



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes                      FFT MNDCT MNRT MNSD

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for return of the security deposit or pet damage deposit; for a monetary order for the cost of emergency repairs; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of the application.

At the commencement of the hearing all parties introduced themselves. Both named tenants attended the hearing with legal counsel and an articulated student. One of the individual respondent landlords also attended, but not the other individual named, and no one for the landlord company attended the call. Another individual who is not named as a party also attended submitting that he had been served with notice of this hearing, but had no involvement with the tenancy. The articulated student for the tenants submitted that the address the notice was sent to was incorrect, and the individual exited the conference call hearing.

The tenants have provided evidence that the individual respondent who did not attend was served with the application and notice of this hearing by courier on September 20, 2018, and the landlord company was also served by courier on that date. The *Residential Tenancy Act* requires an applicant to serve each respondent as follows:

**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*].

None of those methods includes service by courier, however plenary orders can be made by the director during postal strikes or other disruptive issues in the postal service. The postal strike during the fall of 2018 did not commence until October 22, 2018. I am not satisfied that the respondents not in attendance were served in accordance with the *Act*, and I dismiss the tenants' application with respect to the individual respondent (TK) and the respondent company with leave to reapply.

The respondent who attended the conference call hearing (PP) did not dispute service, but disputed that he is a landlord or a proper party to be served.

Each of the tenants gave affirmed testimony, and the individual respondent who attended the hearing (PP) was given the opportunity to question each of the tenants, but did not question either of them and did not testify or remain in attendance for the entire hearing, exiting the call after hearing the tenants' testimony and prior to counsel for the tenants giving closing submissions.

#### Issue(s) to be Decided

The issues remaining to be decided are:

- Have the tenants established that the landlord (PP) is a landlord or a proper party to be served?
- Have the tenants established a monetary claim as against the landlord (PP) for return of all or part or double the amount of the security deposit?
- Have the tenants established a monetary claim as against the landlord (PP) for the cost of emergency repairs?
- Have the tenants established a monetary claim as against the landlord (PP) for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for overpayment of rent?

#### Background and Evidence

**The first tenant** (AD) testified that this fixed term tenancy began on June 15, 2016 and expired on June 14, 2017 at which time the tenants were required to vacate the rental unit. The tenant believes the tenancy ultimately ended on June 1, 2017 but does not recall for sure. Rent in the amount of \$10,590.00 per month was payable under the tenancy agreement and there are no rental arrears. The rental unit is a condominium apartment.

A copy of the tenancy agreement has been provided as evidence for this hearing, which is signed by one of the tenants but not by a landlord. The frontal page of the tenancy agreement names the landlord company as the landlord.

The tenant further testified that a few days after moving into the rental unit the tenants met with both individual landlords (PP) and (TK), and the tenants were advised that the landlord (PP) was the owner of the rental unit. The tenant subsequently met with the landlord (PP) 3 or 4 times throughout the year; weeks or months apart. During the tenancy an issue arose with heating or something, and the tenants called the landlord (TK), which was the common practice for any issues.

The tenant's husband wrote the rent cheques and signed them, however mentioned that he didn't get back the security deposit and was over-charged for rent.

**The second tenant** (SE) testified that according to the tenancy agreement rent was payable in the amount of \$10,590.00 on the 29<sup>th</sup> day of each month but the tenants always paid on the 1<sup>st</sup> day of each month. At the outset of the tenancy the tenants paid a security deposit in the amount of \$5,250.00, and no pet damage deposit was paid. The tenants' forwarding address was provided to the landlord (TK) orally, but the tenant does not know when, and none of the security deposit has been repaid to the tenants.

The tenant further testified that he was not present when his wife met the landlords (PP) and (TK), but met the landlord (PP) at least twice in the rental unit, and one instance met the landlord (TK). The first time the tenant met the landlord (PP), the landlord introduced himself as the owner of the rental unit and a member of the strata board. He also talked about owning 6 other units in the area. He was very kind and friendly and told the tenant to contact himself or the landlord (TK) for any issues. He did not provide his address, but a cell number with a 360 area code, which is in Washington. The tenant met the landlord (PP) again weeks or months later, when he attended the rental unit once or twice about the internet connection and another time for the TV, and minor things. The parties also talked about water fall-off and engineering of the structure of the building. The landlord (TK) was also present except on one occasion. The 2 landlords attended one at a time, and individually dealt with the repairs. None of the visits lasted longer than 10 to 20 minutes.

The tenant further testified that he accidentally over-paid rent by a half month, and copies of cheques have been provided as evidence for this hearing. The lease ends on the 14<sup>th</sup> of the month, so the last month (June, 2017) should only have been for a half month. The other half month has not been reimbursed to the tenants.

No move-in or move-out condition inspection reports were completed, however the landlord (TK) mentioned to the tenant on the phone that there was minor damage. The rental unit was fully furnished, including kitchen supplies. One chair had come apart and a picture on the wall had fallen and broke. The tenant accepted the upholstery and told the landlord (TK) that whatever he felt was reasonable could be taken from the security deposit. The landlord (TK)

also told the tenant that some dishes had been mixed up with those that belonged to the tenants, and the tenant did not dispute that. The parties agreed verbally that all of those costs would not be as much as the security deposit and the balance would be returned to the tenants. None has been returned, and the tenants have not been served with any documentation by any of the named landlords with respect to the security deposit.

The tenants have also provided copies of letters addressed to the landlord (TK) from the tenants' Counsel (Articled Student) dated September 20, 2018 which contains the tenants' forwarding address along with proof of service by a courier company. The letter is accompanied by the tenants' evidentiary material and the Hearing Package.

A similar letter and attachments dated September 20, 2018 to the landlord (PP) has also been provided which contains the tenants' forwarding address with proof of service by a courier company.

Another to the landlord (PP) at a different address dated September 21, 2018 has been provided, also containing a forwarding address of the tenants. Proof of delivery by Registered Mail is also included.

A similar letter to the landlord company has also been provided, along with attachments and containing the tenants' forwarding address. It is dated September 20, 2018 and served by courier.

The tenants have also provided a copy of a Title Search for the rental property showing that the Owner in Fee Simple is the landlord (PP) with a mailing address.

A Company Search has also been provided which shows that the Director is the landlord (TK).

### **Submissions of Counsel**

The tenants entered into a tenancy agreement identifying a company as the landlord. Both tenants testified that they met with the landlord (PP) who identified himself as the owner and did repairs intermittently.

The tenancy agreement names a corporate entity, but the true owner is the person who identified himself as the owner; a classic situation of an agency relationship. Money is payable to the property manager on behalf of the owner. The landlord (PP) disputes that he had anything to do with the tenancy, but that is not true, and then left the conference call hearing. What he was really trying to say is, "Prove it." His conduct should not be accepted; he could have testified and chose not to use the opportunity to testify that he is not a landlord or a proper party to be served. It should not be the burden of the tenants to determine who has the money. The landlords are jointly and severally liable and should sort it out themselves.

The tenants claim double the amount of the security deposit, or \$10,500.00, in addition to the over payment of rent totalling \$5,250.00 and recovery of the \$100.00 filing fee. Counsel also submits that legal costs should be awarded.

### Analysis

I accept the undisputed testimony that the landlord (PP) attended the rental unit on more than one occasion, identifying himself to both tenants, and made repairs intermittently.

I have also reviewed all of the evidentiary material, and there is no question that the tenancy agreement, although not signed by any landlord, names the landlord company as the landlord with an address. The title search of the property shows the Registered Owner in Fee Simple as the landlord (PP) with another mailing address.

The landlord who attended the hearing had plenty of opportunity to testify, but chose not to. I agree with counsel for the tenants, given that the owner of the property has been proven by the land title search, that an agency relationship existed and that the onus is not on the tenants to establish which of the landlords is responsible. I find that the landlord (PP) is a landlord and proper party to be served.

The *Residential Tenancy Act* requires a landlord to return a security deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date landlord receives the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against the deposit within that 15 day period. If the landlord does neither, the landlord must repay double the amount.

In this case, I find that the tenancy ended on June 14, 2017 and the tenants provided a forwarding address in writing in the documentation required to be served for this hearing. The tenants have provided proof of having served the landlord (PP) by courier in a letter dated September 20 and again by registered mail on September 21, 2018, which I find, is deemed to have been received 5 days later, or September 26, 2018. One of the tenants testified that the tenants have not been served with an Application for Dispute Resolution, and I have no such application before me. Given that the landlord has had the tenants' forwarding address in writing via a letter from the tenants' legal counsel for almost 4 months prior to the hearing, I find that the tenants have established a claim for double the amount, or \$10,500.00.

With respect to an overpayment of rent, I have reviewed all of the rent cheques provided by the tenants, all of which are dated the 15<sup>th</sup> of each month and all in the amount of \$10,500.00, with the exception of one cheque. It is dated June 15, 2017 in the amount of \$5,295.00. The tenancy started on the 15<sup>th</sup> day of the month and expires on the 14<sup>th</sup> day of the month. I find that the tenants paid rent on May 15, 2017 for the period of May 15 to June 14, 2017, and therefore, the cheque dated June 15, 2017 in the amount of \$5,295.00 is an overpayment of rent, and the tenants have established that claim.

The tenants did not lead any evidence with respect to the claim for the cost of emergency repairs, and I dismiss that portion of the application as against the landlord (PP) without leave to reapply.

The *Residential Tenancy Act* does not provide for recovery of legal fees, however since the tenants have been partially successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee.

### Conclusion

For the reasons set out above, the tenants' application as against the landlord (TK) is hereby dismissed with leave to reapply.

The tenants' application as against the landlord company is hereby dismissed with leave to reapply.

I hereby grant a monetary order in favour of the tenants as against the landlord (PP) in the amount of \$15,895.00.

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: January 18, 2019

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Residential Tenancy Branch