



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Meadow Beach Holdings and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S

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 unpaid rent of \$170.00; a monetary order for damages of \$832.20; and a monetary order of \$223.13 for damage or compensation for damage under the Act, retaining the security deposit for these claims.

The Tenants, L.E. and R.B., and two agents for the Landlord, L.D. and B.D. ("Agents"), 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 Tenants and the Agents 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 Landlord provided the Parties' email addresses in the Application and they confirmed these addresses 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.

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 Landlord entitled to a monetary order, and if so, in what amount?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on March 15, 2016 and ran to June 30, 2017, and then operated on a month-to-month basis. They agreed that the Tenants paid the Landlord a monthly rent of \$1,000.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$500.00, and no pet damage deposit.

In the course of the hearing, it became apparent that the Landlords relied on a realtor, "Mr. [T.J.]", to be a contact person for the Tenants for issues with the residential property.

#1 UNPAID RENT → \$170.00

The Landlord said this was for a \$70.00 hydro bill, which was paid, and to recover the \$100.00 cost of their Application filing fee. I told them that they had to apply to be reimbursed for the filing fee, which they did not do. As such, this claim is withdrawn.

#2 COMPENSATION FOR DAMAGE → \$832.20

The Landlords said that the claims in this section include a shower door, as well as elements of the kitchen which were negatively affected, the Landlords' claim, because they say the Tenants were running an industrial kitchen in the rental unit.

Shower Door → \$612.21

The Landlords said that this claim is for the cost of replacing the shower door in the rental unit. In the hearing the Landlords said:

On November 19, 2020, we were made aware from the rental agent, Mr. [J.], that the shower door was smashed. We asked for a photo – we noticed that the hinge door was in the fully open position, the glass shattered at the far side of the shower and where the door fully opens, and the bathmat - it looked to be someone slipped....

The Landlords submitted a photograph of a shower stall in the rental unit with shattered glass in squares on the floor of the bathroom in front of the shower stall, and a crumpled bathmat nearby.

In the hearing, the Tenants said:

Someone slipped or something. I didn't get all that what she said, but like I wrote out, the glass always had a click when you shut it. It never shut properly from day one, but we just lived with it. It would click, and it finally just gave way and I pressed against the glass and it just cracked and nobody slipped, I did cut my hand with the glass when I opened the door to get out.

I was coming out of the shower, and at that time the corner, the upper – from inside the upper left corner – it just snapped really hard and cracked, and it all shattered to the floor.

We told Mr. [J.] previously about this. We started to realize how serious it was when he had a person come in to do the caulking – it was leaking through the door a little bit; he told us that there's something wrong with this door - there's a funny click to it when you shut it. He just said it seemed something wrong with that. Can you tell [the Landlord] about this? He said he would. I left it.

For five years, it was just snapping in place. It was so stiff and tight, there was a gap. Mr. [J.] thought it was the caulking. It crashed to the floor and I was lucky that I wasn't hurt more than I was. I just see this as, kind of an impersonal relationship we had with the Landlords – the owners. They just seemed to be out of reach, that we could only talk to Mr. [J.] , but he was always out of reach. It could take weeks for him to get back to us. He had 100 properties. Historically, it just kept going on like this. There was some bit of negligence on their parts – [J.] and [the Landlords] - and so this is the result of ... it wasn't an accident, it wasn't anything, just the fault of the shower stall, itself.

First the water leakage problem – we didn't know where it came from the door or bad caulking - so we got in touch with Mr. [J.], and he had a boy come and look at it and he caulked it up nicely, did a good job. That's when he told us – '...is that door supposed to snap like that? You might want to have that looked at.' I said, 'Can you tell Mr. [J.] for me?' So I just left it. I said it's lasted this long – five years. It makes that click when you shut it. Finally, it gave way.

The Landlords said:

When we had it repaired, they used the exact hinges to replace it, and they put it right back exactly where it is, and it's being used to this day. And there are no issues. In the photos, the bottom hinge is wide open, the mat is scrunched up like someone slipped, and I'm not buying your story, [Tenant].

The [local plumbing company] does all of our work for us. They've done everything, all of the plumbing and heating in that place, so it's not like "Joe Contractor" was there – they would have known what to do.

The Tenants said:

[That company] has come for other things, but they didn't come for the shower. He wasn't able to get [them] to come in, so they sent this young Australian guy to do the caulking and the door.

The Landlords submitted a receipt for the replacement of the shower door, which set out the materials and labour needed to complete the replacement.

Microwave Replacement → \$219.99

The Landlords said that the microwave was new in 2012, and therefore, it was nine years old at the end of the tenancy. The Landlords said that they replaced the broken microwave with "a similar one on sale at [national hardware retailer]. Buying it on sale seemed the appropriate thing to do, because of the age of the item."

The Tenants said: "The microwave was not broken. We rarely used it to heat up a drink. That's the only time we used it. Normal wear and tear."

When I asked the Landlords what was wrong with the microwave from the rental unit,

they explained their perspective, as follows:

It was brought to my attention that our Tenants were running a commercial kitchen out of our home. I did some research on [social media], and she has a [social media] page called [R.S.V.G.F. Organic]. In their comments they talked about going to a farmer's market one day a week, and in my research, I found that this business has been operating for quite some years, and that over time they do more than just one day a week. They say they only do Saturdays, but I have found on their page that they would do Wednesdays and Saturdays, and they also attend markets on Fridays.

They even listed their phone number, and that they could be reached for custom orders of cakes and pies. Their cakes on average are \$8.00 a slice or \$80.00 a cake. These are some of the things that they make, besides treats:

- Cheesecake
- Tarts
- Macaroons
- Foods: gluten free pizza
- Mozzarella & parmesan
- Baked pakoras,
- Peanut ginger sauce,
- Vegan burgers – 4 to a pack, frozen

They also have calzones . . . with 'our mozzarella', Italian pesto, broccoli cheddar crunch from their own home-made cheddar.

They also offered meals ranging from \$8.00 to \$12.00, and in their comments, they said that they had information from Interior Health that they were not a high-risk food. But as you make your own cheese, it was classed as a high-risk food.

Based on this, we think they operated a commercial kitchen from our home on our insurance - if anything had happened – our insurance wouldn't have covered us. They didn't have a business license, they even have their phone number advertised.

The [L.E.] said:

First, I'll start that the kitchen was not commercial – there's not three sinks, ...

...you're not allowed to have a commercial kitchen if you live in the place. We use raw food, so you don't use ovens at all. Everything's dehydrated, and I use my own food processor and two chest freezers.

There's no cheese. There's spreads - made in a dehydrator – made out of almonds or cashews. There's no milk – it's vegan. So, it's all low-risk food, and you can do it from a kitchen. In 2015, I started doing the Wednesday market, correct. I did one Friday market, because the other was cancelled. I stuck to Saturdays for the last 3½ years.

There are no sales at our house. People would make a custom cake order... The orders are delivered at the market - nobody came to the house. There are no business transactions there.

[R.B.] said:

I assisted her taking everything down to the market on Saturdays. Everything she said was true. The freezer was on the back porch. They saw that. We didn't use the counters; we used our own stainless steel. The island was set up.

We have no accounts with stores or cafes or anything about that. The raw food means there's no cooking or baking - no fire involved, so there's no risk to them. I use all my own appliances.

The Landlords went into more detail about the damage they claim was caused in the rental unit kitchen during the tenancy. They said:

In the photos of or kitchen cabinets from April 30, 2021, they show chemical or water damage to the lower cabinets. In front and beside the kitchen sinks – these cabinets were only four years old when they moved in. They were immaculate. When he was there, there was a strong bleach smell. The photo on page eight is a photo of the kitchen cabinets taken when they moved in. And then page nine is a photo of the cabinets after my husband re-sanded, finished and stained them back to their original state.

They ran a kitchen in our house – it's not normal wear and tear when you rent someone a house. Their menu is a long menu – it's not a couple dozen cookies, because they were bored.

The Tenants said:

They were raw and put in the freezer. Their menu list – all the pictures – those were things that are not always available – it's not like we had a grocery store of stuff available. There were only three or four things we made at a time.

Unfortunately, the Landlords' document containing their evidentiary submissions, including their photographs would not load on my computer, therefore, I could not view their photos of the cabinets before and after the tenancy, but I considered their testimony in this regard.

#3 MONETARY ORDER FOR DAMAGE OR COMPENSATION → \$223.13

The Landlords explained that this claim is for the cost of cleaning the rental unit to a reasonable standard. In the hearing, they said:

The \$223.13 was an invoice from [D.R.] Holdings regarding cleaning. Cleaning of a home includes washing floors, windows, ledges, bathroom, wiping cabinets, the fridge. We felt that the home was not left in a clean state, so that is why we had a cleaner come in.

When I got up there, there was batter all over the cupboards and walls up high, it was [D.R.'s] wife that did the cleaning. She couldn't believe how much it took to remove it, and how long it must have been on there. It was everywhere, up high. Any place you could reach below was okay – but upper walls, the ceiling - they were covered in some kind of a batter.

The Tenants said:

We had a CIR and had excellent cleaning – all ticks were there, even Mr. [J.] said we did a good job. He said he's very thorough; he had gloves on, and we sent that in as evidence.

The Landlord said:

I let Mr. [J.] do his job, and when they left, we came back in – the microwave is brown inside. The cupboards – they are stained – the batter. . . that's when I had to go find someone to help.

The Landlords submitted an invoice for the cleaning service, which set out the rate as \$25.00 per hour for a total of four hours.

Analysis

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

#1 UNPAID RENT → \$170.00

The Landlords' \$170.00 claim for the hydro bill and the Application filing fee (for which they did not properly apply) were withdrawn by the Landlords at the start of the testimony.

#2 COMPENSATION FOR DAMAGE → \$832.20

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.

[emphasis added]

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.”

Pursuant to section 7 of the Act, a party who does not comply with the Act, regulation or tenancy agreement must compensate the other party for the resulting damage or loss.

Shower Door → \$612.21

The Tenants claim that the shower door was not working properly from the start of the tenancy. However, I find from their evidence that they asked the repair person to tell Mr. [J.] about it, and they said they left it at that. I find that the Tenants knew that there was something wrong with how the shower door was installed, but that they did not communicate this to the Landlords or their representative, Mr. [J.]. I find this amounted to neglect or negligence on the part of the Tenants.

Further, I find that the Tenants’ explanation of how the shower door ultimately cracked and broke is difficult to imagine. I find it more likely that they are not telling me the whole story in their testimony and documentary submissions.

Based on these considerations of the evidence before me in this matter, I find that the Tenants are responsible for what happened to the shower door in not having it repaired for years. I find that the Landlords are eligible for compensation from the Tenants in this regard, pursuant to sections 7, 32 and 37 of the Act. I, therefore, award the Landlords with **\$612.21** from the Tenants, pursuant to section 67 of the Act.

Microwave Replacement → \$219.99

I find from the evidence before me that the Landlords were concerned about the Tenants’ use of the rental unit kitchen. The Landlords believed that the Tenants were running an industrial kitchen for the foods the Tenants sold at markets. The bulk of the Landlords’ evidence appeared to be aimed at proving that the Tenants ran an industrial kitchen in the rental unit. However, they did not give much evidence about the condition of the microwave that they said needed to be replaced, other than it was “brown inside”. They did not say they tried to clean it or that it would no longer cook food.

Further, Policy Guideline #40 (“PG #40”) is a general guide for determining the useful life of building elements and provides me with guidance in determining damage to capital property. 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.

In PG #40, the useful life of a microwave is 10 years. The evidence before me is that the microwave was new in 2012, therefore, it was approximately nine years old at the end of the tenancy and had one year or 10% of its useful life left. The CIR indicates that the microwave was in good condition at the start of the tenancy, but the Landlord said in the hearing that it needed to be replaced at the end of the tenancy. The Tenant denied that this was true, so I have a “he said/he said” situation before me.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures to a rental unit, a claim for damage and loss is based on the depreciated value of the item and **not** based on the replacement cost. This reflects the useful life of fixtures, such as carpets, countertops, doors, etc., which depreciate all the time through normal wear and tear. Unfortunately, there was no useful life specified in my guideline for a shower door.

Regardless, I find that the Landlords did not provide sufficient evidence to meet their burden of proof on a balance of probabilities; as a result, I dismiss this claim without leave to reapply.

#3 MONETARY ORDER FOR DAMAGE OR COMPENSATION → \$223.13

Section 37 of the Act states that tenants must leave the rental unit “reasonably clean and undamaged”. I also turn to PG #1, as noted above, for guidance on this matter.

The Tenants did not dispute that they used the kitchen a lot, including for their preparation of food they sold at markets and for custom orders. The Landlord provided evidence that there was batter strewn high up on the walls and ceiling of the kitchen. However, they did not comment on the cleanliness of other parts of the rental unit. Further, they did not direct my attention to comments about the lack of cleanliness in the move-out CIR. There are no photographs that I could upload showing the condition of the rental unit. I find on a balance of probabilities that the Landlords have not provided sufficient evidence to meet their burden of proof in this matter. I, therefore, dismiss the

claim for cleaning without leave to reapply.

Summary and Offset

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 \$500.00 in partial satisfaction of the Landlord's monetary award. I authorize the Landlord to retain \$500.00 of the Tenants' security deposit in partial satisfaction of the monetary award. The outcome of the particular claims is as follows:

Unpaid rent	withdrawn
Shower door	\$612.21
Microwave	\$ 0.00
Cleaning	\$ 0.00
Less security deposit	<u>(\$500.00)</u>
Balance owing	<u>\$112.21</u>

I grant the Landlord a Monetary Order from the Tenants of **\$112.21**, pursuant to sections 32 and 67 of the Act. This Order must be served on the Tenants as soon as possible.

Conclusion

The Landlord is partially successful in their claim for compensation for damages under the Act, as the provided sufficient evidence to establish that the Tenants were responsible for the broken shower door. The Landlords withdrew their claim for unpaid rent at the start of the tenancy. The remainder of the Landlords' claims are dismissed without leave to reapply, as the Landlords failed to provide sufficient evidence to meet their burden of proof on a balance of probabilities.

I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of **\$112.21**.

This Order must be served on the Tenants by the Landlord 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: November 04, 2021

Residential Tenancy Branch