



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

MNDCL

### 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.

"Landlord RB" and the two tenants did not attend this hearing, which lasted approximately 17 minutes. Landlord SB ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she had permission to speak on behalf of her husband, landlord RB, as an agent at this hearing.

The landlord testified that the landlords' application for dispute resolution hearing package was served separately to each tenant by way of registered mail on December 14, 2017. The landlords provided two Canada Post receipts and tracking numbers with this application. In accordance with sections 89 and 90 of the Act, I find that both tenants were deemed served with the landlords' application on December 19, 2017, five days after their registered mailings.

### Issue to be Decided

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

### Background and Evidence

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

The landlord testified regarding the following facts. This month-to-month tenancy began on October 1, 2015 and ended on June 1, 2017. Monthly rent in the amount of \$1,500.00 was payable on the first day of each month. A security deposit of \$750.00 was paid by the tenants and the landlords were ordered to pay back double the amount of the deposit pursuant to an order made at a previous Residential Tenancy Branch hearing, but the landlord did not provide the date or file number. Both parties signed a written tenancy agreement and a copy was provided for this hearing. The rental unit is an entire house, with a basement level and an upper level.

The landlords seek a monetary order of \$1,500.00 for June 2017 rent. The landlord said that the tenants vacated the rental unit on June 1, 2017 and did not pay any rent for that month. She stated that the tenants only provided notice by way of text message on May 25, 2017 and email on May 28, 2017, that they were leaving on June 1, 2017. She claimed that the tenants are required to give at least one month's notice to vacate and failed to do so.

The landlord testified that she re-rented the rental unit on August 15, 2017 for \$1,800.00 per month, which is \$300.00 higher than what the tenants were paying, because the rental unit was renovated upstairs. She said that from May 12 to August 15, the basement level was undergoing repairs by an insurance company due to widespread flooding in the City. She stated that she began renovations of the upper floor, where the tenants had been primarily residing, from sometime in July to August 15, 2017. The landlord said that she began looking for new tenants to rent the unit in July 2017.

### Analysis

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the landlords must satisfy the following four elements:

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.

I find that both parties entered into a month-to-month written tenancy agreement. Pursuant to section 45(1) of the *Act*, the tenants are required to give at least one month's written notice on the day before rent is due, which is effective on the date before rent is due.

In this case, the tenants ended the tenancy on June 1, 2018, after giving notice by text message and email on May 25 and May 28, just days before they vacated. Notice by text message and email are not permitted by section 88 of the *Act*, but I find that the landlords received the notice and acted on it, so they were sufficiently served as per section 71(2)(c) of 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.

On a balance of probabilities and for the reasons stated below, I dismiss the landlords' application for a loss of June 2017 rent of \$1,500.00. I find that the landlords failed to mitigate their losses in their efforts to re-rent the unit to prospective tenants. The landlords failed to provide copies of any rental advertisements to show when and on what terms they attempted to re-rent the unit. The landlords failed to provide a copy of the new tenancy agreement to show when and how much they re-rented the unit for. The landlords failed to provide a copy of the insurance and renovation documents to show the actual work done and time taken to complete both. This landlord failed to show how the renovations and repair work were the fault of the tenants, such that it delayed the landlords' ability to re-rent the unit. The landlords had more than ample time to provide this evidence prior to the hearing. Further, the landlords made a \$300.00 monthly profit when they re-rented the unit.

### Conclusion

The landlords' 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: July 30, 2018

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Residential Tenancy Branch