Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1070037 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, RP, PSF, OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for the following claims:

1. an Order to reduce the rent for repairs, services or facilities agreed upon but not provided;
2. an Order for repairs to the unit or property, having contacted the Landlord in writing to make repairs, but they have not been completed;
3. an Order to provide services or facilities required by the tenancy agreement or law;
4. an Order for the Landlord to Comply with the Act or tenancy agreement; and
5. recovery of his $100.00 Application filing fee.

The Tenant, his advocate, L.H. ("Advocate"), and an agent for the Landlord, S.S. ("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 it.

During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to 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 ("Rules"); 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 Tenant provided the Parties' email addresses in the Application and they confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Early in the hearing, I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated different matters of dispute in his Application, which I found were not all sufficiently related to all be decided in this one-hour proceeding. However, I noted that there may be some crossover in claims, so reducing the number of claims made may not affect the Application.

As such, I asked the Tenant to tell me which of his claims is his highest priority for us to review in this one-hour hearing. The Tenant said he wanted to review his claim to reduce the rent for repairs, services or facilities agreed on by the Parties, but not provided, and his claim for the repairs.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Should the Landlord be ordered to make repairs, and if so, which ones?
- Is the Tenant entitled to Recovery of his $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on February 1, 2002, with a current monthly rent of $1,253.83, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of $428.50, and no pet damage deposit. The Agent confirmed that the Landlord still holds the security deposit in full.

In the Tenant's written submissions, the Advocate explained that the Tenant seeks:

1. Tenant seeks a decision that the landlord be ordered to rebuild the patio that they illegally removed from the Tenant's unit on June 6th and 7th, 2022.

2. The Tenant seeks an order that the tenant's rent be reduced by 50% from June 7th until November 8th, for a total amount of $3,134.60.

3. The Tenant further seeks to be granted rent reduction of 50% (626.92 per month) going forward until the Landlord rebuilds a patio of the same size and measurements.

#1 REDUCE RENT FOR REPAIRS, SERVICES, OR FACILITIES AGREED ON BUT NOT PROVIDED → $626.92/Month

Based on the evidence before me, I find that the essence of the Tenant's claims goes back to the Spring of this year, when the Landlord removed a large patio that the Tenant asserts is part of his unit. The Advocate asked the Tenant some questions to start::

The Advocate said:

> The Landlord has agreed that [the patio] is for [the Tenant's] exclusive use. [Tenant], when did the current Landlord take over?
>
> > My first rent was paid to them in November 2016.
>
> Did the Landlord view the building when it was for sale?
>
> > When it was up for sale, quite a few people were interested in buying the building. They used my apartment as a visual point to sell the building; I assume they were part of those groups.
>
> Between when they took over to this email of May 20, 2022, regarding the patio, did they mention anything about the patio - that it was your responsibility?
>
> > They sent me an email saying it was not an authorized patio that I had built, which I had not. I had seven days to remove it and discard it, and they charged me for that for the damage that the patio had caused to the other tenant.
>
> Did they obtain your consent to the removal of the patio?
>
> > No, not at all. On June 6th or 7th, they removed it.

Was the patio an important reason for your renting this unit?

> It was the sole reason I moved in. The previous tenant I knew was there and I had seen the patio. It was about my mental health. I'm a recovering alcoholic, and this helps with that. I love gardening, My patio has always had a garden. I do a summer garden and a winter garden. We use the patio, and quite often have dinners there - I have friends over quite often. It was good when I had a dog. It is an integral part of my life and I miss it very much. Now it is just a space.

The Landlord's Agent then asked the Tenant some questions:

Do you agree with the lease agreement you signed? The addendum to the lease agreement, where the Tenant agreed to do the necessary repairs?

> Although the addendum was signed, I don't believe it's legal. Second, the addendum was that I would take the apartment as is – not painted, not washed not cleaned; they gave me to a reduced amount if I painted, washed, cleaned, etc.

Does the penthouse include the rooftop patio?

> Yes, it has always had a patio. It has a patio door; it was there when I moved in.

I asked the Tenant about the amount he has claimed in compensation, and the Advocate said:

> See page four and five of the Tenant's evidence of rough drawings of the apartment and the size of the patio and the living space. The patio itself is 26% of the unit's overall space, so obviously one estimate is merely to do a reduction of how much less of a unit he has - a 26% reduction in rent. However, as the Tenant just testified, a patio and rooftop garden is something unique and a drawing part of the unit. Gardening – he spends a lot of time in the sun for his mental health and his sobriety. All of that pushes it from 26% to 50% of the unit's overall value.

As far as the specific amount claimed, the Advocate said that the amount claimed of $626.92 per month should go forward until the repairs are completed. The Advocate said that the Tenant's rent should be reduced by $3,134.60, as a rent deduction for the

five months the patio was gone - up to the hearing, and for an order to reduce the rent by 50% or $626.92 per month until the repairs are done to the patio.

The Agent said: “The leak caused by the patio created mental loss for other tenants. Can I ask how they were affected?” The Agent also asked if the amount the Tenant is requesting can be reduced by the cost of repairing the leak to the patio and other public space.

I explained to the Agent that no, I cannot consider such a request, because the Landlord did not apply for such compensation, nor did they give the Tenant notice of this claim. I said that the Landlord would have to apply separately for that.

The Advocate also asked if I would consider that the amount of rent paid for this penthouse suite is under the market value. I said, no, that is not something that is relevant to the issues before me.

#2 REPAIRS TO THE UNIT OR PROPERTY

In an email or text exchange between the Parties dated June 6, 2022, an Agent for the Landlord said:

> According to the description in the lease agreement of you and the previous landlord, you should bear all the maintenance costs of this water leakage. But this time we can bear the repair cost for you. In addition, we recommend that you not install the patio back again for the safety of other people in the building and for any possible roof leaks in the future. If you want to keep the patio, we can put it back in for you. Then we have to sign a guarantee with you to clarify responsibility that you will bear all the repair costs if there are any leaks due to your patio in the future.

In a later message, the Landlord makes a similar statement, but emphasizes the need for the Tenant to take responsibility for any future damage resulting from the patio.

In a handwritten submission by the Tenant, he notes that he has lived there for nearly 11 years, and that a friend of his had been living there prior to the Tenant moving in. The Tenant wrote:

> I also know that during those years the rent increases have been minimal – and that the rent is well below market value for a one bedroom and den penthouse

> suite with a roof garden. I understand that between tenants, the landlord can increase the rent as he sees fit and that if the Landlord were to do all the necessary wear and tear repairs needed, he would increase the rent significantly to bring it to at least what is considered fair market value.
>
> Because I [intend] to live in this suite many years, and because I don't want to pay much higher rent than what the previous tenant was paying – I proposed to the resident managers that I do all the necessary repairs myself, at my own cost and discretion, including normal wear and tear work in exchange for as small of an increase as possible. The resident managers have taken my offer to the property manager. Although he [intended] to undertake the repairs himself and bring the rent up to fair market value, he has agreed that I will accept the apartment in it's current condition and that I will do all the necessary work myself. He agrees too, that I will carry out any improvements that I choose at my own expense and the rent will only increase of $10.00 a month, bringing it to $855.00/ month including heat and hot water.

Signed and dated by the Tenant, January 24, 2002, and a manager at the time, G.H., on February 1, 2022.

The Advocate described the requested repairs, as follows:

> We want them to rebuild the patio to the same size, quality, and look as it was prior to them tearing it down. There is a refence picture on pages 6 and 7 of Tenant's evidence

I asked the Agent why the patio was torn down, and she said:

> In the summer of 2022, a leak occurred in Tenant's rooftop garden, and so we notified the Tenant. Pursuant to his lease agreement, he agreed to do repairs to penthouse for a reduced rent.

The Agent then read from the Tenant's handwritten statement, quoted above. The Agent said: "We repaired the leak at our own expense. We notified the Tenant that he would be responsible for repairing it, pursuant to the tenancy agreement."

The Advocate said:

> We don't dispute the fact that there was a leak, but the rooftop garden has been

there for more than 20 years. Just because a leak occurred, it's not an inherent problem with the rooftop garden, because it was not a consistent problem over the tenancy. And so, if we jump to the argument that is the core of the Landlord's defence here, go to page 18 of the Tenant's evidence

Section 32 of the Act states that a landlord must provide and maintain the residential property in a state of decoration and repair that (a) complies with the health, safety and housing standards required by law, and (b) having regard to the age, character, and location of the rental unit, that make it suitable for occupation by a tenant.

The Advocate also noted that section 32 (4) states that a tenant is not required to make repairs for reasonable wear and tear.

The Advocate cited paragraph 5 of the Act, which states:

This Act cannot be avoided

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

The Advocate continued:

As a result, this addendum that says the Tenant is responsible for all of the maintenance and repair is in violation of the Act, because the Landlord put their responsibility for reasonable wear and tear on to the Tenant, and regardless of whether the Tenant agreed to it or not - it is not binding. All landlords would put this into all tenancy agreements, if it were binding, because then they do not have to do repairs. You can't contract out of the Act.

Go to page 29 of the Tenant's evidence for an email from former landlord. This shows that there have been issues with the roof before, that the deck has been taken down, but it was built back, and that is simply what should happen again here.

The email on page 29 of the Tenant's evidence states:

Hi [Tenant],

> . . .
> Yes, I remembered the time when we were replacing the roof at [the residential property], the owners at that time did ask your permission to take out the deck so a new roof could be replaced and thereafter rebuilt a new deck with the same size and measurements. That was what happened during the time when we were looking after the building for the owners at the time. Take care and best regards,
>
> [S.W.]
> [S.] Properties BC Ltd.

The Agent said:

> The penthouse suite is supposed to be the roof garden patio. That was the Tenant's agreement made with the Tenant and the previous Landlord. It is the only unit with an exclusive, roof garden patio. That's why the former Landlord agreed to a very low rent, because the Tenant agreed that the Tenant will make all the repairs. The Tenant is still a family that used the patio and they caused the leak, and agreed to do all the repairs. They caused the leak and we repaired it. All fixtures and the roof, and in other units and walls and floors we need to be fixed. We tried to negotiate with the Tenant, but he is not cooperating, so we decided we needed to tear down the place.
>
> The tenant has been renting since 2002; it was made with the previous Landlord, so they are using it – rental amount significantly under the market. The Tenants pays very low rent and he is okay for the repairs.

I asked the Agent why the Landlord had not re-built the patio for the Tenant, and she said:

> Because in our understanding the Tenant agreed to the arrangement. If any – both sides agreed. If you say not agreed, anything in writing doesn't work. It isn't something we forced the Tenant to do. Both Parties agreed. I thought it was also legally binding.

The Advocate replied:

> It's tried and true saying that ignorance of the law does not release you from the consequences of the law, and just because they didn't know that they could not contract out of the Act does not free them from consequences of doing just that. We are not disputing that the Parties agreed to it at the time. But it is impossible

for the Tenant to do repairs such as this. And the patio has been there for a very long-time.

Regarding their so-called negotiations, see starting on page 33 of the Tenant's evidence where the Landlord says 'Hey [Tenant], It is confirmed that the leak is caused by your balcony. According to the RTB Leasing Agreement, there is on option including balcony. So we kindly ask you to dismantle it as soon as possible so that technicians can work on it. If you still need the balcony in the future, you'll be responsible for any future leaks under your balcony area.'

In response, to be clear, the Tenant did not construct the patio…. I called the RTB and they agreed… The new owners are still in conflict with the Act. The removal was unjustified. To call that negotiations - perhaps a term I would use is 'bullying'. They did not obtain the Tenant's consent to remove the patio.

Analysis

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

Before the Parties testified, I let them know how I analyze evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline #16, "Compensation for Damage or Loss" (PG #16") sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Tenant must prove:

1. That the Landlord violated the Act, regulations, 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 Tenant did what was reasonable to minimize the damage or loss.

("Test")

#1 REDUCE RENT FOR REPAIRS, SERVICES, OR FACILITIES AGREED ON BUT NOT PROVIDED → $626.92

I find from the communications noted above between the Parties that the Landlord recognized the patio as a part of this Tenant's tenancy. The Landlord has not arranged

to have the patio put back together, and as such, I find that they have withdrawn a service or facility that was provided to the Tenant as part of his rent. As noted above, the Landlord said:

> If you want to keep the patio, we can put it back in for you. Then we have to sign a guarantee with you to clarify responsibility that you will bear all the repair costs if there are any leaks due to your patio in the future.

I find that the Tenant's evidence indicates that he agreed with the arrangement that the rent would be kept lower than fair market value, if the Tenant agreed to be responsible for the repairs needed to the rental unit. However, that is not what has occurred, as the Landlord took over the repairs of a leak that was attributed to the Tenant's rooftop patio. The Landlord repaired the leak and took the opportunity to remove the fence walls and structures on the rooftop patio, which the Tenant said he misses greatly.

I find that the Parties attempted to contract out of the Act and/or regulations by requiring the Tenant to be responsible for the cost of repairs, including normal wear and tear. However, section 5 of the Act states that

> (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
>
> (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Section 32 of the Act requires that a landlord maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and having regard to the age, character, and location of the rental unit, which make it suitable for occupation by the tenant. Section 37 of the Act states that a tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find that the Parties' arrangement is not valid, because it fails to comply with these sections of the Act.

Section 27 of the Act sets out a landlord's obligations regarding the termination and restriction of services or facilities. It requires that a landlord must not terminate or restrict a service or facility, if it is essential to the tenant's use of the rental unit as living accommodation, or if providing the service or facility is a material term of the tenancy agreement.

Section 28 of the Act sets out a tenant's right to quiet enjoyment of the rental unit, and

states that tenants are entitled to “reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit, subject only the landlord’s right to enter the rental unit in accordance with section 29, and use of the common areas for reasonable and lawful purposes, free from significant interference.”

In addition to setting out the Test above, PG #16 states:

> **A. LEGISLATIVE FRAMEWORK**
>
> Under section 7 of both the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act:*
>
> - a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and [emphasis added]
> - the party who claims compensation must do whatever is reasonable to minimize the damage or loss.
>
> Under section 67 of the *Residential Tenancy Act* . . ., if the director determines that damage or loss has resulted from a party not complying with the Act, the regulations or a tenancy agreement, the director may:
>
> - determine the amount of compensation that is due; and
> - order that the responsible party pay compensation to the other party
>
> **B. DAMAGE OR LOSS**
>
> Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:
>
> - loss of access to any part of the residential property provided under a tenancy agreement;
> - loss of a service or facility provided under a tenancy agreement;
> - loss of quiet enjoyment (see Policy Guideline 6);
>
> **. . .**
>
> **C. COMPENSATION**
>
> 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.

These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the Residential Tenancy Act for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

I find that the loss of the rooftop patio is not as substantial an interference with the ordinary and lawful enjoyment of the premises, as would be the loss of use of a sole bathroom. However, I accept the Tenant's testimony and written submissions that the loss of the patio over the summer and into the Tenant's planting of a winter garden is detrimental to the Tenant.

The current state of the rental unit differs from the original Parties' initial intentions, and the Tenant's years of enjoying the patio over the course of his tenancy. The current state is inconsistent with the Tenant's reasonable, anticipated use of the rental unit. Further, I find that it's absence reduces the Tenant's quiet enjoyment of the rental unit and his mental health and sobriety. I find that the loss of the patio is a significant loss of a service or facility agreed upon between the original Parties at the start of the tenancy.

However, I find that the Tenant has not provided sufficient evidence to establish that he has lost 50% of the value of the rental unit by not having had access to the patio for the past five months. I find that it is common knowledge that a "shelter" offers a person protection from the elements, a space to live and store belongings, privacy, and physical and emotional security, at the very least. I find that the patio primarily offers the

Tenant emotional security and contentment, which I find to be a significant loss by the Tenant, but not a loss of 50% of the rental unit, overall.

Based on the evidence before me overall, I find that the loss of the patio represents approximately 20% of the Tenant's benefit of the residential property rented. As such, I award the Tenant 20% of his monthly rent or **$250.77** a month, pursuant to sections 27, 28 and 67 of the Act. **This award is retroactive** to the time at which the patio was removed by the Landlord and not replaced on June 7, 2022, through to the hearing date on November 8, 2022.

I, therefore **award the Tenant** with **$1,253.85** in compensation for the loss of the patio for the last five months. I **also award the Tenant with $250.77** off of his **rent going forward** until the Landlord brings the patio to its state of repair and restoration as evidenced in the Tenant's photographs on pages 6 and 7 of his evidence. To be clear, the Landlord is **Ordered** to return the patio to the style and condition it was in before it was removed by the Landlord, pursuant to sections 27, 28, 32 and 67 of the Act. If the patio is not repaired fully by the beginning of any month in question, the Tenant is **authorized to deduct $250.77** from the monthly rent. If the patio is restored later in that month, the Tenant does not have to reimburse the Landlord for the amount of time in which the patio was complete that month.

#2 REPAIRS TO THE UNIT OR PROPERTY

The Agent said that the Landlord tore down the rooftop patio, because: "We tried to negotiate with the Tenant, but he is not cooperating, so we decided we needed to tear down the place."

As noted above, section 32 of the Act requires that a landlord maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and having regard to the age, character, and location of the rental unit, which make it suitable for occupation by a tenant.

As noted above, I find that the patio is an integral part of the rental unit for which the Tenant pays his monthly rent. I find that it contributes to the overall character of the rental unit, which the Tenant has enjoyed since the start of his tenancy. I find that the Tenant has provided sufficient evidence and authorities to fulfil his burden of proof in this matter on a balance of probabilities.

Pursuant to section 5 of the Act, the Landlord is not allowed to require the Tenant to

perform repairs to the residential property, whether they are normal wear and tear or not. If the Tenant or a person he permits on the property damages the unit or property, the Tenant is responsible for repairing this damage. But there is no evidence before me that the Tenant was responsible for dismantling the patio or even for the leak that was found. That was not an issue before me.

Policy Guideline #1, "Landlord & Tenant – Responsibility for Residential Premises" ("PG #1") states:

> **FENCES AND FIXTURES**
>
> A fixture is defined as a "thing which, although originally a movable chattel, is by reason of its annexation to, or association in use with land, regarded as a part of the land".
>
> For the purposes of determining whether chattels annexed to realty remain personal property or become realty, chattels are divided into two classes:
>
> 1. Chattels, such as brick, stone and plaster placed on the walls of a building, become realty after annexation. In other words, where personal property does not retain its original character after it is annexed to the realty or becomes an integral part of the realty, or is immovable without practically destroying the personal property, or if all or a part of it is essential to support the structure to which it is attached then it is a fixture.
>
> 2. Other personal property, that does not lose its original character after attachment may continue to be personal property, if the owner of the personal property and the landowner agree.
>
> Fixtures that have been considered tenant's fixtures are:
>
> - Trade fixtures - where the tenant has attached them for the purposes of his trade or business.
>
> - Ornamental and domestic fixtures which are whole and complete in themselves and which can be removed without substantial injury to the building. Examples of a chattel which can be moved intact and are more likely to be considered a tenant's fixture are blinds and a gas stove.
>
> 3. The landlord is responsible for maintaining fences or other fixtures erected by him or her.

4. The tenant must obtain the consent of the landlord prior to erecting fixtures, including a fence.

5. Where a fence, or other fixture, is erected by the tenant for his or her benefit, unless there is an agreement to the contrary, the tenant is responsible for the maintenance of the fence or other fixture.

6. If, at the end of the tenancy, the tenant removes the fixture erected by him or her, he or she is responsible for repairing any damage caused to the premises or property.

7. If the tenant leaves a fixture on the residential premises or property that the landlord has agreed he or she could erect, and the landlord no longer wishes the fixture to remain, the landlord is responsible for the cost of removal, unless there is an agreement to the contrary.

8. If the tenant leaves a fixture on the residential premises or property that the landlord did not agree the tenant could erect, and the landlord wishes the fixture removed, the tenant is responsible for the cost of removal.

Based on the evidence before me overall, I find that the patio was in place before the Tenant moved into the rental unit, and was one of the key reasons that led him to move in. I find that the Landlord dismantled this patio, which consisted of a stained wooden deck and decorative fencing to give the Tenant some privacy and structure to the patio.

I find that the Act requires the Landlord to maintain fences or other fixtures erected by him or her. I find that the Landlord acquired the responsibility for rebuilding the fences and fixtures existing in the rental unit at the start of the tenancy.

I Order the Landlord to re-build the patio fixtures and fences to the same style and measurements – the same state in which they existed - prior to being dismantled by the Landlord, pursuant to section 32 of the Act and PG #1. I encourage the Landlord to consult the Tenant's photographs on pages 6 to 10 of his evidence for the style, materials, and sizing of the patio they are required to rebuild.

I Order the Landlord to do this **as soon as possible**, and as noted above, the Tenant is authorized to deduct 20% of his rent payment for every month in which the patio rebuild has not been completed by the first of the month.

Summary and Set Off

The Tenant was awarded **$1,253.85** for his loss of the use of the patio since it was removed in June 2022 up to the date of the hearing on November 8, 2022. The **Tenant is authorized to deduct this amount from future rent payments** in complete satisfaction of this award.

The Tenant is also **awarded 20% of his rent** or **$250.77** off his rent **until the patio is returned to its former condition**, as evidence by the Tenant's photographs of the condition of the patio prior to the Landlord removing it. I encourage the Landlord to refer to the Tenant's photographs in pages 6 to 10 of his evidence. The Tenant may deduct **$250.77** from his rent for each month or part thereof in which the patio is not fully repaired to the condition it was in before being removed by the Landlord in June 2022.

Given his success, the Tenant is also awarded recovery of his **$100.00** Application filing fee, pursuant to section 72 of the Act.

Conclusion

The Tenant is successful in his Application, as he provided sufficient evidence and authorities to prove his claims on a balance of probabilities.

The Tenant is **awarded** recovery of 20% of his rent payments or **$250.77** from the time the patio was removed on June 7, 2022, to the date of the hearing on November 8, 2022, or for five months, for a total of **$1,253.88**. The Tenant is authorized to deduct this amount from future rent payments in complete satisfaction of this award.

The Tenant is **awarded** recovery of **$250.77** in rent for each month in which the patio is not completed by the first of the month when rent is due. The Tenant is **authorized to deduct $250.77 from each such rent payment** until the patio is completed in a manner that conforms to the Tenant's photographs of the patio prior to it being removed by the Landlord.

Given his success, the Tenant is also awarded recovery of his **$100.00** Application filing fee. The Tenant is **authorized to deduct $100.00** from one upcoming rent payment in complete satisfaction of this award.

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: November 29, 2022

Residential Tenancy Branch