



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

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## **DECISION**

Dispute Codes      MNDCL FFL

### Introduction

The landlords seek compensation against their former tenants pursuant to sections 67 and 72 of the *Residential Tenancy Act* (the “Act”).

A hearing was first held on October 27, 2022 and adjourned, for the purposes of service, to November 28, 2022. The parties confirmed they had exchanged evidence as ordered in the interim decision of October 27, 2022.

Attending the November 28 hearing were one of the landlords, both tenants, and a witness. The witness was excused a few minutes into the hearing and was not required to testify. Both the landlord and the tenants were affirmed before giving testimony.

### Issues

1. Are the landlords entitled to compensation as claimed?
2. Are the landlords entitled to recover the cost of the application filing fee?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began February 1, 2017 and ended April 30, 2021. Rent was \$2,515.54. The tenants paid a \$1,150.00 security deposit which has been returned.

The landlords seek \$3,500.00 in compensation and \$100.00 for the cost of the application filing fee. Particulars of the landlords’ application are as follows (reproduced as written from the application, with names redacted in this Decision for privacy reasons):

The tenant(s) [names redacted] have repeatedly not allowed the landlord to show the rental property to prospective tenants thereby hampering the rental income from the new tenants. [the tenants] were ordered by the Residential Tenancy Board to allow the landlord(s) to show the property to tenants. This is a breach of the terms set by the Residential Tenancy Board. The landlord could not rent the property for period of time and is claiming loss of income from the tenant

The landlord testified that he wanted to show the rental unit (also referred to as the “property” in this decision) to prospective tenants before the tenants ended their tenancy at the end of April. However, he testified that he was only able to show the property to two people before the tenants refused to let anyone else enter and view the property throughout the month of April.

As a result of not being able to show any prospective tenant the property, he claims that he was unable to secure a new tenant for May 1 and thus lost potential rent in the amount of \$3,500.00. (This is the amount of rent that the landlord intended to charge any new tenant.) The landlord testified that he managed to secure a new tenant, but that new tenant did not move in until June 1, 2021.

The landlord testified that one of the potential tenants had said he “didn’t like what I see and I can’t rent it if I can’t see it [the rental unit].” The landlord also said that the tenant was asking for \$50 from the landlords’ realtor if they wanted to have a viewing. In any event, the landlord argued that he was only able to finally show the property after the tenants vacated near the end of April. And he reiterated that no one is going to rent a rental unit if they cannot look at it.

A copy of one of several notices were in evidence. One notice, dated March 28, 2021, stated that it was served on the tenants at approximately 3 PM on March 27, and that the landlords would be showing the rental unit on March 28 between 6 PM and 7:30 PM. Another notice, dated March 30, 2021, indicated that it was served on the tenants on March 30 at approximately 8 PM and that the landlord would be showing the rental unit on April 1 between 6 PM and 7:30 PM. There are a few more similar notices.

The tenants did not deny that they prohibited the landlord and potential new tenants from entering the property. Nor did they deny that the landlords had given them notice to enter the rental unit. But the problem is that the landlords’ notice, which was given to them in late March or early April, stated that the landlord intended to enter the rental unit between 5:30 PM and 7:30 PM every day for the remainder of the month.

It is the tenants' position that this was not in compliance with the Act in respect of such notices. After the tenants' refusal to allow such sweeping entry, the landlord was "never able to figure out how to give proper notice."

### Analysis

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, a party claiming compensation must do whatever is reasonable to minimize their loss.

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

To determine whether a party is entitled to compensation, there is a four-part test which must be met, and which is based on the above sections of the Act: (1) Was there a breach of the Act, the tenancy agreement, or the regulations by the respondent? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant do whatever was reasonable in minimizing their loss? Each element of this test must be proven on a balance of probabilities. If one element of the test is not proven, then the remainder of the test need not be considered.

The landlords argue that the tenants' refusal to comply with their entry notices (to show to prospective tenants) led to the landlords suffering a loss of rent.

Section 29(1)(b) of the Act states that

A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies: [ . . . ] at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

Having reviewed the copies of several notices submitted into evidence by the landlords, it is my finding that they comply with section 29(1)(b) of the Act. They were, except for a few, given at least 24 hours before, they noted the date and time of entry, and they stated the purposes for entering (showing the rental unit to a potential tenant is reasonable, I find). There was no “blanket” notice covering every single day in the month of April as the tenants had explained it.

In summary, it is my finding that the tenants failed to comply with at least some of the landlords’ notices to enter the rental unit, which is permitted under the Act. As such, a breach of the Act occurred.

However, I am not persuaded that, but for the tenants’ failure to comply with the notices to enter the rental unit, the landlords would not have suffered a loss. I am not convinced that they could not rent out the rental unit without a physical showing. Indeed, the landlords were able to show the rental unit to at least a couple of potential renters before the tenants decided to become difficult. While a physical, in-person viewing is preferable, it is not a necessity. And what is lacking from the landlords’ evidence is documented *proof* that any or all of the potential tenants were unwilling to consider renting, even in the absence of a physical viewing.

Given the above, it is my finding that while the tenants breached the Act by not complying with the notices to enter, I am not satisfied on a balance of probabilities that the landlords suffered a monetary loss for these breaches. Accordingly, the landlords’ application for compensation is dismissed, without leave to reapply.

### Conclusion

**The application is hereby 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 Act.

Dated: November 29, 2022

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Residential Tenancy Branch