# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes Landlord: MND MNSD FF
Tenant: MNDC MNR RPP MNSD

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on February 24, 2022.

The Landlords attended the hearing. The Tenants also attended the hearing, along with their advocate. The Tenants confirmed receipt of the Landlords' application and evidence, and did not take issue with the service of that package. I find the Landlord sufficiently served the Tenants with this Notice of Dispute Resolution Proceeding and evidence.

The Tenants stated they gave a copy of their Notice of Dispute Resolution Proceeding and evidence to one of the maintenance workers at the rental building. The Tenants also stated they sent the Notice of Dispute Resolution Proceeding by registered mail. However, they did not have any tracking information for this. The Landlord denies getting any package from the Tenants. I do not find the Tenants have sufficiently served the Landlords with any of their documents under any of the allowable methods of service under the Act. As the Tenants failed to serve their Notice of Dispute Resolution Proceeding and evidence, I dismiss their application, in full, with leave.

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

- Are the Landlords entitled to compensation for damage to the unit?
- Are the Landlords entitled to recover the cost of the filing fee or to retain the security deposit to offset money owed?

Background and Evidence

Both parties agree that monthly rent was $600.00 and was due on the first of the month. Both parties also agreed that the Landlords hold a security deposit of $300.00. The tenancy started on November 1, 2019, and ended on April 4, 2021.

The Landlords stated that no move-in condition inspection report was completed, and they have no evidence regarding the condition of the rental unit at the start of the tenancy. The Landlords stated that they had scheduled a move-out inspection for April 2, 2021, which was the day the Tenants were supposed to move out. However, the Tenants needed more time to move, so the inspection could not be completed at that time. The Landlord stated that she did not provide the Tenants with a Notice of Final Opportunity for Condition Inspection, in writing, and only told the Tenants verbally that the inspection would occur on April 6, 2021. The Tenants deny ever being given a second chance to do the move-out inspection.

The Landlords are seeking the following items, as laid out on their application and Monetary Order Worksheet:

1) $2,400.00 – Fixing doors, locks, wall repairs, painting
2) $1,000.00 – Supplies (drywall and front door)

The Landlord stated that the Tenants had an issue with police, and the front door was kicked in sometime in February or March 2021. The Landlords provided a photo of the front door which was taken on April 6, 2021, to show that the front door required major repairs, due to the police having to break in the door.

The Landlords also stated that they own a construction company, and hired their own employees to come and do the above noted repairs at a rate of $30.00/hour. The Landlords provided a typed repair bill. The Landlords stated they spent 80 hours repairing the front door, the two interior doors, the holes in the drywall, and the painting.

The Landlords stated that the Tenants put holes in two of the interior doors, one for the bedroom and one for the bathroom, both of which required replacement. The Landlords

also stated that they had to replace the lock and do significant repairs on the front door. Further, the Landlords stated that the Tenants put several holes in the interior drywall, which required repair and repainting of the affected areas. The Landlords stated that the entire unit also needed repainting, but they did not explain or elaborate on when the unit was last repainted, or whether there was wall damage in other parts of the unit, beyond the couple of holes that required patching.

The Tenants acknowledged that they had an issue sometime in March 2021, where a friend (guest) of theirs was staying over in the rental unit, as she was having a personal crisis. The Tenants explained that their friend's mother called the police because she was suicidal. The Tenants stated that the police attended the unit and broken down the door in order to get access to their friend, and guest, because she was not opening the door. The Tenants acknowledge that this incident caused damage to the front door.

The Tenants denied that they caused any of the other damage to the rental unit, and assert that there is no evidence to prove that they caused the damage to the interior doors, the walls, or the paint. The Tenants assert that there was never a condition inspection done, and that there were issues with the condition of the unit at the start of the tenancy.

3) $1,200.00 – Cleaning

The Landlords stated that the Tenants failed to do any cleaning before they vacated the rental unit. The Landlords stated that it took them 40 hours, at $30.00 per hour to clean up the walls, floors, fridge, stove, and bathroom. The Landlords did not provide any photos of the areas that required cleaning, nor did they elaborate further on why it took 40 hours to clean a small apartment.

The Tenants deny that they left the rental unit in a dirty state, and feel the amounts sought are excessive. The Tenants acknowledge that there was dysfunction at the end of the tenancy, but do not feel they left the unit dirty, as 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 Landlords 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.

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, I find the Landlords failed to complete a move-in inspection report, which violates section 23 of the Act. Further, the although the Landlord completed a move-out inspection at the end of the tenancy, on April 6, 2021, I note this was done in the Tenants' absence. The Tenants acknowledge that they were initially supposed to do the move-out inspection on April 2, 2021. However, when this time did not work, the Tenants stated that the Landlords never gave them a second and final opportunity for an inspection at all, let alone in writing. The Landlords acknowledged they did not provide the Tenants with a second and final opportunity for condition inspection, in writing, at the end of the tenancy.

I find the Landlord breached section 35(2) of the Act, by not providing at least 2 opportunities for inspection. Section 17(2)(b) of the Regulations state that the Landlord must provide a second opportunity in writing and on the approved form, which was not done. I find the move-out condition inspection report is not completed in accordance with the Act and the Regulations, and I afford it no weight. The Landlord only had a couple of photos taken at the end of the tenancy to show the condition when the Tenant's moved out.

First, I turn to the issue with the front door. I find the Tenants are responsible for the front door, as it stemmed from an issue with one of their guests. I find the Tenants breached section 37(2) of the Act by damaging the front door. That being said, I find the Landlords have provided a poor itemization and accounting of how much the front door actually cost to repair. There is no breakdown as to how much this cost, and it was

simply lumped together with other repairs. As such, I find the Landlord has not sufficiently demonstrated the value of their loss.

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 of $200.00 is appropriate for the costs associated with the front door damage the Tenants acknowledged. I award $200.00 for this item.

With respect to the remaining items on the Landlord's application, I find there is a problematic lack of evidence to show what the condition of the rental unit was at the start of the tenancy. The Tenants deny doing the damage, and deny leaving this unit as dirty as the Landlords are alleging.

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. In this case, I find the Landlords have provided insufficient evidence to show that the remaining damage (interior doors, walls, painting) was not pre-existing. Further, the Landlords have also failed to sufficiently demonstrate that the rental unit was not left in a reasonably clean state, and that it required 40 hours of cleaning. There were only a couple of photos of holes in the walls/doors, and little to no evidence showing that cleanliness. Ultimately, I find the Landlords have failed to sufficiently prove that the Tenants are responsible for these items, and the cleaning expense. I dismiss the remainder of the Landlords' application, without leave.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlords were substantially successful with the application, I order the Tenants to repay the $100.00 fee that the Landlords paid to make the application for dispute resolution. In summary, the Landlord is granted $300.00 in total for the front door, and the filing fee. I authorize the Landlords to retain the security deposit of $300.00 to offset the money owed.

Conclusion

The Landlords are partially successful, and are granted permission to retain the security deposit in full.

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: February 24, 2022

Residential Tenancy Branch