



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the tenants' application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement. The landlord did not appear at the hearing. The tenants provided a registered mail tracking number as proof of service and stated that he tracked the number and confirmed that the landlord had received the registered mail. I was satisfied the landlord was sufficiently served with notice of this hearing and I proceeded to hear from the tenant without the landlord present.

### Issue(s) to be Decided

Have the tenants established an entitled to compensation from the landlord for damage or loss under the Act, regulations or tenancy agreement?

### Background and Evidence

The tenancy commenced October 1, 2007 and the tenants were required to pay rent of \$1,290.00 on the first day of the month. The tenants gave verbal notice of their intention to vacate the rental unit on June 25, 2010 and on June 29, 2010 gave the landlord's agent written notice to end the tenancy effective July 31, 2010. The tenants vacated and returned the keys to the rental unit on June 29, 2010. The tenants' post-dated rent cheque for July 2010 was cashed.

The tenants submitted that they gave the landlord's agent a document giving the landlord permission to enter the unit and rent the unit to new tenants as soon as possible with the understanding that should the landlord re-rent the unit in July 2010 the tenants would receive a refund of the rent they paid. The tenants claimed that the landlord's agent told them on June 29, 2010 that they had three prospective tenants for the unit.

On July 6, 2010 and tenant's employee and daughter returned to the rental unit to retrieve a ladder still on the residential property. The employee and daughter observed furniture and paint cans in the garage on the residential property. The tenant called the

landlord and learned that the new tenants were painting the rental unit. The tenant told the landlord that he had not given permission to people to enter for the purpose of making repairs.

Later in July the tenants drove by the property and observed that the curtains were back up and that the “for rent” sign in the window was also gone. Furniture could still be seen in the garage.

The tenant claimed that had a subsequent conversation with the landlord during which time the landlord informed the tenant the incoming tenants had paid rent for August and that the tenant would not be getting any rent back for July 2010.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Under the Act, a tenant must give at least one full month of written notice to end a month to month tenancy. In this case, the tenants gave a written notice with an effective date of July 31, 2010. I accept the tenants’ submission, in the absence of evidence to the contrary, that the landlord had permission to show the unit and permit a new tenant to rent the unit but that the permission did not extend to repairs or renovations on the property. I also accept the tenants’ undisputed submission that the rental unit was being painted in the month of July and that the landlord had failed to gain the tenants’ consent for this. Therefore, I do find the landlord violated the Act.

As outlined in the four criteria above, a violation of the Act, regulations or tenancy agreement does not in itself establish an entitlement to compensation. Rather, the tenants must also show that the landlord’s violation caused the tenants to suffer damages or loss as a result of the landlord’s violation.

I heard the tenants vacated the rental unit to move to a home they purchased in another city. I do not find the landlord's actions caused the tenants to suffer a loss of use or enjoyment of the rental unit since the tenants were not using or occupying the rental unit during the month of July for their own personal reasons. Therefore, I find the tenants have failed to prove the second part of the test for damages as outlined above and I do not find the tenants entitled to compensation from the landlord.

In light of the above, the tenants' application is dismissed.

### Conclusion

The tenant's application is dismissed.

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 01, 2011.

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Residential Tenancy Branch