



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CANADIAN NATIONAL RELOCATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

Both hearings dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of the security deposit, pursuant to section 38;
- authorization to recover the filing fee for the application, pursuant to section 72.

The "first hearing" on March 15, 2017 lasted approximately 63 minutes and the "second hearing" on April 26, 2017 lasted approximately 11 minutes.

The "landlord's agent TK" attended both hearings. The tenant's two agents, "agent SL" and "agent SAM" (collectively "tenant's agents") attended the first hearing only. No one attended the second hearing on behalf of the tenant.

All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At both hearings, the landlord's agent TK confirmed that he was a relocation agent and an employee of the landlord company named in this application and that he had authority to represent the landlord company at this hearing (collectively "landlord"). At the first hearing, both of the tenant's agents confirmed that they had authority to speak on behalf of the tenant. The tenant provided a signed letter, dated August 29, 2016, stating that he authorized agent SL to file this application on his behalf.

### Preliminary Issue - Adjournment of First Hearing and Service of Documents

The first hearing on March 15, 2017 was adjourned because the landlord did not receive the tenant's application, notice of hearing or written evidence package. At the first hearing, I provided specific instructions to both parties to serve and re-serve evidence in accordance with specific deadlines. I issued an interim decision, dated March 17, 2017, adjourning the first hearing and outlining these specific instructions. At the first hearing and in my interim decision, I confirmed with both parties, under oath, that they were aware of and available to attend the second hearing on April 26, 2017 at 9:30 a.m.

At the second hearing, the landlord's agent TK confirmed receipt of the tenant's application for dispute resolution, notice of hearing and written evidence package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's entire application and written evidence package.

Accordingly, I proceeded with the second hearing in the absence of the tenant. The landlord was not required to provide any testimony at the second hearing regarding the tenant's application because the tenant did not appear in order to substantiate his claim.

### Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* provides as follows:

*7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

In the absence of any appearance by the tenant or his agents at the second hearing, I order the tenant's entire application dismissed without leave to reapply.

### Preliminary Issue – Dismissal of Landlord's Application

At the second hearing, the landlord's agent TK confirmed that while the landlord did not issue responsive evidence to the tenant's application, the landlord had filed a separate application and it was joined to be heard together at the same time as the tenant's current application at the second hearing on April 26, 2017 at 9:30 a.m.

In my interim decision, dated March 17, 2017, I noted the following (emphasis added):

*The landlord claimed that he did not know whether the landlord company had filed an application against the tenant. He then claimed that during the hearing, he sent a text message to the landlord company to inquire. He then stated that he had been informed that the landlord had not filed a claim against the tenant. **I informed the parties that if the landlord chooses to file an application for dispute resolution, that is up to the landlord. However, the landlord will not be permitted to join that application, if it is filed prior to the reconvened hearing on April 26, 2017, to this current application by the tenant.** I notified the parties again that this hearing was being adjourned to allow the landlord a fair opportunity to respond to the tenant's application, not to allow them to add a claim and submit new evidence for that claim. The tenant deserves a fair opportunity to review and respond to the landlord's potential application, not to be rushed into having it heard at the same time as the tenant's application. I notified the parties that this adjournment was not to delay the proceedings, which have been ongoing for some time already, since the tenant filed on September 16, 2016.*

At the first hearing, the landlord's agent TK testified that he had not filed an application against the tenant. At the second hearing, I notified the landlord's agent TK that I had advised both parties at the first hearing, that if the landlord chose to file an application against the tenant, that it could not be joined with the tenant's application and heard at the same time at the second hearing. I explained my reasons as noted above.

I made specific reference to this fact in my interim decision as noted above. I reminded the landlord's agent TK about this fact during the second hearing. I asked him whether he had informed the RTB when the landlord filed its application that I had specifically made this direction not to join the landlord's application with the tenant's application. He said that he did not advise the RTB because the landlord's application was filed online and the landlord received a voicemail from the RTB but did not talk to anyone directly. I asked whether he informed the RTB about the direction after receiving their voicemail and he said that he did not.

The landlord's application was filed on April 5, 2017, only 21 days before the second hearing on April 26, 2017, and well after the landlord received my interim decision of March 17, 2017.

Based on my interim decision, the fact that the landlord was clearly aware of my direction, the landlord did not advise the RTB staff of my direction when filing its application, the landlord violated the direction knowingly, and the fact that the tenant was not even present

at this hearing, I notified the landlord's agent TK that I would not hear the landlord's application at the second hearing.

Further, as per Rule 2.3 of the RTB *Rules of Procedure*, I can sever an application where the issues are unrelated or are not central to the main application. The landlord applied for a monetary order for damages and other losses, totalling \$12,808.75. The landlord also applied for an order of possession for the rental unit, in order to get an earlier hearing date, even though the landlord, in its own application, referenced the fact that the tenant had already moved out of the property. I find that the majority of the landlord's claims for damages are unrelated to the tenant's claims.

I did not obtain testimony from the landlord regarding the security deposit at the second hearing, as per Residential Tenancy Policy Guideline 17, because the landlord has already made a separate application to keep it, along with its application for other damages and losses. Therefore, the tenant's security deposit can be dealt with in the landlord's application.

The landlord's application, the file number of which appears on the front page of this decision, is dismissed with leave to reapply. I notified the landlord's agent TK that the landlord would have to file a new application, pay another filing fee and obtain a new RTB hearing date, if the landlord wishes to pursue its application against the tenant.

### Conclusion

The tenant's entire application is dismissed without leave to reapply. The landlord's application, the file number of which appears on the front page of this decision, is 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: April 26, 2017

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Residential Tenancy Branch