



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ASSOCIA BRITISH COLUMBIA, INC. - RHOME  
PROPERTY and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL, MNDCL-S, MNDL-S, FFL

### Introduction

On June 15, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On July 16, 2020, the Landlord amended the Application for Dispute Resolution seeking to increase the amount of monetary compensation being sought pursuant to Section 67 of the *Act* due to: rental loss of August 2020 rent, liquidated damages, and damage and cleaning to the rental unit.

A.G. attended the hearing as an agent for the Landlord and C.G. attended the hearing as the owner of the rental unit. Neither Tenant attended at any point during the 55 - minute teleconference hearing. All in attendance provided a solemn affirmation.

A.G. advised that a Notice of Hearing package was served to each Tenant by registered mail on June 19, 2020, to the rental unit address as the Tenants were still occupying the premises (the registered mail tracking numbers are listed on the first page of this Decision). The tracking history indicated that Tenants received these packages. Based on this solemnly affirmed, undisputed testimony, I am satisfied that the Tenants have been served the Notice of Hearing packages.

A.G. advised that the Tenants gave up vacant possession of the rental unit on July 21, 2020. She stated that the Landlord’s amended Application was served to a mother of one of the Tenants when she came back to the rental unit to pick up remaining items on the property that day. However, she did not have proof of this service. Rule 4.6 of the Rules of Procedure requires that this Amendment be served to the Tenants in

accordance with Section 89 of the *Act*. As service of this Amendment did not comply with Section 89, the Amendment will not be accepted. The Landlord is at liberty to reapply for these claims in a new Application.

On September 16, 2020, A.G. made an Application for Substituted Service, and before receiving a copy of the Substituted Service Decision, she emailed the Landlord's evidence to the Tenants on September 17, 2020. She also sent a copy of the Landlord's evidence to the dispute address on September 17, 2020 by registered mail, despite the Tenants not living there anymore. On September 24, 2020, a Substituted Service Decision was made allowing the Landlord permission to serve evidence by email to Tenant D.G. only. As the Landlord's evidence was served by registered mail to the rental unit where the Tenants no longer resided, and as the evidence was served by email to the Tenants prior to permission being granted to do so, I have excluded all of the Landlord's evidence. It will not be considered when rendering this Decision.

The Tenants did not submit any documentary evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

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

A.G. advised that the tenancy started on March 1, 2020 as a fixed term tenancy for one year; however, the Tenants gave up vacant possession of the rental unit on or around July 21, 2020. Rent was established at \$1,950.00 per month and was due on the first day of each month. A security deposit of \$975.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She stated that the Tenants never provided their forwarding address in writing.

She submitted that the Tenants contacted her in April 2020, advising her that they could not pay April rent. They then paid May 2020 rent, but they did not pay rent for June or July 2020 rent. On July 8, 2020, the Tenants emailed the Landlord stating that they would be moving out. A.G. advised that the Landlord is seeking compensation for April, June, and July 2020 rent. In addition, the Landlord is seeking August 2020 rent as the rental unit was so heavily damaged that she was unable to re-rent it for August 2020. The Landlord is seeking compensation in the amount of **\$7,800.00** for the rental arrears.

Furthermore, she advised that the Landlord is seeking compensation in the amount of **\$1,950.00** for the cost of liquidated damages, as per the tenancy agreement. She submitted that this would cover renewing advertisements every 48 hours, costing between \$300.00 to \$600.00. In addition, an average of five credit checks would cost approximately \$175.00. Additional administrative paperwork would total an estimated \$300.00 and the cost of the caretaker showing the rental unit would be roughly \$175.00.

### Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the evidence before me, I am satisfied that the Tenants never provided a forwarding address in writing to the Landlord. As such, the Landlord is not obligated under the *Act* to do anything with the deposit until a forwarding address is provided. As the Tenants never provided the Landlord with a forwarding address in writing, I am satisfied that the doubling provisions do not apply to the deposit.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines

that when a party is claiming for compensation, “It is up to the party who is claiming compensation to provide evidence to establish that compensation is due”, that “the party who suffered the damage or loss can prove the amount of or value of the damage or loss”, and that “the value of the damage or loss is established by the evidence provided.”

Regarding the Landlord’s claim for lost rent of \$7,800.00 for April, June, July, and August 2020 rent, even though the Landlord’s original Application only sought compensation for April and June 2020 rent, I accept that rental loss for July and August could have been reasonably anticipated under these circumstances. As a result, I will also consider these amounts when rendering this Decision. There is no dispute that the parties entered into a fixed term tenancy agreement from March 1, 2020 for a period of one year, ending February 28, 2021. Yet, the tenancy effectively ended when the Tenants gave up vacant possession of the rental unit on July 21, 2020.

Based on the undisputed evidence before me, I am not satisfied that the Tenants ended the tenancy in accordance with the *Act*. Therefore, I find that the Tenants vacated the rental unit contrary to Sections 44 and 45 of the *Act*, and that as a result of their actions, the Landlord suffered a rental loss.

I find it important to note that Policy Guideline # 5 outlines a Landlord’s duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Moreover, in claims for loss of rental income in circumstances where the Tenants end the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

I am satisfied that the Tenants gave the Landlord minimal notification that they were ending the tenancy and vacating the rental unit. As there was no evidence that the Tenants were permitted to end the tenancy early, and as they provided very little notice thereby making it very difficult to re-rent the unit, I am satisfied that the Landlord would have been challenged to re-rent the unit as quickly as possible. Furthermore, as there was substantial damage to the rental unit, which only increased the likelihood that the Tenants would be responsible for the rental loss that the Landlord suffered, and as this hindered the Landlord from re-renting, I am satisfied that the Tenants are responsible for April, June, July, and August 2020 rent. Consequently, I grant the Landlord a Monetary Order in the amount of **\$7,800.00** for the total rent arrears.

With respect to the Landlord's request for liquidated damages, I find it important to note that Policy Guideline # 4 states that a "liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement" and that the "amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into". This guideline also sets out the following tests to determine if this clause is a penalty or a liquidated damages clause:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.

Based on the testimony before me, I am satisfied that there was a liquidated damages clause in the tenancy agreement that both parties had agreed to. However, this amount is meant to be calculated as a genuine pre-estimate of the Landlord's loss to re-rent the rental unit. Given that the rental unit was so heavily damaged, A.G. acknowledged that there were no attempts to re-rent the unit. Therefore, there were no costs incurred by the Landlord to date. Furthermore, while she listed out the necessary approximate costs of the Landlord's time to re-rent the unit, she failed to explain how these costs totalled even close to the \$1,950.00 liquidated damages amount being sought. Moreover, she stated for all the rental units that she manages, the cost of liquidated damages is always set at an amount of one month's rent despite the approximate administrative costs of the Landlord to re-rent largely remaining the same. She failed to explain how this amount the Landlord was seeking would legitimately total \$1,950.00.

When reviewing her testimony, I find that A.G. has unsuccessfully managed to substantiate how the Landlord's future efforts to re-rent the unit would amount to \$1,950.00. It does not appear to me that this amount is a genuine pre-estimate of this loss, but rather simply an amount chosen as it happened to be conveniently equivalent to one month's rent. As such, I am satisfied that this amount constituted a penalty as opposed to the Landlord's genuine pre-estimate of loss. Consequently, I dismiss this claim in its entirety.

As the Landlord was partially successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. The Landlord elected not to request that the security deposit be applied towards this debt.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Tenants to the Landlord**

April 2020 rental loss	\$1,950.00
June 2020 rental loss	\$1,950.00
July 2020 rental loss	\$1,950.00
August 2020 rental loss	\$1,950.00
Filing fee	\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$7,900.00</b>

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$7,900.00** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The Landlord's claims for compensation on the Amendment pertaining to damage and cleaning are dismissed with 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: October 6, 2020

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Residential Tenancy Branch