

## **DECISION**

**Dispute Codes:** MND, MNR, MNSD, FF, MNDC

### **Introduction**

This hearing dealt with a cross applications by the parties. The landlord applied for a monetary order for loss of income and damages and an order to retain the security deposit in partial satisfaction of the claim. The tenant applied for a monetary order for the amount of the security deposit, applicable accrued interest and double the security deposit.

### **Preliminary Matter**

The tenant withdrew her claim for the \$50.00 notary fees. I therefore dismiss her application for a monetary order for this amount.

### **Issues to be Decided**

1. Whether the tenant is entitled to a monetary order for the amount of the security deposit, applicable accrued interest and double the security deposit?
2. Whether the landlord is entitled to a monetary order for loss of income and damages and an order to retain the security deposit in partial satisfaction of the claim?

### **Background and Evidence**

On June 14, 2007, the landlord collected a security deposit in the amount of \$697.50 from the tenant. On July 1, 2007, the tenant began a fixed term tenancy ending on December 31, 2007. A monthly rent in the amount of \$1446.00 was payable in advance on the first day of each month.

On November 25, 2007, the tenant verbally notified the property manager that she would be moving out on December 31. During this conversation, the property manager advised the tenant that the last day she could give her written notice was December 1. On December 1, the tenant composed her written notice to end tenancy in the property manager's office. On December 13, the tenant moved out. On December 29, the tenant's agent, MD, conducted the move out condition inspection with the property manager. During this inspection, MD agreed in writing for the landlord to retain \$547.00 as costs incurred in addressing the damages. On the same day, MD also gave the tenant's written forwarding address in writing to the landlord.

### **Analysis**

Issue #1 – Whether the tenant is entitled to a monetary order for the amount of the security deposit, applicable accrued interest and double the security deposit?

Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit. I find that the tenancy ended on December 31, 2008, and that the tenant provided her forwarding address in writing on December 29, 2008. I further find that the landlord has failed to repay the security deposit or make an application for dispute resolution within 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address.

I find that the tenant has established a claim for the security deposit of \$697.50, accrued interest of \$16.31, and double the base amount of the security deposit in the amount of \$697.50, for a total of \$1411.31. The tenant is also entitled to

recover the \$50.00 filing fee for this application. The tenant confirmed to agreeing for the landlord to retain \$547.00 from her security deposit as costs incurred in addressing the damages. I therefore grant the tenant an order under section 67 for the balance due of \$914.31. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Issue #2 – Whether the landlord is entitled to a monetary order for loss of income and damages and an order to retain the security deposit in partial satisfaction of the claim?

Other than the \$547.00 that was agreed upon by the tenant, the landlord makes no other claim for damages. Rather, he is claiming for loss of income for January in the amount of \$1446.00. The landlord referred to a clause in the tenancy agreement which states that if the tenancy agreement was not renewed at the end of the original term by a new agreement, the tenancy will continue as month to month tenancy. The landlord said that base on this clause, the tenant is obligated to pay for the loss of income he suffered as a result of her failure to give the required notice to end tenancy on November 30.

The tenant maintained that on November 25, she verbally notified the property manager that she would be moving out on December 31. During this conversation, the property manager said to her that the last day she could give her notice to end tenancy was December 1. The landlord did not dispute that the property manager had made such representation to the tenant. Based on the above, I find that the landlord has waived the statutory requirements to end tenancy as stated in section 45 of the *Residential Tenancy Act* by advising the tenant that she could give her written notice on December 1 to end tenancy on December 31. Accordingly, I also find that the tenant is not responsible for the landlord's loss of income for January. The landlord is therefore not entitled to a monetary order for the amount of \$1446.00.

Based on all of the above, I dismiss the landlord's application.

Dated March 26, 2009.