



# 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 MNDCT FFT

### **Introduction**

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

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

While the tenant MS attended the hearing by way of conference call, the landlord did not. I waited until 1:47 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant provided sworn, undisputed testimony that the landlord was served with the tenants' application for dispute resolution and evidence package on June 10, 2019. The tenant MS testified that he had attended the address of the landlord as indicated on the tenancy agreement, and served the landlord's agent AY. In accordance with section 89 of the *Act*, I find the landlord duly served with the tenants' application and evidence for this hearing.

### **Issues(s) to be Decided**

Are the tenants entitled to the return of his security deposit?

Are the tenants entitled to a monetary order for money owed?

Are the tenants entitled to recover the filing fee for this application from the landlord?

### **Background and Evidence**

This fixed-term tenancy began on April 15, 2019, with monthly rent set at \$10,990.00, payable on the first of every month. The tenants paid a security deposit as well as a pet damage deposit in the amounts of \$5,495.00 each deposit. The tenants moved out on May 31, 2019, and have not received any portion of either deposit from the landlord.

The tenants are seeking the return of their deposits as they did not authorize the landlord to retain any portion of their deposits. The tenants were unable to confirm that the landlord was formally provided with a forwarding addressing in writing for the return of both deposits.

The tenants are also seeking the return of funds which were deducted from their bank account without their authorization. The tenant MS testified they had allowed the landlord to make automatic withdrawals for the monthly rent, but they had attended the bank on May 21, 2019 to place a stop payment to prevent future withdrawals as they were terminating this tenancy. The tenants testified that despite this request, the landlord had attempted to withdraw the June 2019 rent without their authorization, and was successful on June 3, 2019 in withdrawing \$10,990.00 as the landlord had changed their name to a similar, but different name that was previously used by the landlord. The tenant testified that despite the stop payment request, the landlord continues to attempt to withdraw money from their account without their authorization.

In their evidentiary materials, the tenants included a statement of the account activities for the above period showing the stop payment on May 21, 2019, as well as the withdrawal of \$10,990.00 on June 3, 2019.

### **Analysis**

Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit.

As I am not satisfied that the tenants have demonstrated provision of their forwarding address to the landlord in writing, I dismiss the tenants' application for the return of both deposits with leave to reapply. The tenants must provide their forwarding address to the landlord in writing, and the

landlord must, within 15 days of the receipt of that address, either return the tenants' security and pet damage deposit, or make an application for dispute resolution. If the landlord fails to comply with section 38 of the *Act*, the tenants may reapply. Liberty to reapply is not an extension of any applicable limitation period.

I find that the tenants had provided undisputed evidence to support that the landlord had withdrawn money from their bank account without their authorization. I am satisfied that the tenants had placed a stop payment on future withdrawals, but by changing the landlord's name on the account, the landlord was still able to withdraw \$10,990.00 on June 3, 2019. I find that the landlords did not have authorization to remove this money from tenants' account, and accordingly, I allow the tenants a monetary order in the amount of \$10,990.00 for the return of this unauthorized withdrawal.

I allow the tenants to recover the filing fee for this application.

### **Conclusion**

I allow the tenants' monetary application for \$10,990.00, as well as their application to recover the filing fee. I issue a monetary order in the amount of \$11,090.00 in the tenants' favour.

The landlord(s) must be served with **this Order** as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenants' application for the return of their security deposit 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: September 16, 2019

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Residential Tenancy Branch