



# Dispute Resolution Services

Page: 1

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      MNDL-S, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

Tenant R.S. and the landlord's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agreed that the landlord served the tenants with the landlord's application for dispute resolution and amendment via registered mail. I find that the packages were served in accordance with section 89 of the *Act*.

### Preliminary Issue- Res Judicata and Split Claims

Both parties agree that they attended a previous arbitration regarding the same subject rental property on June 1, 2020. The file number for the previous hearing is on the cover page of this decision. A copy of the June 11, 2020 decision was entered into evidence.

Both parties agree that the tenants were awarded double their security deposit in the previous hearing.

The June 11, 2020 decision stated in part:

The landlord testified that the tenant's children had broken the blind and that there was damage to the rental unit including a broken shower head and stains on the carpet....

The tenant agreed that she had advised the landlord that the roll away blind was broken during the tenancy and at the time of the move-out inspection had agreed that some deduction could be made for the roll away blind, but had not agreed to the damage to the shower head or stains to the carpet....

I decline to award the landlord for the showerhead and stains to the carpet as there is dispute as to when these were added to the move-out inspection. Furthermore, it was the landlord's responsibility to ensure that he handed the tenant a copy of the move-out condition inspection on her vacating the unit.

The landlord's amended application for dispute resolution claims damages for the cost of new carpet in the amount of \$4,143.75. The landlord's agent testified that the carpet stains claimed in the June 1, 2020 hearing are different than the stains claimed in this hearing. The landlord's agent testified that the stains claimed in the first hearing came out with professional cleaning, but the stains claimed in this hearing, in one of the bedrooms, did not come out and so the carpet required replacement.

The landlord's agent testified that the current claims were not made in the previous hearing because they had not yet replaced the carpet. The landlord entered into evidence a quote for carpet replacement in the amount of \$4,143.75 dated January 5, 2020 and a cheque in the amount of \$4,143.75 dated June 3, 2020. The landlord's agent testified that the carpet was not immediately replaced because it was wool carpet from Italy and was difficult to obtain.

Tenant R.S. testified that the carpets were not stained when the tenancy ended and that the landlord did not mention stains requiring carpet replacement in the last hearing.

*Res judicata* prevents a plaintiff from pursuing a claim that already has been decided and also prevents a defendant from raising any new defense to defeat the enforcement of an earlier judgment. It also precludes re-litigation of any issue, regardless of whether the second action is on the same claim as the first one, if that particular issue actually was contested and decided in the first action. Former adjudication is

analogous to the criminal law concept of double jeopardy.

The previous Arbitrator awarded the tenants double their security deposit. I find that the landlord's claim for authorization to retain the tenants' security deposit is res judicata as it has already been decided. The landlord's application for authorization to retain the tenants' security is dismissed without leave to reapply.

Rule 2.9 of the Residential Tenancy Branch Rules of Procedure states:

An applicant may not divide a claim.

I find that the landlord has divided his claim, contrary to Rule 2.9. The carpet replacement quote is dated January 5, 2020 and could have been provided at the previous hearing. Pursuant to Rule 2.9, I dismiss the landlord's claim for a Monetary Order for damage, without leave to reapply.

### Conclusion

The landlord's application is dismissed without 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: October 06, 2020

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Residential Tenancy Branch