



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AQUILINI PROPERTIES LP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, MNRL-S, FFL

### Introduction

On July 25, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for unpaid rent and utilities, to apply the security deposit to the claim, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me. The Tenants confirmed that they did not submit any evidence for this hearing.

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

Should the Landlord receive a Monetary Order for unpaid utilities, in accordance with Section 67 of the Act?

Should the Landlord receive a Monetary Order for compensation for lost rent, in accordance with Section 67 of the Act?

Should the Landlord be authorized to apply the security deposit to the monetary claims, in accordance with Section 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

### Background and Evidence

The Landlord and the Tenants agreed on the following terms of the tenancy:

The one-year, fixed term tenancy began on January 30, 2018 and was scheduled to continue as a month-to-month tenancy after January 31, 2019. The rent of \$2,555.00 was due on the first of each month. The Landlord collected and still holds a \$1,277.50 security deposit. The Tenants moved out on July 16, 2018.

The Landlord and the Tenants agreed on the following statements of fact:

On June 6, 2018, the Tenants provided an email to the Landlord to advise that they planned on moving out of their rental unit by mid-July 2018. The Landlord replied and advised the Tenants about their one-year fixed term agreement and gave them information about subletting or assigning their tenancy agreement.

On June 13, 2018, the Landlord's emailed the Tenants again about their plans and asked if the Tenants were going to sublet. The Tenants did not reply.

On July 3, 2018, the Tenants had not paid their rent and the Landlord posted a 10-Day Notice to End Tenancy for Unpaid Rent on their door.

On July 6, 2018, the Landlord received an email from the Tenants advising that they planned on leaving the rental unit on the move-out date of July 16, 2018, as stated on the 10- Day Notice to End Tenancy.

On July 10, 2018, the Landlord advised the Tenants of their responsibilities to pay the rent in accordance with the Tenancy Agreement and warned them that the building currently had two rental units that were advertised for rent and currently vacant.

On July 11, 2018, the Landlord did not receive a response from the Tenants and followed up with an email to book a date for the move-out condition inspection. The Tenants responded and confirmed that they would meet for the condition inspection on July 16, 2018.

On July 12, 2018, the Landlord began advertising the rental unit on various websites for the monthly rent of \$2,555.00.

On July 13, 2018, the Landlord posted a second advertisement and stated that they renewed the ad every two days.

On July 16, 2018, the Landlord and the Tenants conducted a move-out inspection and the Tenants consented to a deduction of \$935.00 from the security deposit for damages to the rental unit.

The Landlord kept advertising the rental unit and on August 8, 2018 received an application from a potential new tenant; however, the tenant did not sign a new Tenancy Agreement.

On August 21, 2018, the Landlord reduced the rent to \$2,495.00 and continued advertising the unit for rent.

On September 7, 2018, the Landlord received another application from a new tenant and successfully arranged for the new tenancy to begin on October 1, 2018 for a monthly rent of \$2,495.00.

The Landlord submitted copies and stated that the Tenants failed to pay their hydro bills in accordance with their Tenancy Agreement in the amount of \$211.29.

The Landlord is claiming a loss of three months rent for July, August and September 2018, in the amount of \$7,665.00, and also requesting compensation for unpaid utilities in the amount of \$211.29, for a total claim of \$7,876.29.

The Tenants did not dispute the Landlord's claim; however, hoped to come to a compromise with the Landlord and to potentially settle the claim. The Tenants wondered if the rental unit could have been rented out faster if the rent was lowered earlier than the end of August 2018.

## Analysis

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Based on undisputed evidence, I find that the Tenants entered into a fixed term tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$2,555.00 until the end of the fixed term of January 31, 2019. I find that the Tenants have not paid rent from July 1, 2018 through to September 30, 2018. As the Tenants are required to pay rent pursuant to Section 26(1) of the Act, I find that the Landlord has established a monetary claim in the amount of \$7,665.00 in outstanding rent.

Based on undisputed evidence, I find that the Landlord has shown that the Tenants were responsible for paying the hydro bills for the rental unit and have failed to do so, in accordance with the Tenancy Agreement. I find that the Landlord has established a monetary claim in the amount of \$211.29 in outstanding utility bills.

Before awarding a monetary claim to the Landlord, I have to consider Section 7(2) of the Act that states a Landlord or Tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the Regulations or their Tenancy Agreement must do whatever is reasonable to minimize the damage or loss.

The Landlord testified that they initiated the advertising for the rental unit soon after confirming that the Tenants would be moving out on July 16, 2018; actively marketed the rental unit for rent; and, advertised the rental unit for a reduced rent within a reasonable amount of time. Based on this, I find that the Landlord has shown diligence in minimizing their losses, in accordance with Section 7(2) of the Act.

The Landlord's claim has merit and should be compensated for the cost of the filing fee, in accordance with Section 72 of the Act.

The Landlord has established a monetary claim in the amount of \$7,976.29, which includes \$7,876.29 for unpaid rent and utilities and the \$100.00 in compensation for the filing fee for this Application for Dispute Resolution. The Landlord and the Tenants

agreed that the Landlord currently holds the balance of the security deposit in the amount of \$342.50. Pursuant to Section 72(2) of the Act, I authorize the Landlord to keep the balance of the Tenants' security deposit in partial satisfaction of the monetary claim.

Based on these determinations, I grant the Landlord a Monetary Order for \$7,633.79, in accordance with Section 67 of the Act.

### Conclusion

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$7,633.79. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: November 28, 2018

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Residential Tenancy Branch