



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Associa British Columbia, Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

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

- compensation for a monetary loss or other money owed; and
- recovery of the filing fee.

The tenant and the landlord's agents (agents) 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 all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

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.

### Issue(s) to be Decided

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

### Background and Evidence

Filed into evidence was a written tenancy agreement showing a tenancy start date of August 1, 2019, with a monthly rent of \$1,308.

The tenant said that the tenancy ended on August 31, 2020.

The tenant's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Reimbursement rent, March-June, August	\$6,575.00
2. Escrow closing fee	\$750.00
3. Property tax, September 2020	\$411.11
4. Strata fee	\$250.00
5. Mortgage, September 2020	\$1,890.30
6. Home insurance	\$60.70
<b>TOTAL</b>	<b>\$9,937.11</b>

In support of his application, the tenant submitted the following:

#### **Escrow closing fee, property taxes, strata fee, mortgage payment and home insurance costs –**

As to the tenant's claims for escrow closing fee, property taxes, a strata fee, a mortgage fee and home insurance, the tenant submitted he had to cancel his planned move in September, due to the landlord's refusal to accept his notice of August 1, 2020 to end the tenancy on August 31, 2020. In an email from the tenant, he explained that he had to cancel his agreement to purchase a home, as he could not afford monthly rent for September and the homeownership expenses.

The tenant testified that he was informed that the home was not completed in time for the move in September and the landlord should be responsible for the first month's homeownership expenses.

The tenant wrote that he moved out of the rental unit as of August 28, 2020, to allow him to plan for a new school year as an assistant professor. The tenant alleged that he was forced to move in September, for work purposes.

I note that it was not made clear of the exact date in August the tenant vacated or whether and/or when the tenant eventually moved into his new home.

**Reimbursement of monthly rent, March-June and August) –**

The tenant submitted he is entitled to recover all of the monthly rent he paid for the months of March through June 2020, and for August 2020.

The tenant explained that he did not have quiet enjoyment of the rental unit for various reasons. The tenant said that his microwave did not work properly and he was unable to cook his food to this satisfaction.

The tenant submitted additionally that the enterphone system allowing access to the residential property was located on the outside of the building next to his rental unit. The tenant wrote that he was awakened often due to the noise from the buzzer, which caused him to suffer terrible nightmares, depression and anxieties. The tenant submitted that his prayer life has been negatively affected as well.

The tenant wrote that the disturbances from the volume of the enterphone forced him to teach, attend meetings, record lecture videos from his workplace, risking contracting Covid-19.

In response to my inquiry, the tenant confirmed that he did not notify the landlord about his issues with the enterphone system until on or about August 21, 2020, because he did not realize until then that he had the right to quiet enjoyment.

In response to my inquiry, the tenant confirmed that he had full use of his rental unit, including bedroom, bathroom, and kitchen facilities during these months.

The tenant also raised the concern about the theft of his bicycle outside the residential property.

The tenant's additional relevant evidence included SMS messages between the tenant and landlord, email correspondence between the parties, receipts for homeownership claims, a sketch of the layout of the rental unit and photos.

### **Landlord's response –**

Landlord's agent, DD, submitted that when the tenant raised the issue about his microwave not working properly, she notified the warranty department, as it was a new appliance. DD submitted that she acted promptly. DD said that the warranty representative acted promptly, but that ultimately the decision to replace the microwave was made. DD said the microwave issue was out of her hands, due to the warranty claim and it was resolved as soon as possible.

Landlord's agent, AG, said that, with the exception of the microwave, they did not know about other issues with the tenant until he notified them in August 17, 2020.

As to the enterphone system, the agent submitted that in August 2019, while the tenant lived in another province, they were holding an open house, having only one 1 bedroom apartment left. The tenant inquired about the rental unit, and the agent said that the tenant could have a friend attend the open house to preview the rental unit; however, the friend never visited. Instead, the agent submitted that the tenant proceeded with the application process, sight unseen. The enterphone system has been in the same location since the building was built and they only learned of a potential issue on August 17, 2020, when the tenant notified them, according to the landlord. The landlord wrote that this issue came as a surprise as the tenant had lived in the rental unit for over a year, with no complaints, and they would have addressed it immediately had they been notified.

DD said that when they were notified, they took immediate steps, by turning down the volume on the enterphone and putting in caution notices to other tenants and visitors, about the sound levels. DD explained that the maximum volume for the enterphone was 15, and that it is normally set at 9. After the complaint from the tenant, the enterphone's volume was reduced to 4, which is barely audible to users, according to the agent.

The landlord submitted that the tenant provided his notice to vacate on August 1, 2020, ending the tenancy on August 31, 2020. The landlord submitted that they attempted to arrange a showing, but were hampered by the tenant.

The landlord's evidence showed that the tenant later retracted his notice to vacate, when he learned he would be responsible for the monthly rent for September 2020, due to the insufficient notice.

The landlord's relevant evidence included copies of email communication between the parties and a written timeline of events of the tenancy.

### Analysis

#### 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 each of 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 whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant 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 landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenant did whatever 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.

#### **Escrow closing fee, property taxes, strata fee, mortgage payment and home insurance costs –**

The tenant has claimed costs involved in purchasing his own home. However, an applicant can only recover damages for the direct costs of breaches of the Act, the Residential Tenancy Regulations (Regulation) or the tenancy agreement in claims under Section 67 of the Act. Buying a home is a choice made by the tenant, as he was not prevented by the landlord from moving into another rental unit of his choosing.

I find the tenant has failed to provide sufficient evidence to hold the landlord responsible for choices made by the tenant. I also find the tenant was not required to move out by operation of the Act. It is the tenant's responsibility to know his obligations regarding proper notice.

I **dismiss** the tenant's claim for escrow closing fee, property taxes, strata fee, mortgage payment and home insurance costs, without leave to reapply.

**Reimbursement of monthly rent, March-June and August) –**

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the Act; use of common areas for reasonable and lawful purposes, free from significant interference.

The tenant raised other minor issues, such as a low-functioning microwave; however, at the hearing and in his application, this claim centered around the tenant's assertion that the noise from the enterphone caused him to suffer a loss of his quiet enjoyment. As a result, the tenant has claimed that he is entitled to be reimbursed his entire monthly rent payments for five months.

In this case, the tenant confirmed that he had full use of his rental unit, including bedroom, bathroom, and kitchen facilities during the entire tenancy. I find his claim for full reimbursement of his monthly rent when he had full use of the rental unit to be unreasonable.

Additionally, the undisputed evidence is that the tenant never alerted the landlord of any of his complaints about the enterphone until several weeks after he provided notice to the landlord that he was vacating the rental unit, or over a year later. A landlord cannot address complaints that were never given. In this case, although the tenancy was ending, I find the landlord reasonably and properly addressed the matter of the volume on the enterphone, as was their obligation.

Finally, as the tenant failed to notify the landlord of any of his issues regarding the enterphone for over a year, I find the tenant has submitted insufficient evidence that he took reasonable steps to mitigate his alleged loss.

For these reasons, I **dismiss** the tenant's claim for reimbursement of his monthly rent payments, without leave to reapply.

Conclusion

As I have dismissed the tenant's monetary claim, I dismiss his application in full.

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: December 23, 2020

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Residential Tenancy Branch