

**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
S.B.C. 2004, c. 42 as amended (the “Act”)**

AND

IN THE MATTER OF

**[Licencee 1]
([Licence #])**

AND

**[Brokerage 1]
([Licence #])**

**AND IN THE MATTER OF A CLAIM TO
THE REAL ESTATE SPECIAL COMPENSATION FUND BY**

[Applicant 1, Applicant 2, Applicant 3 & Applicant 4 (Collectively: Claimant 4)]

[This Decision has been redacted before distribution and publication]

1. [Applicant 1], [Applicant 2], [Applicant 3] and [Applicant 4] (“the Applicants”¹) bring a claim against the Real Estate Special Compensation Fund (“the Fund”) with respect to losses they allege occurred in relation to a residential tenancy agreement that they were parties to.
2. The Applicants claim that in January 2019 they entered into a fixed term tenancy agreement for a property located at [Property 1] in Vancouver (“the Property”), and that they made separate payments of \$1,325.00 (for a security deposit) and \$2,650.00 (for first months rent) in respect of the Property. The Applicants claim that those payments were made to [Company 1], a British Columbia registered corporation for which [Licencee 1] was the sole director. [Licencee 1] (“[Licencee 1]”) was licensed at the time with [Brokerage 1]. The Applicants claim that [Licencee 1] held himself out as the authorized rental property manager for the Property.
3. On February 6, 2019, the date on which the Applicants were to take possession of the Property, [Licencee 1] failed to provide the Applicants access. [Licencee 1] subsequently informed the Applicants that the rental was no longer available. Despite promising to return to the Applicants their security deposit and first month’s rent payments, [Licencee1] did not do so.
4. In this application, the Applicants each say that they are entitled to one quarter of the total funds (\$3,975, or \$993.75 each) advanced to [Licencee 1].

¹ Section 62 of the *Real Estate Services Act* sets out that if more than one claim has been made in relation to a licensee, the superintendent may consider the claims together.

Proceedings

5. On January 11, 2022, a Hearing Officer² determined, pursuant to section 63(1) of the RESA, that a hearing into whether the Applicants had experienced a compensable loss would proceed by way of written submissions.
6. This is a hearing pursuant to section 63(1) of the RESA, which sets out that if a claim against the Special Compensation Fund is made, the Superintendent of Real Estate must consider the claim and may conduct a hearing to determine whether the person making the claim suffered a compensable loss and, if applicable, assess the amount of that loss,

Issues

The issues to be determined are:

- Did the applicants suffer a compensable loss as defined by section 60 of the RESA?
- If so, what is the amount of that loss?

Applicable Law

7. Section 60 of RESA defines “compensable loss” as follows:

"compensable loss" means loss suffered by a person in relation to real estate services that is the amount of money that

(a) was held or received by

- (i) a licensee,
- (ii) an officer, director, controlling shareholder or partner of the responsible brokerage,
- (iii) an employee of the licensee, of the responsible brokerage or of another related licensee of that brokerage, or
- (iv) a person acting in an independent contractor relationship with the licensee, with the responsible brokerage or with a related licensee of that brokerage,

from, for or on behalf of a principal in relation to real estate services, including any amount that is or is intended to be remuneration to a licensee, and

(b) was, as applicable,

- (i) misappropriated or wrongfully converted by a person referred to in paragraph (a) (i) to (iv),
- (ii) intentionally not paid over or accounted for, by a person referred to in paragraph (a) (i) to (iv), to the person entitled to the money, or

² The Superintendent of Real Estate has delegated the statutory powers and duties set out in sections 61 to 67 to Hearing Officers.

(iii) obtained by the fraud of a person referred to in paragraph (a) (i) to (iv),

but does not include loss that

(c) is claimed by a licensee or former licensee as remuneration to the licensee or former licensee,

(d) was caused by conduct that occurred before section 61 (1) [*claim for compensation*] came into force,

(e) was caused by conduct of a licensee acting under an exemption provided by Part 9 of the rules, or

(f) is prescribed;

8. Section 61 of the Act provides that in order to make a claim for compensation from the Special Compensation Fund, a person must apply in writing to the superintendent within the time limit established by section 61(2), which is set out as follows:

61(2) The time limit for making a claim is 2 years after the earliest of the following:

(a) the date on which the person making the claim became aware that the compensable loss occurred;

(b) if the licence of the responsible brokerage was cancelled or suspended by an order under section 45 (2) (a) [*orders in urgent circumstances relating to licensees*] at any time after the conduct that caused the compensable loss, the date of that cancellation or suspension;

(c) the date the superintendent publishes a notice, in accordance with the regulations, that compensable loss may have occurred.

Section 61(1) requires that an application must include the particulars of the conduct on which the claim of compensable loss is based, if the person is relying on a court decision, a copy of the decision, and any other information required by the superintendent.

Background

9. This claim for compensable loss was initiated by way of a Compensation Fund Claim Form which was completed by [Applicant 1] on October 30, 2019 and submitted to the former Real Estate Council of British Columbia³ (RECBC). In that initial claim form [Applicant 1] indicated he was filing a complaint and seeking compensation for a compensable loss in the amount \$3,975. [Applicant 1] identified the licensee involved in the matter as [Licencee 1].
10. Subsequent to completing the October 2019 Claim Form, [Applicant 1] provided an amended Claim Form to the RECBC on April 29, 2020. In the amended claim form [Applicant 1] indicated that the claim was being filed not only on his own behalf, but also on behalf of [Applicant 2], [Applicant 4], and [Applicant 3]. Each of the Applicants signed the amended claim form.

³ As of August 1, 2021, RECBC ceased to exist, and RESA was revised such that claims brought under section 61 of RESA were to be determined by the Superintendent of Real Estate.

11. RECBC legal counsel interviewed each of the Applicants. What follows is a general chronology based on those interviews, as well as being based on the documentary evidence before me, which includes emails between [Licencee 1] and the Applicants.
12. The Applicants were friends who decided to move from Ireland to Canada to seek employment. The Applicants intended to live together as roommates.
13. [Applicant 1] and [Applicant 2] initially moved to Calgary, Alberta, in December 2018, with the intention to find a space suitable for the Applicants to reside in in Vancouver, commencing in February 2019. It was intended that [Applicant 4] and [Applicant 3] would join [Applicant 1] and [Applicant 2] in Vancouver in mid-March 2019.
14. While in Calgary, [Applicant 1] and [Applicant 2] began to search online for a space to live in Vancouver. They ultimately found a number of properties advertised by [Company 1]. [Company 1] was a British Columbia incorporated company whose sole director was [Licencee 1].
15. [Licencee 1] was continuously licensed to provide real estate services between April 10, 2018 and February 13, 2019.
16. [Applicant 1] contacted [Licencee 1] in January 2019 regarding one of the properties advertised by [Company 1], located at [Property 1] (the "Property") in Vancouver British Columbia. Initially, [Applicant 1] contacted [Licencee 1] by telephone, with further communication by way of email⁴.
17. After that initial communication, [Licencee 1] provided [Applicant 1] and [Applicant 2] with a tour of the Property by way of a video call. Following that video call, [Applicant 1] and [Applicant 2] had their friend attend the Property to view the space with [Licencee 1] in person. The friend informed [Applicant 1] and [Applicant 2] that the space looked appropriate and, as a result, [Applicant 1] and [Applicant 2] confirmed with the other Applicants that they would move forward with renting the space from [Licencee 1].
18. The Applicants each completed a Residential Tenancy Application on January 18 and 19, 2019, which were provided to [Licencee 1]. Further, [Applicant 1] signed a Residential Tenancy Agreement on January 22, 2019. That Residential Tenancy Agreement was then purportedly signed by a [Individual 1] as the landlord, also on January 22, 2019. The Residential Tenancy Agreement indicated that rent for the Property was \$2650.00 per month, with a security deposit of \$1,325.00 required.
19. Each of the Applicants has indicated that [Applicant 3] collected the other three Applicant's shares of the security deposit, and that [Applicant 3] then transferred the security deposit to [Company 1]. [Applicant 3]'s bank statements from January 2019 show an international transfer to [Company 1] in the amount of \$1,325.00 Canadian dollars on January 24, 2019.
20. [Applicant 1] then collected and paid the first month's rent in the amount of \$2,650.00 to [Company 1] on February 4, 2019. [Applicant 1]'s bank records show an international transfer to [Company 1] on that date. Each of the claimants have confirmed that they each contributed a one quarter share of the first month's rent to [Applicant 1].

⁴ [Applicant 1] communicated to [Licencee 1] at the email address [email address identifying Company 1].

21. On February 6, 2019, [Applicant 1] and [Applicant 2] arrived in Vancouver, and planned to meet [Licencee 1] at a Starbucks just outside the Property in order to take possession and move in.
22. [Applicant 2] indicated in her interview with RECBC that when she and [Applicant 1] had arrived early on the date of their meeting, she had attempted to contact [Licencee 1], but that he had not responded. She further indicated that [Licencee 1] had not attended at their scheduled meeting at Starbucks. [Applicant 1] also emailed [Licencee 1] on February 6, 2019, but [Licencee 1] did not reply.
23. [Applicant 1] and [Applicant 2] then contacted [Licencee 1]'s brokerage to make inquiries. The brokerage informed them that the Property was not listed with their brokerage, and that they were also unable to reach [Licencee 1].
24. The following day, February 7, 2019, [Licencee 1] emailed [Applicant 1] and informed him that [Licencee 1] had not been prepared for the Applicants' arrival and that he would need to refund the deposit and rent paid.
25. [Applicant 1] replied that same date, and indicated that the Applicants continued to wish to rent the Property and noted that they had signed a tenancy agreement.
26. [Licencee 1] replied, again on February 7, 2019, asking whether there was some amount of compensation he could provide to solve the issue, and [Applicant 1] again indicated that the Applicants wished to move into the apartment. [Licencee 1] replied that the Property was not on the market, and indicated that he would like to return the Applicants' funds and provide an amount of compensation that they viewed as fair.
27. The Applicants then provided [Licencee 1] with banking details of [Applicant 1]'s bank account in order for Roberts to provide a wire transfer returning their funds. The Applicants subsequently noted that they had made an error in those banking details and sent updated information to [Licencee 1]. The Applicants have all indicated that despite providing [Licencee 1] with that banking information, they did not receive any funds from [Licencee 1]. [Applicant 1]'s banking records show no deposits from Roberts during the time period in question.

Reasons and Decision

28. I am satisfied that the evidence supports a finding that that the Applicant's suffered a compensable loss as defined by section 60 of the Act. I assess the amount of that loss to be equal to a total amount of \$3,975.00, with each applicant entitled to receive compensation in the amount of \$993.75. My reasons for having reached this conclusion follow.
29. At the outset, I note that I am satisfied that the requirements of section 61 have been met. In this case, the evidence indicates that the Applicants brought their claims well within the time limit established by section 61(2). Specifically, the [Applicant 1] completed a Compensation Fund Claim Form which was submitted to the former Real Estate Council of British Columbia on July 25, 2019⁵. That form was subsequently amended to include all of the Applicants on April 29, 2020. As this matter relates to conduct on the part of [Licencee 1] that occurred in late January and early

⁵ [Applicant 1] initially completed a form only on his own behalf.

February 2019, I find that the claim for compensation was brought within the requisite time period set out in section 61(2), and that the application included the particulars required in order to consider the claim.

Did the applicants suffer a compensable loss as defined by section 60 of the RESA?

30. I have summarized the circumstances that led to this application for compensation above. Having considered the evidence and information before me, which includes the interview statements provided by each of the Applicants, as well as the email correspondence between [Applicant 1] and [Licencee 1], and the Applicants' banking information showing transfer of funds to [Company 1], I find that it is more likely than not that the Applicants have experienced a compensable loss in this case.

31. In reaching that conclusion, I find the evidence to show that the Applicants experienced a loss in relation to real estate services. The definition of real estate services, set out in section 1 of RESA, includes "rental property management services". "Rental property management services" is further defined in section 1 as meaning any of the following services provided to or on behalf of an owner of rental real estate:

- (a) trading services in relation to the rental of the real estate;
- (b) collecting rents or security deposits for the use of the real estate;
- (c) managing the real estate on behalf of the owner by
 - (i) making payments to third parties,
 - (ii) negotiating or entering into contracts,
 - (iii) supervising employees or contractors hired or engaged by the owner, or
 - (iv) managing landlord and tenant matters

[emphasis added]

32. The definition of "providing", in relation to real estate services, is also set out in section 1 of RESA. That definition indicates that providing includes offering to provide real estate services, holding oneself out as a person who provides such services, or soliciting for the purposes of the provision of such services.

33. I accept the evidence of the Applicants that [Licencee 1] held himself out as an agent acting on behalf of the purported landlord of the Property. I further accept that the evidence supports a conclusion that in that capacity, [Licencee 1] purported to negotiate and enter into a contract on behalf of the landlord, and that [Licencee 1] collected both a security deposit and first months rent which he purported to hold on behalf of the landlord. In my view, all of the above clearly indicates that [Licencee 1] was providing rental property management services as contemplated by section 1 of the RESA.

34. The evidence further supports a conclusion that the money for which the Applicants make their claim of loss was held or received by a licensee as contemplated by section 60(a)(i) of the RESA.

35. While the security deposit and first month's rent were paid by the Applicants to [Company 1], the evidence before me indicates that [Licencee 1], a licensee, was providing rental property management services through that company. As I have noted above, the information before me is that [Licencee 1] was the sole director of [Company 1], and it was [Licencee 1] who directed the

Applicants to make their payments to [Company 1]. I find that in directing the payments to be made to [Company 1], [Licencee 1], as a licensee, can be seen to have been indirectly holding the Applicant's money.

36. In the alternative, I consider the evidence could equally support a conclusion that in receiving the funds, [Company 1] can rightly be seen as a person acting in an independent contractor relationship with [Licencee 1], as contemplated by section 60(a)(iv).
37. Finally, I consider the evidence of the Applicants to clearly demonstrate that the money was misappropriated by [Licencee 1]. The Applicants paid [Licencee 1] money in relation to the rental of the Property, however, [Licencee 1] did not fulfill that rental. Despite [Licencee 1]'s initial representations that he would return the money to the Applicants, the evidence and information before me indicates that he did not do so. In summary, it appears that [Licencee 1] obtained the funds by holding himself out as an agent with the authority to rent the Property, when that was in fact not the case, and that he has misappropriated the money provided to him by the Applicants by failing to apply it to the rental of the Property and by failing to repay the Applicants.
38. I note that I do not consider that any of the exclusions to compensable loss set out in sections 60(c) through 60(f) to have application in this case.

What is the amount of the Applicants' loss?

39. Having concluded that the Applicants have experienced a compensable loss, section 63(1)(a) requires that I assess the amount of that loss.
40. The Applicants paid a total of \$3,975.00 to [Licencee 1] in relation to real estate services, and the evidence and information before me shows that none of that money was returned.
41. I accept the submissions of the Applicants that they each contributed one-quarter of the money that misappropriated by [Licencee 1]. I assess then, that the amount of each Applicant's compensable loss is \$993.75.

Conclusion

42. I find that the Applicants experienced a compensable loss as contemplated by section 60 of RESA.
43. I assess the amount of that loss as \$993.75 for each of the four Applicants. A certificate specifying the amount of the compensable loss will be issued for each of the Applicants.

Dated this 30 day of November, 2022, at the City of Kelowna, British Columbia

"ANDREW PENDRAY"

Andrew Pendray
Hearing Officer

IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
S.B.C. 2004, c. 42 as amended (the "Act")

AND

IN THE MATTER OF

[Licencee 1]
([Licence #])

AND

[Brokerage 1]
([Licence #])

AND IN THE MATTER OF A CLAIM TO
THE REAL ESTATE SPECIAL COMPENSATION FUND BY

[Claimant 4; Applicant 1]

AMENDED CERTIFICATE OF COMPENSABLE LOSS

[This Certificate has been redacted before distribution and publication.]

In the matter of a claim for compensation to the Real Estate Special Compensation Fund by [Applicant 1] pursuant to section 63(1)(a) of the *Real Estate Services Act*, the Superintendent on November 30, ~~2021~~ 2022:

- a. determined that [Applicant 1] suffered a compensable loss; and
- b. assessed the amount of the compensable loss in the amount of \$993.75.

This Certificate is issued by the Superintendent pursuant to section 64 of the *Real Estate Services Act*.

Dated this ~~30~~ 8 day of ~~November~~ December, 2022, at the City of Kelowna, British Columbia

"ANDREW PENDRAY"

Andrew Pendray
Hearing Officer

IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
S.B.C. 2004, c. 42 as amended (the "Act")

AND

IN THE MATTER OF

[Licencee 1]
([Licence #])

AND

[Brokerage 1]
([Licence #])

AND IN THE MATTER OF A CLAIM TO
THE REAL ESTATE SPECIAL COMPENSATION FUND BY

[Claimant 4; Applicant 2]

AMENDED CERTIFICATE OF COMPENSABLE LOSS

[This Certificate has been redacted before distribution and publication.]

In the matter of a claim for compensation to the Real Estate Special Compensation Fund by [Applicant 2] pursuant to section 63(1)(a) of the *Real Estate Services Act*, the Superintendent on November 30, ~~2021~~ 2022:

- a. determined that [Applicant 2] suffered a compensable loss; and
- b. assessed the amount of the compensable loss in the amount of \$993.75.

This Certificate is issued by the Superintendent pursuant to section 64 of the *Real Estate Services Act*.

Dated this ~~30~~ 8 day of ~~November~~ December, 2022, at the City of Kelowna, British Columbia

"ANDREW PENDRAY"

Andrew Pendray
Hearing Officer

IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
S.B.C. 2004, c. 42 as amended (the "Act")

AND

IN THE MATTER OF

[Licencee 1]
([Licence #])

AND

[Brokerage 1]
([Licence #])

AND IN THE MATTER OF A CLAIM TO
THE REAL ESTATE SPECIAL COMPENSATION FUND BY

[Claimant 4; Applicant 3]

AMENDED CERTIFICATE OF COMPENSABLE LOSS

[This Certificate has been redacted before distribution and publication.]

In the matter of a claim for compensation to the Real Estate Special Compensation Fund by [Applicant 3] pursuant to section 63(1)(a) of the *Real Estate Services Act*, the Superintendent on November 30, ~~2021~~ 2022:

- a. determined that [Applicant 3] suffered a compensable loss; and
- b. assessed the amount of the compensable loss in the amount of \$993.75.

This Certificate is issued by the Superintendent pursuant to section 64 of the *Real Estate Services Act*.

Dated this ~~30~~ 8 day of ~~November~~ December, 2022, at the City of Kelowna, British Columbia

"ANDREW PENDRAY"

Andrew Pendray
Hearing Officer

IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
S.B.C. 2004, c. 42 as amended (the "Act")

AND

IN THE MATTER OF

[Licencee 1]
([Licence #])

AND

[Brokerage 1]
([Licence #])

AND IN THE MATTER OF A CLAIM TO
THE REAL ESTATE SPECIAL COMPENSATION FUND BY

[Claimant 4; Applicant 4]

AMENDED CERTIFICATE OF COMPENSABLE LOSS

[This Certificate has been redacted before distribution and publication.]

In the matter of a claim for compensation to the Real Estate Special Compensation Fund by [Applicant 4] pursuant to section 63(1)(a) of the *Real Estate Services Act*, the Superintendent on November 30, ~~2021~~ 2022:

- a. determined that [Applicant 4] suffered a compensable loss; and
- b. assessed the amount of the compensable loss in the amount of \$993.75.

This Certificate is issued by the Superintendent pursuant to section 64 of the *Real Estate Services Act*.

Dated this ~~30~~ 8 day of ~~November~~ December, 2022, at the City of Kelowna, British Columbia

"ANDREW PENDRAY"

Andrew Pendray
Hearing Officer

**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
S.B.C. 2004, c. 42 as amended (the "Act")**

AND

IN THE MATTER OF

**[Licencee]
([Licence #])**

AND

**[Brokerage]
([Licence #])**

**AND IN THE MATTER OF A CLAIM TO
THE REAL ESTATE SPECIAL COMPENSATION FUND BY**

Claimant 4

SECTION 63(1) DECISION

After having reviewed the Claimant's claim and evidence in support and after having reviewed the response materials provided by the licensee(s), the Committee makes the following determination pursuant to section 63(1) of the *Real Estate Services Act*:

- To conduct a hearing to determine whether the Claimant suffered a compensable loss and, if applicable, assess the amount of that loss,
- To decline to make such a determination or assessment, or both, on the basis that the Committee considers the matter would more effectively be dealt with by a court proceeding,
- To postpone conducting a hearing pending the conclusion of a discipline hearing or court proceeding.

Dated this 10 day of January, 2022 at the City of Kelowna , British Columbia

"ANDREW PENDRAY"

Andrew Pendray
Chief Hearing Officer