



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for monetary compensation and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant and one of the Landlords were present for the teleconference hearing. The Landlord stated that she did not receive the Notice of Dispute Resolution Proceeding package or a copy of the Tenant’s evidence as it was delivered to the address of the rental unit where she does not live. As a neighbor noticed a delivery card, the Landlord attempted to pick up the package at the post office, but it had already been returned to the Tenant.

The Landlord stated that it was then that she contacted the Residential Tenancy Branch and was provided with the Notice of Dispute Resolution Proceeding package. However, the Landlord has not received a copy of the Tenant’s evidence. The Tenant confirmed that she sent the Notice for Dispute Resolution Proceeding packages and a copy of her evidence to each Landlord at the address of the rental unit as she thought that they resided there. The packages were returned to her. The Landlord submitted a tenancy agreement and insurance information showing that she has been residing at a different address since June 2018.

As stated in the *Residential Tenancy Branch Rules of Procedure*, the applicant must serve the evidence to the respondent at least 14 days prior to the hearing. As noted in Sections 88 and 89 of the *Act*, service by registered mail is a method of service to an address where the person resides. As I have evidence before me that the Landlord did not reside at the rental unit, I do not find that she was served with the Tenant’s evidence in accordance with the *Act* and therefore the Tenant’s evidence is not accepted and will

not be considered in this decision. However, as the Landlord confirmed that she had a copy of the tenancy agreement and rent receipts with her as they were submitted as evidence in a previous dispute resolution proceeding, these will be considered as evidence from the Tenant. The remainder of the Tenant's evidence is not accepted. The Tenant confirmed receipt of the Landlord's evidence package which will therefore be included as evidence.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

### Issues to be Decided

Is the Tenant entitled to monetary compensation?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

While I have considered the relevant documentary evidence and testimony, not all details of the submissions are reproduced here.

The parties agreed that the tenancy began on March 30, 2014 and ended on April 1, 2017. A tenancy agreement was submitted as evidence and confirms the tenancy start date.

The tenancy agreement states that monthly rent was \$900.00 per month. The Tenant testified that prior to moving in she and the Landlord discussed that rent would be \$900.00, but when she moved in she was advised that rent would be \$1,100.00 per month. The Tenant stated that she wished to discuss this with the property owner, but the Landlord refused to give her his contact information and when she finally received it, she never heard back from him.

The Tenant submitted into evidence six receipts for rent paid, which state that \$1,100.00 was paid for rent for January 2016, February 2016, June 2016, September 2016, February 2017 and March 2017.

The Tenant stated that the Landlord advised her that she had to pay \$1,100.00 per month or she would be evicted. The Tenant confirmed that she paid \$1,100.00 per month throughout the entire duration of the tenancy. The Tenant has applied for

compensation in the amount of \$7,200.00, which is the equivalent of \$200.00 per month for a period of 36 months, which the Tenant stated is the amount that was overpaid.

The Tenant also applied for compensation for registered mail costs in the amount of \$57.54 and filing fees from previous dispute resolution applications in the amount of \$200.00.

The Landlord stated that she was friends with the Tenant and was living in the rental unit at the time for a monthly amount of \$1,100.00. However, as the Landlord was moving out she offered the unit to the Tenant on behalf of the property owner who had provided permission for her to act as an agent.

The Landlord provided testimony that the Tenant advised her that she would only be approved for a monthly rent of \$900.00 from her rental subsidy payment so asked to have a tenancy agreement written up in the amount of \$900.00. The Landlord stated that the Tenant told her that despite the tenancy agreement stating \$900.00, the Tenant would pay the additional \$200.00 per month. The Landlord testified that the Tenant asked for proof that rent was \$900.00 as well as confirmation from the property owner that the Landlord was able to act on his behalf.

The Landlord submitted email correspondence dated April 2, 2014. In the emails, the Landlord asks the owner to provide an email stating that she has permission to act on his behalf. In the email, the Landlord also states the following:

*She's agreed to rent the house from you for an amount of 1100 per month the catch right now is that disability is only paying her 900 and the rest she will be giving me to make up the difference, so that is why is noted on the letter 900*

On April 2, 2014, the owner sent an email to the Landlord confirming that she has permission to act on his behalf and then the Landlord emailed the Tenant the same day to forward the email and ask if it was what she needed.

The Landlord stated that she received the full \$1,100.00 per month in rent every month throughout the tenancy. She stated that the Tenant never expressed any concerns with this until after the tenancy ended.

#### Analysis

While the Tenant applied for compensation for registered mail costs in the amount of \$57.54 and filing fees from previous dispute resolution proceedings in the amount of

\$200.00, I decline to compensate the Tenant for these costs. Registered mail costs may be incurred by both parties during a dispute resolution proceeding. Regarding the previous filing fees claimed, a decision on these fees is made at the time of the original dispute resolution proceeding and therefore I am not able to reconsider a matter for which a decision was already made.

As for the Tenant's application for monetary compensation in the amount of \$7,200.00, I refer to Section 7 of the *Act* which states the following:

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The Tenant provided testimony that the Landlord did not comply with the tenancy agreement which stated that rent was \$900.00. However, I do not find the tenancy agreement to be compelling evidence towards the rent amount based on the testimony and evidence that indicates that the parties had a verbal tenancy agreement that monthly rent was \$1,100.00.

I accept the email evidence submitted by the Landlord that establishes that the parties agreed on \$1,100.00 per month but signed a tenancy agreement for \$900.00 so the Tenant would be approved for a rental subsidy. Both parties agreed that the Tenant paid \$1,100.00 each month and that the Landlord accepted this amount. Had the parties not agreed that rent was \$1,100.00, I find it unlikely that the Tenant would have paid this amount and/or that the Landlord would have accepted this amount for a period of three years.

I also refer to Section 7(2) of the *Act* which states that a party claiming a loss has a duty to take reasonable steps to minimize their losses. Had the Tenant believed that monthly rent was \$900.00, I find it unlikely that she would have continued to pay \$1,100.00 without seeking remedy to the situation during the tenancy, instead of more than one year after the tenancy ended. Although the Tenant stated that the Landlord threatened eviction if \$1,100.00 was not paid, I find that the Tenant had rights under the *Act* to dispute an eviction had this occurred. Instead, the Tenant continued to pay \$1,100.00, which leads to my finding, on a balance of probabilities, that the parties had a verbal agreement that monthly rent was \$1,100.00.

As stated in rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim which in this matter is the Tenant. Based on the testimony and evidence provided, I am not satisfied that the Tenant met the burden of proof to establish that they experienced a loss due to a breach by the Landlord, and that they took reasonable steps to minimize any potential losses. Therefore, the Tenant's application for monetary compensation is dismissed, without leave to reapply. As the Tenant was not successful with her application, I decline to award the recovery of the filing fee.

### Conclusion

The Tenant's Application for Dispute Resolution 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: February 27, 2019

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Residential Tenancy Branch