



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNSD FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on January 18, 2021. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit;
- to keep the security deposit; and,
- to recover the cost of the filing fee.

The Landlord and Tenants both attended the hearing. All parties provided testimony. The Tenants confirmed they received the Landlord's application, Notice of Hearing, and evidence by registered mail in early October 2020. The Tenants did not take issue with the service of those documents, nor did they provide any documentary evidence of their own.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Landlord entitled to a monetary order for damage to the unit or for damage or loss under the Act?

- Is the Landlord authorized to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

### Background and Evidence

Both parties agreed that monthly rent was set at \$2,900.00 and was due on the first of the month. The Landlord still holds a security deposit in the amount of \$1,450.00. The parties also agree that the tenancy started on June 1, 2018, and ended on August 31, 2020, the day the Tenants moved out.

The Landlord acknowledged that he did not complete a walk-through inspection in accordance with the regulations at the start of the tenancy, or at the end of the tenancy. The Landlord and the Tenants did not walk through the unit together at the start or end of the tenancy, and no condition inspection report was completed. The Landlord did not present any photos of evidence to show the condition of the rental unit at the start of the tenancy. The Landlord only took a few photos of the items he felt were damaged at the end of the tenancy.

The Landlord is seeking \$3,810.00 in compensation for 49 different items that he feels the Tenants are responsible for. The Landlord was asked to present what he is seeking, and why, and to point out any relevant evidence he wished to rely upon. However, in the hearing, he only generally referred to his list of 49 items, and did not provide any direct statements as to how he knew it was the Tenants who caused the damage, and how he arrived at all of his repair estimates for all of the items. The Landlord specifically stated he cannot prove the Tenants caused the damage, but he wanted to file this application because he had to after the Tenants' requested their deposit back. The Landlord's list of items consists of damaged cupboard doors, locks, wall markings, holes, broken light switches, flooring damage, broken faucet and other items. However, he did not speak to any of the items individually, and felt his list he provided was sufficient.

The Landlord's list consisted on 49 items, with a brief couple of words stating what the item was, a very small photo of the damage taken after the Tenants moved out, and an estimate for what it will cost to fix (although no evidence was provided to show how the amounts were arrived at).

The Tenants stated they did not really know how to respond to this claim against them because the Landlord never did any inspections with them, and has no proof they caused the damage. The Tenants stated that 95% of the damage was pre-existing, and

they dispute causing any damage, aside from the following 4 items (which they agree they damaged):

- 1) Gouge in floor – item #9 in the Landlord's list

The Tenants stated that they left something sticky on the floor, and when it was removed, the flooring surface came off, causing damage.

- 2) Toilet paper holder x 3 – items 19, 31, and 45 in the Landlord's list

The Tenants agree they damaged the toilet paper holders.

- 3) Phone jack – item # 43 on the Landlord's list

The Tenants agree that they damaged this item.

- 4) Heaters – item 41 and 39 on the Landlord's list

The Tenants agree that there was some felt marker on the surface of one of the electric in-wall heaters, and well as some minor damage on a second electric in-wall heater. The Tenants opined that these heaters would not need to be fully replaced as the Landlord has alleged.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Based on all of the above, the evidence and the testimony provided at the hearing, I find as follows:

Condition Inspection Report

Sections 23 and 35 of the Act states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

In this case, the Landlord failed to comply with section 23 and 35 of the Act, and also failed to sufficiently document the condition of the rental unit at the start of the tenancy. Without proof that the damage was not pre-existing, I find the Landlord has failed to meet the first part of the test for damage or loss for any of the items he is seeking (that the damage was caused by the Tenants and that it stemmed from the Tenant's breach of the Act). As such, I find the Landlord has provided insufficient evidence to show the Tenants are responsible for any of the items on his list. I also note the Landlord only generally spoke to his list, and did not explain how any of the estimates were arrived at, or how he could know, with any degree of certainty that the Tenants caused the damage. Ultimately, the Landlord has failed to sufficiently prove his claim. All items are dismissed, in full, with the exception of the following 4 items.

The Tenants acknowledge that they damaged 4 items, as noted above. Although the Tenants do not agree with the "estimates" the Landlord provided, I note they do not dispute damaging those 4 items. I accept that the damage on these items is beyond what would be considered reasonable wear and tear, and I find the Tenants ought to be responsible for these items. However, I also note the Landlord has provided no insight, or explanation as to how he arrived at his estimates for the items.

I find it important to note that an arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this case, I find a nominal award is appropriate. I award a nominal award of \$100.00 for the floor damage, \$50.00 total for the damaged toilet paper holders, \$50.00 for the

broken phone jack, and \$200.00 for damaged in-wall heaters. I find this amounts to a nominal award of \$400.00.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlords were partly successful in this hearing, I award them half the filing fee (\$50.00) they paid to file this application.

In summary, the Landlord is awarded \$450.00. The Landlord currently holds \$1,450.00 as a security deposit. I allow the Landlord to retain \$450.00 from the deposit and return the remaining balance to the Tenants. I will issue a monetary order to the Tenants for the remaining portion of the security deposit, \$1,000.00.

### Conclusion

The Tenants are granted a monetary order pursuant to Section 38 and 67 in the amount of **\$1,000.00**. This order must be served on the Landlords. If the Landlords fail to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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: January 19, 2021

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Residential Tenancy Branch