



# 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      MNSD, FFT

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on December 19, 2018, wherein the Tenant sought monetary compensation from the Landlord representing double the security deposit paid and recovery of the filing fee.

The hearing was originally scheduled for 1:30 p.m. on April 11, 2019. Both parties called into the hearing. The Tenant was also represented by legal counsel, O.M.

By Interim Decision dated April 12, 2019 I adjourned the matter to 9:30 a.m. on April 29, 2019. This Decision must be read in conjunction with my April 12, 2019 Interim Decision.

When the hearing reconvened before me on April 29, 2019, only the Tenant and his counsel, O.M. as well as legal counsel for the Landlord, R.A., called into the hearing.

The Landlord's counsel confirmed that he communicated with the Landlord's representative, T.K., throughout the hearing, although at no time did T.K. call in to personally participate in the hearing. The Landlord's counsel confirmed that he communicated with T.K. on at least four separate occasions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure* and my Interim Decision of April 12, 2019. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Jurisdiction

Approximately 15 minutes into the hearing on April 29, 2019, the Landlord's counsel informed that the Landlord's representative, T.K. had filed for Judicial Review of my Interim Decision of April 12, 2019. At this time, the Landlord's Counsel argued that I lacked jurisdiction to hear the Tenant's Application for Dispute Resolution.

The Landlord's counsel could not provide the file number for the Judicial Review Petition and stated that he was informed by T.K. (during the hearing on April 29, 2019) that T.K. had personally filed the petition that morning. While he did not have a copy of the petition before him, he stated that he was informed T.K. had filed for Judicial Review of my April 12, 2019 Interim Decision as the Landlord disputed my finding that the Landlord was served notice of the April 11, 2019 hearing.

Section 58(2)(c) of the *Act* provides as follows:

**58** ... (2) Except as provided in subsection (4), if the director accepts an application under subsection (1), the director must resolve the dispute under this Part unless

...  
(c) the dispute is linked substantially to a matter that is before the Supreme Court.

The matter before me, namely, whether the Tenant is entitled to return of double his security deposit and recovery of the filing fee is not linked substantially to a matter that is before the Supreme Court. The matter apparently before the Supreme Court is my finding that the Landlord was served notice of the April 11, 2019 hearing.

I therefore find that I have jurisdiction to determine the dispute before me.

Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit?
2. Should the Tenant recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement confirming that this tenancy began April 1, 2018. Monthly rent was payable in the amount of \$7,800.00 and a security deposit of \$3,900.00 was paid by the Tenant. The Tenant provided documentation confirming that the deposit was paid by wire transfer.

Also introduced in evidence were copies of text communication between the Tenant and the owner, T.K., confirming this was their regular means of communication. The Tenant testified that he communicated primarily with an employee by the name of D.W. by email and with T.K. by text message.

The Tenant testified that the tenancy ended on August 30, 2018. On that date, the Tenant also provided T.K. with his forwarding address by text message. A copy of this text message was provided in evidence. The Tenant testified that following this text message T.K. ceased responding to his text communication.

The Tenant stated that T.K. did not respond to the Tenant's request following which on September 17, 2018 the Tenant sent a further text to T.K. as a reminder and asking that they confirm they had sent the cheque for his security deposit. This text message was also provided in evidence by the Tenant.

When the Landlord did not return his deposit, the Tenant sent a letter dated September 24, 2018 wherein the Tenant again asked for return of his security deposit, provided his forwarding address, and reminded the Landlord of the requirements of section 38 of the *Residential Tenancy Act*. The Tenant provided a copy of the letter, as well as the envelope and registered mail information confirming that this letter was sent by registered mail on September 25, 2018. Further documentation (from Canada Post) confirms the Landlord's staff signed for this letter on September 28, 2018.

The Tenant testified that the Landlord failed to return his security deposit following which the Tenant applied for Dispute Resolution on December 19, 2018.

Documentary evidence provided by the Tenant confirms that the Tenant received a cheque from the Landlord for his security deposit on or before March 11, 2019. The Tenant testified that he did not cash this cheque as he was seeking return of double the deposit in the within Application.

At the outset of the hearing on April 29, 2019, and as the Landlord's counsel was not at the first hearing, I summarized the above information from the hearing on April 11, 2019. At that time the Tenant and his counsel confirmed they did not have any further evidence or submissions.

The Landlord's counsel stated that he did not have instructions to respond to the Tenant's evidence, testimony or submissions. He also stated he would not be calling witnesses on behalf of the Landlord.

Notably, while I declined the Landlord's adjournment request at the April 11, 2019 hearing, and ordered that neither party submit any further *documentary* evidence, the Landlord was at liberty to call witnesses and give oral testimony in response to the Tenant's claim at the April 29, 2019 hearing.

The Landlord's Counsel confirmed his understanding that he was able to call witnesses and provide oral testimony at the April 29, 2019 hearing. As noted, T.K., the owner of the company named as Landlord in this proceeding declined the opportunity to call into the hearing (despite being in telephone contact with his legal counsel during the hearing).

### Analysis

The Tenant applies for return of double the security deposit paid pursuant to section 38 of the *Residential Tenancy Act* which reads as follows:

#### **Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the Tenant's undisputed testimony and evidence, and on a balance of probabilities, I find as follows.

I find that the Tenant paid a security deposit in the amount of \$3,900.00 to the Landlord.

I accept the Tenant's evidence that he did not agree to the Landlord retaining any portion of his security deposit.

I find that the Landlord received the Tenants forwarding address in writing on September 28, 2018, the date the Landlord signed for the registered mail package containing the Tenant's letter of September 24, 2018.

I find that the Landlord failed to return the security deposit or apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, as required under section 38(1) of the *Act*.

I therefore find the Tenant is entitled to **\$7,800.00** representing return of double the security deposit paid pursuant to sections 38(1) and (6) of the *Residential Tenancy Act*.

As the Tenant has been successful in his application, I also award him recovery of the **\$100.00** filing fee pursuant to section 72 of the *Act*.

### Conclusion

The Tenant's application for return of double his security deposit and recovery of the filing fee is granted.

In furtherance of this I grant the Tenant a Monetary Order in the amount **\$7,900.00**. The Tenant must serve a copy of the Monetary Order on the Landlord and may file and enforce the Order in the B.C. Provincial Court (Small Claims Division).

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: May 17, 2019

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Residential Tenancy Branch