



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ARIAS & ASSOCIATES PROPERTIES,  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing dealt with the landlord's application, filed on September 2, 2021, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for damage to the rental unit of \$4,408.23, pursuant to section 67;
- authorization to retain the tenant's security deposit of \$1,100.00, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The applicant landlord did not attend this hearing, which lasted approximately 14 minutes. The respondent tenant and her two agents, agent VT ("tenant's agent") and "agent AC," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

This hearing began at 1:30 p.m. and ended at 1:44 p.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant, her two agents, and I were the only people who called into this teleconference.

All hearing participants confirmed their names and spelling. The tenant provided an email address for me to send this decision to her after the hearing. She stated that her two agents had permission to speak on her behalf at this hearing. She identified the tenant's agent as the primary speaker for her at his hearing.

At the outset of this hearing, I informed the tenant and her two agents that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”). The tenant and her two agents all separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing process to the tenant and her two agents. They had an opportunity to ask questions, which I answered. They did not make any adjournment or accommodation requests. They confirmed that they were ready to proceed with this hearing.

The tenant’s agent confirmed receipt of the landlord’s application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord’s application.

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

Rule 7.3 of the RTB *Rules* states:

*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 landlord, I order the landlord’s entire application dismissed without leave to reapply.

#### Preliminary Issue – Residential Tenancy Policy Guideline 17

Residential Tenancy Policy Guideline 17 states the following, in part (emphasis added):

*The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:*

*• **a landlord’s application to retain all or part of the security deposit;***

***or***

*• a tenant’s application for the return of the deposit.*

*unless the tenant’s right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.*

As per the above, I am required to deal with the tenant's security deposit because the landlord has applied to retain it. As noted above, the landlord did not appear at this hearing to support its application to retain the tenant's security deposit and the landlord's application was dismissed without leave to reapply.

The tenant's agent stated the following facts. The tenant paid a security deposit of \$1,100.00 to the landlord. The tenant made a previous RTB application to obtain a return of double the amount of her security deposit of \$1,100.00, totalling \$2,200.00, plus the \$100.00 filing fee. A previous RTB hearing was held regarding the tenant's application on August 23, 2021, after which a decision, dated August 25, 2021, was issued by a different Arbitrator. The previous RTB decision awarded the tenant double the value of her security deposit, plus the filing fee, totalling \$2,300.00, and monetary order for same. The tenant received the \$2,300.00 monetary amount from the landlord, after enforcing the RTB monetary order in the Small Claims Division of the Provincial Court of British Columbia.

The file number for the previous RTB hearing is contained on the front page of this decision. I reviewed the previous RTB decision and monetary order and confirmed that the tenant was issued a monetary order of \$2,300.00, for double the value of her security deposit plus the filing fee. The landlord did not provide a copy of the previous RTB decision or monetary order for this hearing. However, I reviewed the online RTB file information to confirm same, during and after this hearing. As noted on the previous RTB decision, the landlord's two agents and the tenant and her two agents attended the previous RTB hearing. The previous RTB decision and monetary order were issued to both parties on August 25, 2021, prior to the landlord filing this application on September 2, 2021.

The tenant's security deposit has already been dealt with in a previous RTB hearing, decision, and order. Therefore, I cannot make a decision about the tenant's security deposit, as it is *res judicata*, since it has already been decided. I verbally informed the tenant and her two agents of my decision during this hearing. They confirmed their understanding of and agreement to same.

### Conclusion

The landlord's entire application is dismissed without leave to reapply.

The tenant's security deposit has already been dealt with in a previous RTB hearing, decision, and order, so it is *res judicata*.

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: March 17, 2022

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Residential Tenancy Branch