



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

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

### Introduction

This hearing was scheduled to convene at 1:30 p.m. on February 10, 2023 concerning an application made by the landlords seeking the following relief:

- a monetary order for unpaid rent or utilities;
- a monetary order for damage to the rental unit or property;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and
- to recover the filing fee from the tenant for the cost of the application.

The landlords were represented at the hearing by an agent, who gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call.

The landlord's agent advised that the tenant was served with the Notice of Dispute Resolution Proceeding and all of the landlords' evidence by registered mail on September 7, 2022 and a copy of a Registered Domestic Customer Receipt and a Canada Post cash register receipt bearing that date have been provided for this hearing. The evidence also shows that it was unclaimed by the tenant, and the landlord served the documents again by email on September 30, 2022. The landlords' agent testified that the tenant provided an email as an address for service in the tenancy agreement, which has been provided for this hearing, and specifies an email address of the tenant.

An applicant must serve the respondent with the hearing package within 3 days, in the following ways:

**89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (f) by any other means of service provided for in the regulations.

The law also specifies that a document given or served in accordance with Section 89, unless earlier received, is deemed to be received on the 5<sup>th</sup> day after it is mailed. I accept that the landlord served the tenant by registered mail within 3 days as required by the *Act*.

All evidence of the landlord has been reviewed and is considered in this Decision.

#### Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenant for unpaid rent?
- Have the landlords established a monetary claim as against the tenant for damage to the rental unit or property?
- Have the landlords established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for late rent fees, N.S.F. fees, liquidated damages and parking fees?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on February 15, 2022 and was to expire on February 28, 2023 thereafter reverting to a month-t-month tenancy. However, the tenant vacated the rental unit on August 4, 2022. Rent in the amount of \$2,300.00, plus parking fees of \$50.00 per month were payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$1,150.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is an apartment in a low-rise development.

A copy of the tenancy agreement has been provided for this hearing which states that the tenant paid a pro-rated amount of rent for the first partial month of the tenancy, and sets out liquidated damages in the amount of \$2,300.00, not as a penalty, for all costs associated with re-renting the rental unit if the tenancy ends prior to the end of the fixed term. The landlords' agent testified that the landlords were successful in obtaining an order of possession and a monetary order for 1 month's rent, and copies have been provided for this hearing. The landlord claims liquidated damages of \$2,300.00.

The landlords have provided a Monetary Order Worksheet setting out the following claims, totaling \$9,295.00:

- \$2,300.00 liquidated damages;
- \$5,850.00 for unpaid rent and charges; flooded and ruined, renovators took over.
- \$150.00 for cleaning;
- \$250.00 for carpet cleaning;
- \$100.00 for blind cleaning;
- \$480.00 for wall repair;
- \$15.00 for a parking pass; and
- \$150.00 for furniture removal.

The landlord withdraws the claims for cleaning, carpet cleaning, blind cleaning, and wall repair. The tenant had a giant screw in the wall in the den which punctured a sprinkler pipe, then pulled it out and the suite flooded, as well as a suite below. Therefore, all of those claim fall under renovations. Normally \$15.00 is the cost for a parking pass, but the landlord's agent has not provided proof of the cost, nor that of furniture removal.

The landlords have also provided a Revised Monetary Order Worksheet setting out the following claims, totaling \$5,850.00:

- \$1,450.00 for June 2022 rent;
- \$2,000.00 for July 2022 rent;
- \$2,400.00 for August 2022 rent.

However, the \$1,450.00 claim for June's rent has already been awarded to the landlords, and this amount is withdrawn from this application. In July, the tenant paid \$400.00 which is why the claim for that month is \$2,000.00. The landlords also claim \$25.00 for N.S.F. charges and \$25.00 for late fees, which is provided in the tenancy agreement, which includes rent for August. The \$50.00 parking fees are included in the claim. The landlords have also provided a tenant ledger showing the payments due, made, returned for insufficient funds and owed.

The landlords claim \$2,300.00 liquidated damages, \$2,000.00 for unpaid rent for July; \$2,400.00 for unpaid rent and fees for August; \$100.00 for recovery of the filing fee; and an order permitting the landlord to keep the security deposit.

### Analysis

I have reviewed all of the evidentiary material. The landlord's agent did not specify how or when the landlords received the tenant's forwarding address in writing, however considering the undisputed testimony of the landlord's agent, I accept that the tenancy ended on August 4, 2022 and the landlords filed this application on August 17, 2022, I find that the landlord has made the application within 15 days of the date the tenancy ended, in accordance with the law.

Considering that the landlords were successful in obtaining an order of possession, I am also satisfied that the tenant caused the tenancy to end prior to the end of the fixed-term, contrary to the tenancy agreement. I also accept the undisputed testimony of the landlord's agent that flooding occurred at the end of the tenancy caused by the tenant and that the suite had to be renovated. Therefore, I do not find it necessary for the landlord to prove that the rental unit was advertised for rent within a reasonable time after the tenancy ended. I find that the landlords have established a claim for liquidated damages in the amount of \$2,300.00.

The tenancy agreement also specifies that late payment of rent is subject to a fee of \$25.00 and for N.S.F. fees. I have also reviewed the tenant ledger and I find that the

landlords have established a claim of \$4,200.00 for unpaid rent and \$100.00 for parking and \$100.00 for late fees and N.S.F. fees.

The landlord's agent did not lead any evidence with respect to damage to the rental unit or property and I dismiss that portion of the application.

Since the landlords have been partially successful with the application the landlords are also entitled to recovery of the \$100.00 filing fee.

Having found that the landlords have established claims totaling \$6,800.00, I order the landlords to keep the \$1,150.00 security deposit in partial satisfaction, and I grant a monetary order in favour of the landlords as against the tenant for the difference of \$5,650.00.

### Conclusion

For the reasons set out above, the landlords' application for a monetary order for damage to the rental unit or property is hereby dismissed without leave to reapply.

I hereby order the landlords to keep the \$1,150.00 security deposit and I grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$5,650.00.

This order is final and binding and may be enforced.

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: February 10, 2023

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Residential Tenancy Branch