Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-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 order for damages for the Landlord of $425.00, retaining the security deposit to apply to the claim; and to recover the $100.00 cost of their Application filing fee.

An agent for the Landlord, B.P. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenants. The teleconference phone line remained open for over twenty minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

I explained the hearing process to the Agent and gave him an opportunity to ask questions about it. During the hearing the Agent was given the opportunity to provide his evidence orally and to respond to my questions. 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.

As the Tenants did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that he served the Tenants with the Notice of Hearing documents by Canada Post registered mail, sent on July 3, 2021. The Landlord provided Canada Post tracking numbers as evidence of service. I find that the Tenants were deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Agent in

the absence of the Tenants.

Preliminary and Procedural Matters

The Agent provided the Landlord's email address in the Application and he confirmed it in the hearing. He also confirmed his understanding that the Decision would be emailed to the Landlord and mailed to the Tenants, and that any Orders would be sent to the appropriate Party in this manner.

At the outset of the hearing, I advised the Agent that he is not allowed to record the hearing and he confirmed that he was not recording anything.

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 $100.00 Application filing fee?

Background and Evidence

The Agent confirmed the details of the tenancy, as follows. He said that the Tenants moved in on May 2, 2018, but that the tenancy officially began on June 1, 2018 – the first full month of the tenancy. He said the Tenants paid the Landlord a monthly rent of $1,100.00, due on the first day of each month. The Agent confirmed that the Tenants paid the Landlord a security deposit of $550.00, and no pet damage deposit. The Agent said that the Landlord retained the security deposit to apply to this claim.

The Agent said that the Parties conducted a move-in inspection of the condition of the rental unit, and the Agent said that they gave the Tenants a copy of the resulting condition inspection report ("CIR"). The Agent said that the Parties also conducted a move-out inspection at the end of the tenancy.

The Agent said that the tenancy ended when the Tenants gave their notice to end the tenancy on March 30, 2021. The Landlord has applied for a monetary award of $425.00, that the Agent said consisted of maintenance and cleaning charges.

#1 RE-GLAZING THE BATHTUB → $250.00

The Landlord's first claim is for compensation for having to re-glaze the bathtub in the rental unit. The Agent explained it as follows in the hearing:

> Basically – see pictures 5 and 6; on their moveout, there was a bit of a yellow stain and many scratches in the bathtub. It was rough to touch - not smooth as the tub should be.
>
> See the CIR where it is marked that during move-in, the bathtub was ‘good’ in the comments. We believe, as a Landlord that this did not present in ‘good’ condition at the end of the tenancy. There was no system at the time to take pictures upon move-in, but it’s too late now.
>
> You can see how thoroughly this CIR is made – it has the most notes I have seen in my career – every part of rental unit has a comment: where are the holes, where is the damage? So, it is likely to have noted any damage in the bathtub at the start.

When I looked at pictures 5 and 6 of the Landlord’s documentary submissions, I note that there is a yellow stain in the drain end of the bathtub and a dark mark, as well.

The Agent explained the Landlord’s process for doing repairs in rental units. He said:

> For mitigation, we use our own supplies for all the repairs we are able to. Ordering an outside provider is always more expensive. We use our own personnel; we have to pay for their time and their supplies. But most of the costs are hidden, because it’s included in inventory that we buy in bulk, and the employees’ salaries are confidential. But on page 16 there is a completed work order for glazing the tub by our maintenance personnel. There’s time in and time out.
>
> Labour is charged at $25.00 per hour. They have solutions to prepare and reglaze and get proper colour and structure.

The Agent commented on the RTB Policy Guideline that sets out the useful life of fixtures in a residential property. However, this analysis is relevant when a fixture is replaced, rather than being repaired, as in this case.

The Landlord submitted a work order for “re-glaze the bathtub”. The technician’s notes state: “Clean bath tub. Remove bath tub accessories and preparation. Apply epoxy paint.” This work order has a unit price of $250.00 for a total of $250.00.

#2 STOVE REPAIR AND CLEANING → $175.00

The Agent said that the stove was supplied brand new when the Tenants moved in. He pointed out the move-in CIR, which states that the oven and stove were new at the start of the tenancy.

In explaining the stove repair, the Agent directed me to two photographs of the stove top. These photographs show the element trays or pans to be badly stained and/or rusty, due to food having run over into the pans, I infer.

The Landlord pointed to two more photographs, which show a very dirty oven and oven door.

In answer to my question about the amount claimed by the Landlord for this matter, the Agent said:

> They made no attempts to clean it on the move-out. And it wasn‘t cleaned much throughout the whole tenancy period. See page 20 for the work order for cleaning staff. It was cleaned and they put in $175.00 for labour and materials.
>
> Drip pans were rusty, uncleanable, also the pans are thin pieces of metal – to get them up to shape was not worth what it cost to replace them. We took new drip pans from our inventory – bulk from suppliers - especially with items that are a few years old, and if items are discontinued. We weren’t able to acquire any receipts for this, but we charged $25.00 for each of the smaller drip pans, and $40.00 for the big drip pan for a total of $115.00 for their replacement.
>
> For the remaining $60.00 – see the work order for two hours cleaning at $25.00 each; and $10.00 is used for the materials noted down – oven cleaner, SOS pads, paper towel, and also the notes mentioned the trays are not cleanable.

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 Agent testified, I advised him of how I would analyze the 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 sets out

a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenants 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 Landlord did what was reasonable to minimize the damage or loss.

("Test")

Section 32 of the Act requires a tenant to make repairs for damage that is 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 a tenant to leave the rental unit undamaged.

However, sections 32 and 37 also provide that reasonable wear and tear is not damage, and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #1 helps interpret these sections of the Act:

> The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).
>
> Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness, and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

As set out in Policy Guideline #16 ("PG #16"), "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 claiming compensation to provide evidence to

establish that compensation is due."

#1 RE-GLAZING THE BATHTUB → $250.00

I find that the bathtub was damaged during the tenancy and that the damage is more than normal wear and tear. I find that the Tenants caused damage to the bathtub during the tenancy, and that they did not repair this damage before ending the tenancy. I find that the Landlord was required to repair the damage, which cost them $250.00.

I find that the Landlord did not replace the bathtub, but instead, they repaired it, which I find reduced the cost to the Tenants. I find this demonstrates that the Landlord minimized or mitigated their costs in this matter.

When I consider the evidence before me in this matter, I find that the Landlord has proven the elements of the Test and, therefore, is eligible for compensation from the Tenants in the amount of $250.00. I award the Landlord with **$250.00** from the Tenants for the repair of the bathtub, pursuant to sections 32, 37, and 67 of the Act.

#2 STOVE REPAIR AND CLEANING → $175.00

I find that the Tenants were responsible for cleaning the rental unit and for repairing any damage left to the rental unit at the end of the tenancy. This includes leaving the the oven and stove top clean and undamaged.

I find that the Tenants failed to clean this the oven and stove top, which is a breach of sections 32 and 37 of the Act. As a result of this violation, the Landlord had to have the oven and stove top cleaned and repaired. The stove top pans or trays were so dirty that the Landlord's professional cleaners could not get them clean, so they had to be replaced from the Landlord's inventory of stove top pans.

As a result, I award the Landlord with $115.00 for the replacement of the stove top pans, and $60.00 for the labour and materials to clean the inside of the oven. As such, I award the Landlord with **$175.00** from the Tenants for this claim, pursuant to sections 32, 37, and 67 of the Act.

<u>Summary and Set Off</u>

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's security deposit of $550.00 in partial satisfaction of the Landlord's

monetary award. I authorize the Landlord to retain $525.00 of the Tenant's security deposit and return the remaining $25.00 to the Tenants, as soon as possible.

The Landlord is awarded $250.00 for reglazing the bathtub and $175.00 for repairing and cleaning the oven and stove top, pursuant to section 67 of the Act.

I also award the Landlord with recovery of their $100.00 Application filing fee pursuant to section 72 of the Act, for a total award of **$525.00** from the Tenants.

The Landlord is authorized to retain $525.00 from the Tenants' $550.00 security deposit, and to return the remaining $25.00 to the Tenants, as soon as possible. The Tenants are granted a Monetary Order from the Landlord for **$25.00**.

Conclusion

The Landlord is successful in their Application, as they provided sufficient evidence to meet their burden of proof on a balance of probabilities. The Landlord is awarded **$425.00** for their claims, including the recovery of the **$100.00** Application filing fee from the Tenants.

The Landlord is authorized to retain $525.00 of the Tenants' $550.00 security deposit in complete satisfaction of this award. The Landlord is Ordered to return the remaining $25.00 of the Tenants' security deposit, as soon as possible.

The Tenants are awarded a Monetary Order against the Landlord for **$25.00** in this regard This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: September 14, 2021

Residential Tenancy Branch