



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNR

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation for unpaid rent and to recover the filing fee.

The hearing was conducted by teleconference on August 23, 2017. Only the Landlord called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

On July 4, 2017 the Landlord obtained an Order for substituted service pursuant to section 71 of the *Act* and was permitted to serve the Tenant by email. The Landlord testified that he emailed the Application materials to the Tenant on July 4, 2017, July 21, 2017, August 2, 2017, August 9, 2017 and August 21, 2017. The Landlord confirmed that the Tenant did not respond to any of his emails after he informed her he would pursue compensation through the Residential Tenancy Branch.

I find the Tenant was duly served as of Jul 4, 2017 and I proceeded with the hearing in her absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the Landlord's 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.

### Issues to be Decided

1. Is the Landlord entitled to a Monetary Order for unpaid rent?
2. Should the Landlord recover the filing fee?

### Background and Evidence

The Landlord testified that the tenancy began May 2014. Monthly rent was payable in the amount of \$900.00. The Tenant paid a security deposit in the amount of \$450.00 which the Landlord continues to hold.

The Landlord testified that during the three years of the tenancy the Tenant was regularly unable to pay the full amount of rent owing such that at the time he filed his Application for Dispute Resolution he believed that the amount of rent owing was \$3,700.00. He stated that, despite the large amount owing, he worked with a family member of the Tenant, such that he was reluctant to evict her for non-payment of rent. Email communication between the parties confirms that the Landlord informed the Tenant that the amount of outstanding rent was \$3,800.00; the Tenant acknowledges this debt in her responses.

At the hearing the Landlord confirmed that at the time he applied for Dispute Resolution he was not able to obtain his banking information for the earlier time period of the tenancy. He confirmed that at the end of July 2017 he obtained this information and was then able to confirm that the total amount owing for rent was \$11,100.00. He testified that he sent this information to the Residential Tenancy Branch at the end of July 2017, but was later informed by staff at the Branch that the information was not received. He confirmed that he resent this information to the Branch on August 19, 2017.

The Landlord testified that he emailed the Tenant to inform her that he would be seeking the sum of \$11,100.00 but did not send her the relevant banking information. He also did not amend his application to increase the amount claimed.

### Analysis

After consideration of the Landlord's undisputed testimony and evidence, and on a balance of probabilities, I find the Tenant failed to pay the rent as required.

The documentary evidence filed by the Landlord indicates the Tenant agreed that the sum of \$3,800.00 was owed.

While I accept the Landlord's testimony that the amount owing is more than the amount claimed, the Landlord did not amend his Application for Dispute Resolution to request this increased sum; as such, he did not give the Tenant proper notice that he would be seeking more than \$3,700.00 at the hearing.

Further, *Residential Tenancy Branch Rules of Procedure* provide that an Applicant must serve their supporting evidence on the Respondent within three days of receiving the application package, and in any case no later than 14 days prior to the hearing. I accept his testimony that the evidence was not available at the time he filed his Application, however, the Landlord confirmed he did not serve the evidence of his banking information on the Tenant. One of the principles of Natural Justice is that a party to a dispute has the right to know the case against them and an opportunity to respond to any such claims. In this case, the Tenant was not made aware of the increased claim, nor was she afforded the opportunity to review the banking information filed in support of the increased amount. I therefore declined to consider that information.

Finally, rule 2.2 of the *Residential Tenancy Rules of Procedure* provides that a claim is limited to what is stated on the application. As such, I find that the Landlord is only entitled to recovery of the amount claimed on his Application, namely the sum of \$3,700.00 in addition to the filing fee for a total of **\$3,800.00**. I grant the Landlord leave to reapply for the balance of the rent owing.

#### Conclusion

The Landlord is granted monetary compensation for unpaid rent in the amount of \$3,700.00. He is also entitled to recover the filing fee for a total of **\$3,800.00**.

I authorize the Landlord to retain the \$450.00 security deposit as partial payment of the amount awarded and I grant the Landlord a Monetary Order for the balance due **\$3,350.00**. This Monetary Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

The Landlord is granted leave to reapply for the balance of rent owing. 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: August 23, 2017

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Residential Tenancy Branch