



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR FF

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on September 10, 2018 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing, and provided affirmed testimony.

The Landlord testified the Application package and subsequent documentary evidence were served of the Tenant by registered mail. The Tenant acknowledged receipt. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find that these documents were sufficiently served for the purposes of the *Act*. The Tenant did not submit documentary evidence in response to the Application.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, 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. Is the Landlord entitled to an order granting recovery of the filing fee?

### Background and Evidence

The Tenant rented the rental property from the Landlord and, in turn, rented a separate unit in the rental property to a tenant of her own. As between the parties, a fixed-term tenancy began on May 15, 2016, and continued to May 15, 2017. During the fixed-term, rent in the amount of \$1,800.00 per month was due on the first day of each month.

The parties subsequently entered into a new month-to-month tenancy, which commenced on November 1, 2017. Under the terms of the new agreement, rent in the amount of \$2,000.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$900.00, which the Landlord holds. The tenancy ended when the Tenant vacated the rental unit on October 1, 2018. Copies of the tenancy agreements between the parties were submitted into evidence.

The Landlord testified the Tenant paid rent as follows:

<b>Month</b>	<b>Amount paid</b>	<b>Outstanding</b>
July 2018	\$1,015.00	\$985.00
August 2018	\$1,000.00	\$1,000.00
September 2018	\$0	\$2,000.00

In support, the Landlord submitted bank statements confirming payments received, as described in her testimony.

The Tenant acknowledged that rent was not paid for the month of September 2018 as claimed. She testified she felt justified in withholding rent due to the way the tenancy was ending. However, the Tenant testified that rent for July and August 2018 were paid in full. Specifically, she testified that her tenant paid the balance of rent outstanding in July 2018 to the Landlord directly, which the Landlord denied. In addition, the Tenant testified that rent for the month of August 2018 was paid in cash. As noted above, the Tenant did not submit documentary evidence or call witnesses in support of her testimony.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26(1) of the *Act* confirms:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

[Reproduced as written.]

Further, section 41 of the *Act* confirms that a landlord must not increase rent except in accordance with the *Act*, which requires a notice of a rent increase to be given at least 3 months before the effective date of the increase and in the approved form. I find that rent was increased from \$1,800.00 to \$2,000.00 contrary to the *Act* and is therefore invalid. As a result, I find that at all material times the amount of rent due was \$1,800.00. Further, I find it is more likely than not that rent was not paid when due as alleged by the Landlord. The testimony of the Tenant was inconsistent in that she stated that her tenant paid the balance of rent directly to the Landlord in July 2018 (although the tenant's rent was only \$800.00 per month), but offered no documentary evidence or witness testimony in support. Therefore, I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$3,385.00, which has been calculated as follows:

<b>Month</b>	<b>Rent due</b>	<b>Rent paid</b>	<b>Outstanding</b>
July 2018	\$1,800.00	\$1,015.00	\$785.00
August 2018	\$1,800.00	\$1,000.00	\$800.00
September 2018	\$1,800.00	\$0	\$1,800.00
<b>TOTAL:</b>			<b>\$3,385.00</b>

Having been successful, I also find it is appropriate to grant the Landlord recovery of the filing fee, and to order that the security deposit held be applied in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$.00, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Unpaid rent:	\$3,385.00
Filing fee:	\$100.00
LESS security deposit:	(\$900.00)
<b>TOTAL:</b>	<b>\$2,585.00</b>

Conclusion

The Landlord is granted a monetary order in the amount of \$2,585.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: January 14, 2019

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Residential Tenancy Branch