



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BENTALL GREEN OAKS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      **MNDCT, FFT**

### Introduction

This hearing dealt with the Applicants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Assistant Property Manager, LT, Leasing and Resident Experience Manager, AM, and one Applicant, JS, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Applicant confirmed that she served the Landlord with the Notice of Dispute Resolution Proceeding package and her evidence for this hearing by using a permitted email address for service purposes on October 8, 2021 (the "NoDRP package"). The Landlord confirmed receipt of the email from the Applicant on October 12, 2021. A Landlord employee advised the Applicant that they were having trouble opening five documents in the email attachments. The Applicant provided copies of the five attachments to the Landlord. The Landlord confirmed receipt of the five documents delivered by the Applicant. I find that the Landlord was served with the NoDRP package

on October 12, 2021, in accordance with Sections 43(2) of the *Residential Tenancy Regulation* (the “Regulation”).

### Issues to be Decided

1. Are the Applicants entitled to an Order for compensation for a monetary loss or other money owed?
2. Are the Applicants entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on February 1, 2021. The fixed term ended on January 31, 2022. Monthly rent was \$3,495.00 payable on the first day of each month. A security deposit of \$1,747.50 and a pet damage deposit of \$1,747.50 were collected at the start of the tenancy. The deposits were returned to the Applicants less \$35.00 for one hour of cleaning and a \$500.00 lease break fee.

Section 23 of the tenancy agreement, a break agreement clause, states:

*In the event that the Tenant vacates the Premises before the end of the original term as set out in the Agreement, the Landlord may, at the Landlord's option, treat this agreement as being at an end. In such event, the Tenant shall pay to the Landlord not as a penalty but as liquidated damages the sum of \$500.00 for the reasonable costs incurred by the Landlord in re-letting the Premises, including legal costs, solicitor fees and the expense of keeping the Premises in good order and preparing the Premises for re-letting. The Landlord and Tenant acknowledge and agree that payment of liquidated damages will not preclude the Landlord from exercising any further right of pursuing another remedy available in law or in equity, including but not limited to, damage to the Premises and damage as a result of lost rental income due to the Tenant's breach of any term of the Agreement. (emphasis mine)*

As early as May 2021, the Applicants made inquiries on approaches to ending their tenancy early. The community administrator set out the Lease break (Applicants pay \$500.00) and Lease assignment options (Applicants not charged \$500.00).

The Applicants provided a notice to vacate on June 3, 2021. The Applicant testified that they were given the option to advertise the suite themselves and do all the showings (Lease assignment); or they could pay \$500.00 and the Landlord would actively market the rental unit, show the rental unit and begin to handle everything within 48 hours (Lease break). The Applicants chose the Landlord's Lease break-active marketing offer and paid the \$500.00. The June 3, 2021 letter from the Landlord stated they would make their best efforts to rent the apartment as soon as possible and release the Applicants from their rent payment obligations under their fixed term tenancy. The letter set out that the Landlord's rental practice includes:

- On site management office is open daily (including most holidays)
- Experienced building management team includes 3 staff members
  - Suite rental advertising
  - Extensive building marketing program

The Applicants testified that there were no showings of the rental unit in the month of June 2021. After making inquiries for an update on the search for a new tenant in the rental unit, the Applicants received on July 20, 2021 an email from CL, Leasing and Resident Experience Manager saying, *"We have your suite advertised on the following web pages rentals.com, craigslist, kijiji, Padmapper, zumper, rentfaster.com, 4rent.ca, rentboard.ca, trovit and REW.ca. All postings went live the morning of July 7th except craigslist which went up the morning of July 12th. They will be ongoing until the suite is rented."*

The Applicant searched on online websites she thought their rental unit would be listed, but she could not find it listed in any of those places. On July 6, 2021, the Applicants received their first email requesting a showing of the rental unit for July 7, 2021. The Applicants moved out on July 17, 2021 after doing all the exiting paperwork with the Landlord. There were no issues and the Applicants received their full deposits back. On July 26, 2021, the Applicants returned the keys to the rental unit to the Landlord, and were told that no new tenant had been secured for August 1, 2021. At the end of July, the Applicants were told that the Landlords had found a tenant for September 1, 2021.

The Applicant stayed in contact with the office team about rental of her unit. She maintained her home in a clean fashion so that if any prospective tenant came in, they would see a tidy unit. The Applicant maintains that she did everything she could to support the Landlord's team so they could secure a quick leasing of the unit.

The Applicants monetary worksheet includes:

Monetary Claims	Amount
Lease Break Fee	\$500.00
August Rent	\$3,495.00

The Landlord testified that they listed the rental unit on their own website; however, they do not tell people that advertisements will go up within 48 hours. In an August 5, 2021 letter from CLR, the Regional Property Manager, Residential, they wrote:

...

*Upon receipt of the written notice to vacate on June 3<sup>rd</sup>, 2021 the rental unit was added to the sites list of available units. We updated the online advertising to include the style of unit as available and marketed it on Kijiji, Zumper, WalkScore, 4Rent, RentBoard, Trovit, RentFaster, REW and Craigslist. We do not list specific units in our advertising, rather the type so that we do not need to update the online advertising each time a unit is rented out. The style of unit was listed as available and shown to prospects inquiring about a unit of that size and price.*

...

The Landlord uploaded invoices for the end of June and July 2021 illustrating the residential property was listed on:

LIFT	Monthly Service Fees – [name of building]
PadMapper & Zumper	RentSync Cost Per Lead Advertising: [name of building]
Rent Board	Featured Listings - [name of building]
SEM	Google Ad Words Campaign and Management Fee - [name of building]
Walk Score	RentSync Cost Per Lead Advertising: [name of building]

The invoices do not specify if the Applicants' specific unit was included in the postings. The Landlord described that the invoice information does not list the unit numbers,

rather only the unit types; however, after reviewing the invoices, unit types are not listed.

The Landlord stated they also provided information to enquiries from people who asked about the rental unit. The Landlord stated that people were not happy with the view which is obstructed by an HVAC unit.

There was interest from a current tenant of the residential property, but this person who was familiar with the suite layout, saw pictures of the outside views from the rental unit and declined to submit an application.

The Landlord's hearing participants stated that they do not actively advertise, that all advertising is done through their marketing team. At the time the Applicants were vacating, the Landlord stated they had 24 units available to rent, including another penthouse suite with an unobstructed view of the water.

The Landlord's position is that the Applicants' are not entitled to a monetary award.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The Applicants are claiming a monetary award for, what they submit was, the Landlord not actively marketing their rental unit when they needed to end their tenancy.

Section 7 of the Act states:

### ***Liability for not complying with this Act or a tenancy agreement***

- 7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
- (2) *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.*

RTB Policy Guideline #16 addresses the criteria for awarding compensation to an affected party. This guideline states, *“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.”* This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze whether:

- a party to the tenancy agreement has failed to comply with the Act, Regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and,
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The Applicants submit that the Landlord breached their own break agreement clause in their tenancy agreement when they did not actively market the Applicants’ rental unit after receiving the Applicants’ notice to end tenancy before the fixed term end date. The Landlord’s break agreement clause specifies that the liquidated damages amount of \$500.00 is used towards the *“reasonable costs incurred by the Landlord in re-letting the Premises, including legal costs, solicitor fees and the expense of keeping the Premises in good order and preparing the Premises for re-letting”*. (emphasis mine) The Landlord wrote that their rental practice includes in part:

- Experienced building management team includes 3 staff members
  - Suite rental advertising
  - Extensive building marketing program (emphasis mine)

On July 20, 2021, a Landlord team member gave email confirmation to the Applicant that all postings of the Applicants’ rental unit went live on several platforms on July 7, 2021 and the Craigslist posting went live on July 12, 2021. The Landlord’s representative in the hearing provided invoices of advertising for the residential property; however, the invoices are more general than specifically referring to the Applicants’ rental unit. I find that the Landlord has not complied with its tenancy agreement and had not used the collected liquidated damages towards suite rental

advertising and an extensive building marketing scheme for the Applicants' rental unit. I find that the Applicant was diligent in seeking information from the Landlord about their efforts to re-rent her suite. She did choose the lease break option as opposed to the assignment option and the marketing of her rental unit was out of their hands. I find the Applicants incurred damage and loss that directly flowed from the non-active marketing of their rental unit. I also find that the Applicants made reasonable efforts to minimize the damage and losses they experienced by maintaining communication with the Landlord, effectively reminding them to not let their efforts wane. I find the Applicants are entitled to monetary compensation in the amount \$500.00.

On the other side of this matter, I find that the Landlord is under no obligation to compensate the Applicants for the return of August's rent. The Applicants have not proven on a balance of probabilities that the Landlord's non-active marketing, or late-active marketing of their rental unit was the reason for the Landlord not finding a new tenant until September 1, 2021. A landlord is entitled to claim the loss of rent for the remainder of the term of a fixed term tenancy agreement, and this expense is the Applicants to bear.

As the Applicants are partly successful in their claim, they are entitled to recovery of the application filing fee. The Applicants' total Monetary Award is (\$500.00+\$100.00) \$600.00.

### Conclusion

I grant a Monetary Order to the Applicants in the amount of \$600.00. The Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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 Act.

Dated: June 08, 2022

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Residential Tenancy Branch