

## **DECISION**

### **Dispute Codes:**

MNSD, FF

### **Introduction**

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present oral evidence, to ask relevant questions, and to make submissions to me.

The Landlord's Application for Dispute Resolution was amended, with the consent of both parties, to reflect the correct spelling of the Tenant's name

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

The issues to be decided are whether the Landlord is entitled to retain all or part of the security deposit paid by the Tenant and to recover the filing fee for the cost of this Application for Dispute Resolution.

### **Background and Evidence**

The Landlord submitted a copy of an Application for Tenancy that is filled out in the name of the Tenant and the Agent for the Tenant. The Application indicated that the tenancy would begin on April 01, 2010. The Application is signed by the Tenant and dated March 07, 2010. It is not signed by the Landlord.

The Application for Tenancy stipulates that the offer is subject to acceptance by the Landlord and is open for acceptance until 6:00 p.m. on the fifth day following the date of this application, which is March 12, 2010. The Application for Tenancy does not specify how the Tenant will be notified if the offer is accepted. The Agent for the Landlord #2 stated that typically the Landlord checks references and employment before accepting an application for tenancy; that they notify applicants by phone once an application is accepted; and that the agreement becomes a verbal agreement until a written agreement can be prepared and signed by both parties.

The Agent for the Landlord #2 and the Agent for the Tenant agree that a security deposit of \$825.00 was paid on March 07, 2010. The Agent for the Tenant stated that she paid the security deposit on March 07, 2010 because she believed that it was a requirement, even though she understood that the parties had not entered into a tenancy agreement at that point.

The Agent for the Tenant stated that she understood that the Landlord would advise them, by phone, if their tenancy application had been accepted and that the tenancy was to begin. She stated that they never heard from the Landlord so all the prospective occupants assumed that their application had not been accepted.

The Agent for the Landlord #1 stated that he telephoned the Tenant on March 11, 2010 to advise them that their application had been accepted. He does not know what time he made the phone call. He stated that he telephoned the Tenant at one of the telephone numbers on the Application for Tenancy, although he does not recall which number he phoned. He stated that he did not personally speak with the Tenant or the Agent for the Tenant but that he left a message on the answering machine. The Agent for the Landlord #1 provided no evidence to corroborate this statement.

The Witness for the Tenant stated that he was also going to move into the rental unit; that he was present when the Application for Tenancy was signed by the Tenant; that they were told that they would be contacted in five days regarding their application; that they never heard back from the Landlord; and that he assumed the application had not been accepted as they had not heard back from the Landlord.

The Agent for the Landlord #1 stated that she spoke with the mother of one of the persons named on the Application for Tenancy, who advised that they had not been advised that the application had been approved and that they wished to have their security deposit returned to them.

The Agent for the Tenant stated that the parties checked their call display at their current address and they checked their cell phone records and determined that they had not received a call from the Landlord prior to March 15, 2010.

The Agent for the Landlord#2 and the Agent for the Tenant agree that neither the Tenant nor the Agent for the Tenant moved into this rental unit.

The Agent for the Landlord and the Agent for the Tenant agree that the Tenant did not provide the Landlord with a forwarding address. The Agent for the Tenant stated that the Landlord was aware that the Tenant was still residing at the address on the Application for Tenancy.

The Agent for the Landlord #2 stated that the rental unit was rented to someone else on April 01, 2010, so the Landlord did not experience a loss of revenue. The Landlord is seeking to retain the security deposit as liquidated damages. The Application for Tenancy stipulates that the applicant will forfeit the security deposit if the application is cancelled five days after the application was made. It further stipulates that the security deposit will be refunded in full if the Application for Tenancy is not accepted.

### Analysis

I find that the Tenant completed an Application for Tenancy on March 07, 2010 and that a security deposit of \$825.00 was paid on that date. This Application for Tenancy indicated that the Landlord had until March 12, 2010 to advise the Tenant that the offer had been accepted.

I find that the Landlord submitted insufficient information to establish that the Landlord clearly advised the Tenant that his Application for Tenancy had been accepted. In my view, leaving a message on an answering machine without making any effort to confirm that the message has been received is not a reasonable method of communicating with a party for the purposes of entering into a tenancy agreement. In the absence of the Tenant acknowledging receipt of that message, I find that the Landlord has not established that it communicated its intent to enter into a tenancy prior to the Tenant's offer to enter into a tenancy had expired on March 12, 2010.

As the Landlord failed to establish that it advised the Tenant that his offer to enter into a tenancy agreement had been accepted prior to the expiration date of the tenancy, I find that the offer was not properly accepted prior to the expiration of the offer. I therefore find that the Landlord must return the security deposit paid for this tenancy, as stipulated in the Application for Tenancy.

### Conclusion

I find that the Landlord's application has been without merit and I dismiss the Landlord's claim to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

As I have determined that the Landlord must return the security deposit, I grant the Tenant a monetary Order, in the amount of \$825.00. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: July 19, 2010.

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Dispute Resolution Officer