



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Attu Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC-S, MND-S, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for a monetary loss or other money owed;
- compensation for alleged damage to the rental unit by the tenant;
- authority to keep the tenants' security deposit to use against a monetary award; and
- recovery of the filing fee.

The landlord's agent (landlord), the office manager, and the tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receiving the other's evidence.

Thereafter both parties were provided the opportunity to present their affirmed testimony and to refer to relevant documentary or digital evidence submitted prior to the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

The landlord's application was made on or about March 6, 2020, listing a total monetary claim of \$13,071, which included a claim for unpaid rent or loss of rent for March 2020, in the amount of \$5,863.

The landlord's monetary order worksheet did not provide the unpaid rent claim, but listed a claim for a garage door fob, carpet replacement, and blind repair. The monetary order worksheet was dated March 6, 2020.

On or about June 23, 2020, the landlord filed into evidence an updated monetary order worksheet, listing a monetary claim of \$20,926.

The landlord was informed that they may not add to their monetary claim through evidence. The monetary claim may only be amended or increased through an amended application and supporting evidence, which then must be served to the respondent, the tenant here, in compliance with the timelines set out in the Rules. This is because the respondent is entitled to know the claim against him and have an opportunity to submit responsive evidence.

I therefore refused to hear or consider the additional monetary claim of the landlord. The hearing proceeded on the landlord's original monetary claim of \$13,071.

The landlord is at liberty to apply for those claims not considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The evidence was that a tenancy between the parties initially began on September 1, 2016. The parties signed a new tenancy agreement, providing for a tenancy beginning

on September 1, 2019, with a fixed term ending on August 31, 2020, for a monthly rent of \$5,863, and a security deposit of \$2,750 being paid.

The landlord's original and accepted monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Loss of rent revenue for March 2020	\$5,863.00
2. Garage door fob	\$168.00
3. Carpet damage (original install cost)	\$6,540.00
4. Repair to the blind pulls	\$400.00
5. Filing fee	\$100.00
<b>TOTAL</b>	<b>\$13,071.00</b>

#### **Unpaid rent (loss of rent revenue) –**

The landlord submitted that the tenant was well aware that when they negotiated and executed the latest tenancy agreement, the tenant would be responsible for the monthly rent through the end of the fixed term, and in this case, August 31, 2020.

The landlord submitted that their email evidence proves the tenant's understanding of his obligation.

The landlord explained that the tenant was building a home in the area, and there was a possibility that he would either move into the new home or sell it; however, the tenant agreed to the fixed term tenancy agreement.

The landlord referred to their email evidence to show that the tenant gave notice of his intention to move from the rental unit and temporarily into his home, and having another party move temporarily into the rental unit.

The landlord's evidence shows that they required some documents prior to letting another party sub-let the rental unit, but that this arrangement never came to fruition. Ultimately, in an email on January 20, 2020, the tenant informed the landlord he was moving out of the rental unit by March 1, 2020.

The landlord said that after that email, the tenant told them three days later that he may not move out, as he had three potential buyers for his home. According to the landlord,

they had no further contact from the tenant by the end of January 2020, and then sent him an email. The landlord submitted that the tenant responded in an email on February 3, 2020, that he was moving out.

The landlord submitted that they had begun to look for a new tenant before February 3, 2020, by contacting the local, large employers. The landlord said on February 3, they were out of the country and asked the tenant to send in photos of the rental unit so it could be listed. The landlord said that the tenant sent the photos on February 10, and the rental unit was officially listed for rent on February 11, 2020.

The landlord submitted they consistently advertised, expended a lot of energy and time, and secured a new tenant for May 1, 2020.

The landlord submitted that the rent cheque for March from the tenant was returned due to insufficient funds and they are entitled to the loss of rent revenue for March 2020.

*Tenant's response –*

The tenant asserted that the email he sent to the landlord on January 20, 2020, and the response from the office manager on January 22, 2020, showed there was a mutual agreement between the parties to end the tenancy.

The tenant submitted that the rental unit needed painting and that no one knew Covid-19 would be happening, saying that the pandemic and old painting were the reasons the rental unit could not be re-rented.

The tenant said the increase in the monthly rent the landlord sought also did not help in securing a new tenant.

The tenant said the landlord always knew he intended on moving out, as it was fully communicated.

**Carpet, garage door fob, and repair to the blind pulls claim –**

The landlord said that the tenant damaged the carpet in the living room beyond repair, due to the large stain caused by the tenant. The landlord submitted that the carpet was pure wool and installed in 2014.

The landlord submitted that the carpet in the living room cannot be patched and has to be replaced, as a result of the damage from the tenant.

The landlord submitted an estimate for carpet replacement from the company who installed the original carpet.

In response to my inquiry, the landlord submitted the carpet has not yet been replaced.

As to the blind pulls, the landlord submitted that all the strings had been pulled off and placed in the window. The actual costs to repair was \$218.

The landlord submitted a copy of the condition inspection report (CIR), which contained information from the move-in date and the move-out date. The landlord here said his wife conducted the move-in inspection.

#### *Tenant's response –*

The tenant said there was already a stain on the carpet, but said that the carpet could easily be repaired, as shown by his evidence, a quote from a company.

The tenant denied having any knowledge of the blind damage.

The tenant agreed to pay the garage door fob.

#### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

#### Test for damages or loss

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 sections 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 what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

#### **Unpaid rent (loss of rent revenue) –**

Section 45(2) of the Act states that 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.

In other words, the tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month that is not earlier than the fixed term, August 31, 2020.

On the basis of the undisputed evidence that the tenant's notice was provided in late January, with final confirmation on February 3, 2020, I find that the tenant breached the terms of his written tenancy agreement by ending the tenancy before August 31, 2020. I find the tenant is liable to the landlord for monthly rent under the terms of the tenancy agreement, subject to the landlord's obligation to minimize their loss.

I find the tenant's email of January 20, 2020, to the landlord was simply his notice that he was vacating the rental unit. Despite the tenant's assertion, I do not find his notice

became a mutual agreement by virtue of the fact the landlord's agent responded with an acknowledgement the tenant was moving out.

I have reviewed the landlord's documentary evidence and find that they met their obligation to minimize their loss. The landlord began looking for a new tenant February 3, 2020. The advertisements submitted by the landlord showed they began advertising the rental unit February 11, 2020, which I find substantiated that they quickly and consistently advertised the rental unit; however, they were unable to find a new tenant for March 2020.

Due to the above, I find the landlord has established a monetary claim of \$5,863, for a loss of rent revenue for the month March 2020.

**Carpet damage and repair to the blind pulls claim –**

As to the costs claimed by the landlord associated with alleged damage, Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

I have reviewed the landlord's CIR and find this evidence is inconclusive and inconsistent. For instance, the Report shows that on September 7, 2016, when the rental unit was first inspected by the parties at the beginning of the tenancy, the living room carpet had a "large stain/water mark". Additionally, the Report lists repairs that were to be completed at the start of the tenancy. One of the listed repairs was to the blinds.

While the landlord submitted a photo of the stain taken after the tenancy ended, I was not provided a photo of the stain taken at the beginning of the tenancy. I was therefore unable to compare the stain from the beginning of the tenancy to that at the end of the tenancy.

The tenant denied knowing anything about the blinds.

I therefore was unable to determine whether the tenant caused any damage to the carpet and blinds which was above reasonable wear and tear.

Due to the landlord's inconsistent and inconclusive evidence and the disputed oral evidence, I find they have not proven their claim for carpet and blind damage, on a balance of probabilities.

I dismiss the landlord's claim for carpet replacement/repair and blind repair.

**Garage door fob –**

The tenant agreed to responsibility for the garage door fob. The landlord said that the actual costs was \$218.

I therefore find the landlord has established a monetary claim of \$218 for the garage door fob replacement.

As the landlord has been successful with some of their application, I award them recovery of their filing fee of \$100.

Due to the above, I find the landlord has established a total monetary claim of \$6,181, comprised of loss of rent revenue for March 2020, in the amount of \$5,863, the garage door fob for \$218, and the filing fee paid for this application in the amount of \$100.

At the landlord's request, I direct them to retain the tenant's security deposit of \$2,750 in partial satisfaction of their monetary award of \$6,181. I therefore grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$3,431, which is included with their decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is cautioned that costs of such enforcement may be recoverable from the tenant.

*Information to the parties –*

During the hearing, I was informed that the tenant has filed an application for dispute resolution, which is set to be heard before another arbitrator on another date. I informed the parties that any evidence they submitted for this hearing will not be transferred for the hearing on the tenant's application for dispute resolution. The parties were informed if they wanted any evidence to be considered at the hearing on the tenant's application, they must submit it specifically for that file. This includes a copy of this Decision, if they so choose.



Conclusion

The landlord's application for monetary compensation is granted in part. The landlord has been granted a monetary award of \$6,181, authorized to deduct the tenant's security deposit of \$2,750 and they have been granted a monetary order for the balance due, \$3,431.

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 16, 2020

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Residential Tenancy Branch