

## **DECISION**

### **Dispute Codes:**

MNDC, MNSD, FF

### **Introduction**

This hearing was convened in response to cross applications.

The Landlord filed an 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.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for the return of his security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The hearing was scheduled for 2:00 p.m. on this date and by 2:19 p.m. the Tenant had not appeared. I find that the Tenant failed to diligently pursue the application and I therefore dismiss the Tenant's application without leave to reapply.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the address noted on the Application, on May 01, 2010. Canada Post documentation was submitted in evidence that corroborates this statement. The Landlord stated that he received this service address from the Tenant when he was served with copies of the Tenant's Application for Dispute Resolution. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, and the hearing proceeded in the absence of the Tenant.

### **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 stated that this tenancy began on May 10, 2009; that the Tenant was required to pay monthly rent of \$550.00 on the first day of each month; that the Tenant

paid a security deposit of \$275.00; that the tenancy ended on October 31, 2009; and that he did not receive a forwarding address from the Tenant until he received the Tenant's Application for Dispute Resolution sometime during the latter portion of April of 2010.

The Landlord stated that the Tenant paid his rent for November of 2009; that he had a dispute with an agent for the Landlord; that he decided to move out on October 31, 2009; and that the agent for the Landlord returned his rent to him on October 31, 2009. The Landlord submitted a document, which appears to have been signed by the Tenant, in which the Tenant acknowledged that he did not give the Landlord thirty days notice of his intent to vacate the rental unit.

The Landlord is requesting authorization to retain the Tenant's security deposit in compensation for loss of rent from November of 2009. The Landlord stated that he advertised the rental unit on a popular website but was unable to find a new occupant for the month of November.

### Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant failed to comply with section 45 of the *Act* when he failed to provide the Landlord with written notice of his intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. To end this tenancy on October 31, 2009 in compliance with section 45 of the *Act*, the Tenant would have had to provide written notice to the Landlord on, or before, September 30, 2009.

I find that the improper notice to vacate prevented the Landlord from finding new tenants for November 01, 2009, as the Landlord did not have a reasonable opportunity to advertise the unit. I find that the Landlord is therefore entitled to compensation for loss of revenue from November of 2009. In these circumstances the Landlord is only seeking to retain the security deposit in compensation for loss of revenue from November, which is the equivalent of \$275.00. As the Landlord experienced a loss of revenue in the amount of \$550.00 in November, I find that he is clearly entitled to the compensation requested.

### Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$325.00, which is comprised of \$275.00 in compensation for loss of revenue from November and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Pursuant to section 72(2) of the *Act*, I hereby authorize the Landlord to retain the security deposit of \$275.00, in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$50.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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 26, 2010.

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Dispute Resolution Officer