



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed June 6, 2022, wherein the Tenant sought monetary compensation from the Landlord in the amount of \$2,264.00 for an overpayment of rent and recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for teleconference at 1:30 p.m. on February 21, 2023. Only the Tenant 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.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 1:42 p.m. Additionally, 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 and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenant's hearing package. The Tenant testified that he served the Landlord with the Notice of Hearing and the Application on June 17, 2022 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of June 22, 2022 and I proceeded with the hearing in their absence.

The Tenant was cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. The Tenant confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Tenant and relevant to the issues and findings in this matter are described in this Decision.

#### Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. Should the Tenant recover the filing fee?

#### Background and Evidence

In support of his claim the Tenant testified as follows. He confirmed that he paid rent in the amount of \$2,164.00.

The Tenant accidentally paid twice for his rent in July of 2021 such that the Landlord received an overpayment of \$2,164.00. The Landlord's son then agreed to not cash the August 2021 cheque.

The tenancy ended pursuant to a 2 Month Notice to End Tenancy issued February 15, 2022. The Tenant moved out in April of 2022. After the tenancy ended, the Landlord cashed the Tenant's August 2021 cheque.

In the hearing before me the Tenant sought return of the \$2,164.00 overpayment as well as the \$100.00 filing fee.

### Analysis

After consideration of the Tenant's undisputed testimony and evidence, and on a balance of probabilities I find as follows.

I find the Tenant was obligated to pay monthly rent in the amount of \$2,164.00. I accept the Tenant's testimony that the Landlord received a double payment for July 2021 such that the Tenant overpaid by \$2,164.00. This is confirmed by the Tenant's testimony as well as the documentary evidence submitted by the Tenant. The evidence indicates the Landlord agreed not to cash the August 2021 cheque, yet after the tenancy ended in April of 2022, the Landlord cashed that cheque.

I find the Landlord had no legal claim to the \$2,164.00 overpayment and must return those funds. I therefore grant the Tenant monetary compensation for this amount.

As the Tenant has been successful in their Application, I also award them recovery of the \$100.00 filing fee for a total award of **\$2,264.00**.

### Conclusion

The Tenant's claim is granted in its entirety. The Tenant is entitled to a Monetary Order in the amount of **\$2,264.00**. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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 1, 2023

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Residential Tenancy Branch