



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing was convened in response to an application pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Applicants and Respondent were each given full opportunity under affirmation to be heard, to present evidence and to make submissions.

### Preliminary Matters

The Applicant requested and the Respondent agreed to an amendment to the application to remove the party named “D and K M M” Group and replace it solely with “M” Group.

It was noted that the Applicant did not indicate in the body of the application that any monetary claim was being made. The Applicant provided a monetary order worksheet with its evidence package indicating a monetary claim. The Respondent confirms that it understands that the Applicant was making the monetary claim set out in the worksheet and is prepared to answer to these monetary claims.

Issue(s) to be Decided

Did the Parties enter into an enforceable tenancy agreement?

Is the Applicant entitled to damages?

Relevant Background and Evidence

The following are undisputed facts: In mid-June 2017 the Applicant sent a 3<sup>rd</sup> party to view a rental unit after which the Applicant applied to rent the unit. On June 21, 2017 the Respondent sent the Applicant a tenancy agreement and addendum for signature. The tenancy agreement provided an occupancy date of August 1, 2017 and rent of \$2,995.00. The tenancy agreement indicated that the security deposit was payable on June 24, 2017. On June 22, 2017 the Applicant requested and obtained a second viewing of the unit for the next day. This was the first viewing for the Applicant. On June 23, 2017 after viewing the unit the Applicant sent a text informing the Respondent that the signed tenancy agreement would be provided that afternoon. On that same date the Respondent also sent a text informing the Applicant that the Landlord decided not to rent the unit to the Applicant. The Applicant did not sign and return the tenancy agreement and did not pay the security deposit.

The Applicant states that right after receiving the tenancy agreement a text was sent to the Respondent indicating acceptance of the terms of the tenancy. The Respondent denies receiving any such text and notes that no copy of this text was provided as evidence. The Respondent states that the only response from the Applicant to the provision of the tenancy agreement and addendum was the request to view the unit. The Respondent states that they believed the Applicant wanted to delay signing in order to see the unit first. The Respondent states that at the second viewing the Applicant wanted to negotiate an earlier move in date along with other items, such as painting the unit and the removal of a mirror. The Respondent states that these terms were not discussed with the owner and were not a part of the tenancy agreement and that changes had to be made to the tenancy agreement if the owner agreed to the Applicant's conditions and request for an earlier move in date. The Respondent states

that the Applicant's text to accept the tenancy came at the same time as the Respondent was sending the text to inform the Applicant that they would not rent the unit to the Applicant.

The Applicant argues that as the security deposit was not payable until June 24, 2017 the Applicant had until then to pay this amount. The Applicant argues that the payment of the security deposit does not make a difference since the Applicant accepted the tenancy when the agreement was offered to the Applicant. The Respondent states that a couple of days are generally provided to a tenant for the payment of the security deposit even after a tenancy agreement is signed. The Respondent states that the Applicant requested a second viewing and at that viewing was making comments that the unit may not be suitable for their purposes. The Respondent states that they also felt that the unit would not be suitable for the Applicant based on the comments made during the second viewing. The Respondent argues that they had a right to change their minds about offering the tenancy agreement as the Applicant had not accepted the tenancy agreement. The Applicant states that the second viewing was only for the purposes of measuring the unit to determine which furniture would fit. The Applicant states that the tenancy agreement was not signed while they were at the second viewing as her husband was not present to sign as he was out of the province and the documents could not have been sent and returned to him at the same time.

The Applicant claims damages as a result of the Respondent's decision to not rent the unit to the Applicant.

### Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Section 91 of the Act provides that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. A basic common law rule for contracts is that an offer can be revoked at any

time before acceptance. Given the lack of a copy of a text informing the Respondent of acceptance of the terms being offered in the tenancy agreement and addendum prior to the second viewing or the Applicant's first viewing I accept the Respondent's evidence that the Applicant did not accept the Respondent's offer of a tenancy agreement prior to the second viewing. Based on the undisputed evidence that the Applicant wanted different terms for the tenancy agreement along with conditions to be met such as painting and the removal of item I find on a balance of probabilities that the Parties were still in the process of negotiations and that there was no acceptance of the tenancy agreement at the second viewing. Given that the copy of the Respondent's text to revoke the tenancy offer is time stamped for the same time as the Applicant's text informing the Respondent that the tenancy was accepted and given that there was no signed tenancy agreement or paid security deposit at the time of the Respondent's text to revoke the offer, I accept that the Respondent did revoke the offer prior to the acceptance of the tenancy by the Applicant. For these reasons I find that the Applicant has not substantiated that the Respondent breached a tenancy agreement and I dismiss the application.

### Conclusion

The application is dismissed.

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: September 28, 2017

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Residential Tenancy Branch