



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL, FFL

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The two landlords, "male landlord" and female landlord ("landlord"), and the three tenants, female tenant ("tenant"), "tenant PB," and "tenant JD," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 31 minutes.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing package and the landlord confirmed receipt of the tenants' evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the three tenants were duly served with the landlords' application and the two landlords were duly served with the tenants' evidence.

During the hearing, I explained the hearing and settlement processes to both parties. Both parties had an opportunity to discuss the above information with each other and to ask questions to me. Both parties confirmed that they were ready to proceed with the hearing, they did not have any objections, they did not want to settle this application, and they wanted me to make a decision regarding this application. Both parties did not make any adjournment or accommodation requests at this hearing.

### Issues to be Decided

Are the landlords entitled to a monetary order for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Are the landlords entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 15, 2020 for a fixed term to end on April 30, 2021. The tenancy ended on November 30, 2020. A written tenancy agreement was signed by both parties. Monthly rent in the amount of \$3,150.00 was payable on the first day of each month. A security deposit of \$1,575.00 and a pet damage deposit of \$1,575.00 were paid by the tenants and the landlords returned both deposits to the tenants. Move-in and move-out condition inspection reports were completed for this tenancy.

The landlords seek a monetary order of \$1,261.34 plus the \$100.00 application filing fee. The tenants dispute the landlords' application.

The landlord testified regarding the following facts. The tenants broke the lease, they did not provide enough notice and the landlords tried to re-rent the unit as soon as possible. The market conditions were not enough to rent it at \$3,150.00. The landlords were open to allow the tenants to break the lease because they said they were suffering a financial loss, but later the landlords found out that the tenants were all working from home and getting into each others' way. It was not a good excuse from the tenants, and they did not apply for rental subsidies. If the tenants were moving for financial reasons, then the landlords would have more leniency. The tenants asked to sublet but did not give 6 months' notice to do so, but they really wanted to assign not sublet and they did not know the difference. The landlords are seeking \$250.00 per month for five months because they were unable to re-rent the unit at the same price of \$3,150.00. The tenants gave notice to leave in an email on October 4, 2020, indicating there was a shift in employment. The tenants did not want to settle, despite offers from the landlords. The landlords provided lots of documents with this application.

The tenant testified regarding the following facts. The tenants provided emails between both parties from October 3 to 20, 2020. Tenant JD experienced a loss of income in his sales job, where he was earning less pay. The tenants were not aware of rental programs to help with rental subsidies. On October 4, 2020, both parties agreed to mutually end the tenancy, the landlords agreed to find new tenants for a one-year lease as of December 1, 2020. In their email of October 20, 2020, the landlords tried to re-rent the unit according to the market at \$2,850.00 to \$2,950.00 per month, as they did not make any effort to rent it at \$3,150.00 per month. On October 25, 2020, the landlords signed a new lease with new tenants to move in as of December 1, 2020. The tenants showed the rental unit to new tenants during the covid-19 pandemic period, and the unit was advertised by the landlords. After the tenants moved out, then the landlords claimed a loss of \$250.00 per month.

In response to the tenant's submissions, the landlord stated that the tenants asked for a rent discount, which the landlords could not do but they offered a deferred payment plan to the tenants, which was rejected. The landlords did all the work to advertise and re-rent the unit, the tenants simply showed it to prospective tenants. There was no mutual agreement to end tenancy on the part of the landlords.

### Analysis

During the hearing, I notified the landlords that as the applicants, they were required to present the landlords' application, including their documents and claims. The following Residential Tenancy Branch ("RTB") *Rules of Procedure* state, in part:

*7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party's agent...*

...

*7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

*7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

I find that the landlords did not properly present their evidence, as required by Rule 7.4 of the *RTB Rules of Procedure*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the *RTB Rules of Procedure*. During the hearing, the landlords failed to properly go through specific claims and the amounts for each claim.

This hearing lasted 31 minutes, so the landlords had ample opportunity to present this application. The landlord spoke for the majority of the hearing time, as compared to the tenant. However, the landlord did not go through any of the landlords' documents during the hearing.

During the hearing, I notified the landlords about the below test. Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the landlords must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties.

Subsection 45(2) of the *Act* sets out how tenants may end a fixed term tenancy:

*A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

*(a) is not earlier than one month after the date the landlord receives the notice,*

*(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*

*(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

The above provision states that tenants cannot give notice to end the tenancy before the end of the fixed term. If they do, they may have to pay for rental losses to the landlords.

In this case, the tenants ended the tenancy, prior to the end of the fixed term on April 30, 2021. I find that the tenants breached the fixed term tenancy agreement. As such, the landlords may be entitled to compensation for losses they incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlords for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on landlords claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I dismiss the landlords' application of \$1,250.00 for five months of rental loss, without leave to reapply. The landlords seek a loss of \$250.00 per month for a period of five months, from December 2020 to April 2021, left in the tenants' fixed term tenancy agreement, since the landlords re-rented the unit at a lower rent of \$2,900.00 per month, instead of \$3,150.00, as of December 1, 2020. The landlords did not explain this information during the hearing, as this was contained in their documents, which they did not review during this hearing.

Both parties agreed that the landlords received notice from the tenants on October 4, 2020, that they wanted to vacate the rental unit. The landlords re-rented the unit to new tenants on December 1, 2020, and therefore did not suffer a rental loss, since the tenants moved out on November 30, 2020. The landlord agreed that she was "open to allow the tenants to break the lease" but only revoked this agreement when she thought the tenants were not leaving for financial reasons. The landlord proposed the solution to re-rent the unit for a one-year lease as of December 1, 2020, if the tenants showed it to prospective tenants.

I accept the tenants' evidence that the landlords advertised the rental unit from \$2,850.00 to \$2,950.00. This was the landlords' choice to advertise and re-rent the unit at a lower rental price than the \$3,150.00 that the tenants were paying. The landlord testified that she based the lower price on the market conditions. This was confirmed in emails from the landlords to the tenants on October 20, 2020 and December 8, 2020, which the landlords did not dispute. In the landlords' email to the tenants on October 4,

2020, the landlord also referenced a “price adjustment” would be made, stating that the tenants offered to pay more rent for the three of them in a two-bedroom and solarium.

The landlords did not go through any of their rental advertisements, any new tenancy agreement signed with the new tenants, or any other documents during the hearing. Accordingly, I find that the landlords agreed that the tenants could end their fixed term tenancy early and the tenants vacated on November 30, 2020. I find that the landlords advertised and received a lower rent price of \$2,900.00 instead of \$3,150.00 because the landlords chose to advertise the unit for a lower rent amount of \$2,850.00 to \$2,950.00. The landlords even asked the tenants whether they agreed with the lower price range, when it was the landlords’ decision to make about their own unit. The landlords cannot now ask the tenants to pay for this market rental price, that the landlords chose themselves.

I dismiss the landlords’ application of \$8.35 for an online advertisement and \$2.99 for a tenant form, without leave to reapply. These amounts were indicated in the landlords’ monetary document provided with their application but not reviewed by the landlords during the hearing. The landlords did not explain these claims or amounts during the hearing, nor did they review any receipts, invoices or other documentary evidence during the hearing. Further, I find that these costs are part of the ordinary costs of doing business as a landlord. The landlords are not required to pay for advertisements and forms but chose to do so, which I find are their costs to bear.

As the landlords were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the tenants.

### Conclusion

The landlords’ entire application is dismissed without leave to reapply.

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: April 23, 2021

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Residential Tenancy Branch