence was that he provided the Landlord with his forwarding address via email on April 13, 2019. The Landlord applied for dispute resolution at the RTB on April 29, 2019.

The Parties agreed that they conducted an inspection of the condition of the rental unit at the start of the tenancy, but not at the end of the tenancy. The Agent said this was because the Tenant moved out of the rental unit early, so the Agent said she did not have an opportunity to inspect the rental unit with the Tenant at the end of the tenancy. There is no evidence before me that anyone contacted the Tenant at his forwarding address to schedule an outgoing condition inspection, pursuant to section 35 of the Act. No one submitted a copy of the condition inspection report ("CIR").

In the hearing, the Agent said that the Tenant did not repair damage he did to the rental

Unit during the tenancy. The Agent also said that the Tenant did not pay for pool supplies he ordered from the pool company in the last year of the tenancy.

The Landlord submitted a Monetary Order Worksheet ("MOW"), as follows:

	Receipt/Estimate From	For	Amount
1	[Pool supply company]	Pool supplies	$217.50
2	[Pool supply company]	Pool supplies	$161.18
3	[Pool supply company]	Pool supplies	$11.65
4	[Pool supply company]	Pool supplies	$161.18
5	[Building supplier]	Locking handle	$38.08
6	[Hardware store]	Chandelier	$110.88
7	[Renovation company]	Quote	$9,345.50
8	[Roofing company]	Quote	$11,191.00
		Total monetary order claim	$21,081.97 $10,700.00 amount claimed

The Agent submitted receipts or estimates for all of the items listed in the MOW.

The Agent's total on the MOW was less than half of the amount claimed when the items listed are added up; however, she did not explain this on the MOW or in the hearing. Given this uncertainty in the claim, I should dismiss the entire Application with leave to reapply; however, as the Parties participated in a full hearing, I will analyze the evidence before me, keeping this uncertainty in mind.

Pool Supplies

In terms of the first four items listed on the MOW, the Agent said the that rental unit includes an outdoor pool that the Tenant is allowed to use. The Agent said that the Tenant has ordered supplies from the pool supply company on the Landlord's account in the past, but the Tenant always paid for the supplies. However, the Agent said that in

2018, the Tenant ordered the supplies listed in items 1 through 4, but did not pay for them.

In the hearing, the Tenant pointed to item five in the Summary he submitted to the RTB and served on the Landlord. Item five states:

> 5. Pool began leaking in 2017. In September 2017 tenant informed pool company of leak. When Pool Company tried to open pool in 2018 they ran a couple of tests to determine where the leak was and attempted to repair it. This occurred over several months. They were unsuccessful and the leaking got worse to the point that the pool could not be maintained. There were several attempts to open the pool that required additional materials and supplies. In August 2018 in one final attempt, in addition to the leak, it was determined that the chlorinator cell that makes the chlorine for the pool from the salt was also not working and needed replacement. The pool company told tenant they would contact the Landlord regarding replacement. Overall, the tenant enjoyed about 2 weeks of total pool time in 2018.

In the hearing, the Agent said:

> The owner talked to the pool company, but they never contacted us last year at all. If it was leaking, the water bill would be high. The pool company never contacted us to tell us the pool wasn't working. You think you'd contact the property manager. The owners didn't know anything. The house was for sale last year, but no one said anything about the pool not working.

The Tenant said that his contact was always with the pool company, and they tried diligently to fix it in 2018. The Tenant said:

> These were bags of salt and break out – why shock the pool in July if the pool is okay?
>
> The other point is when they came to close the pool in the fall, they removed the chlorinator, the main piece for the pool. There is a component to the pool system a chlorinator cell. There was no chlorine in the pool, you still couldn't maintain the chlorine in the pool. We only discovered this in August. They were going to call the Landlord to determine what to do about it.

The Agent said: "The pool was opened, but nothing was wrong with it; it was opened

this year and nothing's wrong with it. Last year when house was for sale, some realtors said the pool was not being maintained and it was filthy dirty. This goes with it not being maintained by the Tenant."

The Tenant said that the Agent's description of the dirty pool is correct, but he said it was dirty because it was leaking and they were trying to fix it. The Tenant said: "It was clean for a while, but you can't maintain the balance of the water if there's a leak. This is the fourth year I've had the pool and I spent more time cleaning it that year than the other three years combined."

The Tenant went on to say:

> There's no evidence here that the pool was not repaired – that the Landlord didn't get a new chlorinator. It's a $1200 item and my assumption is that they put in a chlorinator; of course they have a chlorinator, if they opened it that year. Last year the pool company identified where the leak was in the piping underground from the pool pump house to the pool itself. They tried to repair it without digging by putting epoxy into where they often had leaks.

Locking Handle

The Agent said that lock on one of the door handles in the rental unit was broken when the tenancy ended and that it cost $38.08 for a new one. The Tenant said that the lock was broken when they moved in and that he repaired it a few months later. The Tenant said that within a couple of months it broke again. He said he never bothered to repair it again, as in his written submission he said that he "…assumed it was a flaw in the lock design and just used a wooden bar since then (2015)."

The Parties did not provide a CIR, so there is no evidence before me from the Landlord regarding the condition of this item at the start of the tenancy.

Chandelier

The Agent said that the chandelier has lights in the middle, which are surrounded by glass pieces, which were broken at the end of the tenancy.

In his written submission, the Tenant said the following about the broken chandelier:

> Regarding the light fixture, I came home one day and found that half of the glass

> had detached and fallen away from the ring holding it. I thought that was very odd and upon inspection found that the glass was actually cheap plastic. It was torn and had fallen off the ring. There was no way to repair it, so I removed it. There are still remnants of the plastic on the ring.

In the hearing, the Tenant said:

> This was a poor quality fixture. I thought it was glass, usually there's some kind of locking device on fixtures, but this was held up by heated plastic. Even though [the rental unit was] redone in 2011, it was quite obvious that the contractor exceeded their budget, so most of the locks and fixtures are cheap quality. It was heat sealed to a metal ring, so you can't repair it.

The Agent said it was fine all the other years until all of a sudden it was broken. She said it was right above the staircase and was not something you could run into, unless you were up high on a ladder. The Tenant agreed that it was hanging up high and that "it was impossible for someone to run into it, so it just detached." The Landlord said, "If you're moving something up and down the stairs and you hit the chandelier it would break." The Tenant said, "It was hanging pretty high, so you would have to be on a pretty big ladder up the stairs, unless you were carrying a ladder up the stairs, but these are 'what ifs?' and 'maybes'."

Deck and Ceiling

The Agent said in the hearing that there was damage to the backyard deck, because the Tenant drilled holes in the deck when he installed a gazebo on the deck. The Parties disagreed on the cause, but agreed that this damage affected the ceiling of the garage below the deck, as well.

The Agent submitted quotes for repairing the deck and the ceiling. She said she obtained quotes to have the holes fixed that the Tenant put in the deck to install the gazebo. The Agent also said that there are "high pressure winds" in this area, so the gazebo had to be installed pretty well.

The Tenant referred to his documentary evidence, which included an email dated January 22, 2016, that he had sent to the property management company. The paragraph in the email the Tenant referred to states:

> There is a new problem, however, as a section of the ceiling in the garage, about

> 3 feet by 6 feet has fallen down due to water in the ceiling. The recent snow and then melt plus rain has somehow ended up with water running into the ceiling. Need a handyman for the repair.

The Tenant also referred to paragraph two of his summary document, which states:

> A handyman looked at the leak when it was actually leaking and concluded it was probably from the expansion gap that was directly above where the water was leaking. He told me he would return in the spring when it was dry, clean out the expansion gap and apply sealant. He never came and when I enquired about the repair, I was told that a concrete person would come. That was in the spring of 2016 and no one ever came.
>
> I tested the handyman's assertion the next winter by piling wet snow on the expansion gap. As soon as it started to melt, the water just ran down into the garage. For the next 3 winters, I managed water in the garage by shoveling snow away from the expansion gap.

The Agent said that they didn't believe it was the expansion gap. She said: "It never leaked until he installed that gazebo. I've been managing the property since 2011. It never leaked before, until the gazebo was installed. Everything in that house was brand new in 2011, including the patio. I had tenants in there since then and nothing there was a problem.

The Tenant said:

> There is no evidence presented that identifies that the gazebo is responsible for any leakage. And whether something is 5 minutes or 5 years old, it won't preclude that something will start leaking. The gazebo is a coincidence and has nothing to do with the leak at all. The only people who have seen this are myself and the repairman. I reiterate that the Landlord has done nothing about this, yet has been aware of this for 3½ years.

The Agent said "You put holes in a concrete pad." To which the Tenant said:

> The holes in the concrete pad were snug – 1½ inch screws. They are right beside the railing. I have 30 year experience building and renovating and doing construction for rentals and residences, so I am speaking with some level of confidence. What the Landlord should do is have it repaired. It's not going to be

caused by a small hole from a gazebo. But since you didn't do anything for three years, you're going to have some water damage. The quotes are saying let's just replace it, yet they've had the option since 2016 to repair it. The Agent said she did not have any comment on the Tenant's statement about the 3½ years of inaction on this front. She said: "The owners want him to pay for what he's cost them.

The Agent said that this work has not been completed and that the claim in this regard is based on quotes or estimates.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

The party who applies for compensation against another party has the burden of proving their claim. Policy Guideline 16 sets out a four part test that an applicant must prove in establishing a monetary claim. In your case, the Landlord must prove:

1. That the Tenant violated the Act, regulation, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss, as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

["Test"]

This is the framework in which I considered the evidence before me.

The Agent's evidence is that everything in the rental unit was new in 2011 or eight years prior to the end of the tenancy.

Pool Supplies

Policy Guideline #40 ("PG #40") is a general guide for determining the useful life of building elements for establishing damage. The useful life is the expected lifetime, or the acceptable period of use of an item under normal circumstances. If an arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost of the replacement.

Another consideration is whether the claim is for actual damage or normal wear and tear to the unit. Section 32 of the Act requires tenants to make repairs for damage caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets. Section 37 requires tenants to leave the rental unit undamaged. However, sections 32 and 37 also provide that reasonable wear and tear is not damage and a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

In PG #40, the useful life of a swimming pool is 15 years. The evidence before me is that the pool was new in 2011, so it was approximately eight years old at the end of the tenancy and had seven years or 47% of its useful life left. The Agent said that the pool was in good condition at the end of the tenancy, but the Tenant said in the hearing that the pool was only useable for two weeks of the summer of 2018. The Agent said that the Tenant paid for the pool supplies in every year, except 2018, which is consistent with the Tenant's version of events that something was wrong with the pool and the supplies that were used attempting to repair it were the responsibility of the Landlord.

The Agent's comments about the pool not being properly maintained that year are consistent with the Tenant's version of events. When I consider all the evidence before me in this matter, overall, I find on a balance of probabilities that the Tenant's version of events is more likely than not true. As a result, I dismiss the Landlord's claims for recovery of pool supplies without leave to reapply.

Lock Handle

The Parties provided consistent evidence that the lock on the door handle was broken more than once during the tenancy. The Tenant's undisputed evidence was that it was not working when he moved in. Given his evidence of experience in the building and renovation business, I find it reasonable that the Tenant decided to fix it himself. When it broke again, he said he decided that it was not worth fixing again, as he had another mechanism for keeping the door locked using a wood bar. However, I find that it would have been reasonable for the Tenant to have reported the broken lock to the property manager. The Agent could have arranged for a professional locksmith to investigate the problem, since it happened again after the Tenant's repair attempt.

The Agent said that everything was new in 2011; however, this tenancy began in 2015 and I do not have a CIR or the Agent's testimony before me to contradict the Tenant's evidence that the lock was broken from the beginning of this tenancy.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. The Tenant provided more evidence on this point than did the Agent, including a reasonable response to the lock failing repeatedly. The Agent did not submit any evidence that the lock failure was the result of the Tenant's action or neglect; therefore, I find that the Agent did not satisfy the first two steps of the Test.

PG #40 states that lock replacement for buildings have a useful life of 20 years. However, I have not followed this policy guideline, due to the repeated nature of the failure of this locking mechanism. Given the Tenant`s undisputed evidence about the lock, I find that the breakdown was a matter of ordinary wear and tear, for which a tenant is not responsible.

As a result, I dismiss the Landlord's claim on this matter without leave to reapply.

Chandelier

Neither Party offered persuasive evidence as to how the chandelier was suddenly broken. PG #40 states that the useful life of a light fixture is 15 years. At the end of the tenancy, the chandelier was eight years old and should have had seven years or 47% of its useful life left.

Again, the Tenant did not report this issue to the property manager, nor did he attempt to repair or replace the light fixture. I am not inclined to accept that a light fixture simply falls apart when no one is at home using it or without any reasonable explanation for why this happened.
I find that this is not a matter of ordinary wear and tear, and I find pursuant to section 32 of the Act, that the Tenant was responsible for replacing the light fixture, if it could not be repaired. According to PG #40, the Landlord could have expected seven more years of useful life of the light fixture, so I award the Landlord 47% of the $110.88 cost of the replacement or **$52.11**.

Deck and Ceiling

The Agent assigned the cause of the leaking deck to the Tenant's installation of a gazebo. However, the Tenant's undisputed evidence is that the handyman sent to investigate the problem by the property manager theorized that the problem was the result of an expansion gap. The Tenant gave a reasonable explanation for how he

tested this theory and determined it to be true. There was no follow up from the handyman, the property manager or the Landlord regarding this matter, about which the Tenant advised these Parties.

I find there is no credible evidence before me that the Tenant's actions or neglect were responsible for this damage; rather, I find that the Landlord failed to mitigate the damage by failing to follow up with the handyman's investigation of the matter raised by the Tenant. I find that the Agent did not provide sufficient evidence to establish any steps in the Test.

Further, the Agent provided quotes on how much the repairs are estimated to cost; the Landlord has not had the repairs done.

Based on the evidence before me, overall on this matter, I dismiss this claim without leave to reapply.

Security Deposit

Section 38 of the Act states:

> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> > (a) the date the tenancy ends, and
> >
> > (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> > (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> >
> > (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Tenant provided his forwarding address to the Landlord on April 13, 2019, and the tenancy ended on April 11, 2019. The Landlord applied for dispute resolution on April 29, 2019. Section 38(1) of the Act applies to this situation, as follows: The Landlord was required to return the $1,050.00 security deposit within fifteen days after April 13, 2019, namely by April 28, 2019, or to apply for dispute resolution, claiming against the security

deposit. The Landlord provided no evidence that they returned any amount. Further, the evidence before me is that the Landlord applied for dispute resolution one day late. Therefore, I find the Landlord failed to comply with their obligations under Section 38(1).

Since the Landlord has failed to comply with the requirements of Section 38(1), and pursuant to section 38(6)(b) of the Act, I find the Landlord must pay the Tenant double the amount of the security deposit or **$2,100.00**. There is no interest payable on the security deposit.

Set Off

I have dismissed the Landlord's claim for compensation for the pool supplies, the lock repair and the deck and roofing repairs. I found that the Landlord did not provide sufficient evidence to satisfy the steps of the Test set out in PG #16.

I awarded the Landlord **$52.11** or recovery of 47% of the cost of replacing the chandelier, as a reflection of the useful life the Landlord could have expected to gain from this item, based on PG #40. The Landlord was predominately unsuccessful in their Application, therefore, I decline to award them recovery of the $100.00 filing fee.

The Landlord had retained the Tenant's $1,050.00 security deposit and did not apply for dispute resolution within 15 days of receiving the forwarding address, so the security deposit is doubled to $2,100.00. I authorize the Landlord to deduct the $52.11 award from the security deposit, before returning the balance to the Tenant in the amount of $2,047.89.

Conclusion

The Landlord failed to provide sufficient evidence to establish their claims on a balance of probabilities, except for a $52.11 award for 47% of the cost of a light fixture, based on the useful life remaining in the chandelier damaged during the tenancy.

I authorize the Landlord to deduct this award from the Tenant's doubled security deposit of $2,100.00, before returning the balance of **$2,047.89** to the Tenant. The Tenant is awarded a monetary order under section 67 of the Act from the Landlord in the amount of **$2,047.89**.

This order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: August 08, 2019

Residential Tenancy Branch