

## **DECISION**

**Dispute Codes:** O, MNDC and FF

### **Introduction**

This application was brought by the landlord seeking an Order that the tenant continue the existing tenancy agreement and recovery of the filing fee for this proceeding.

As the tenancy ended between the time of the landlord's application on December 13, 2009 and the date of the hearing on January 18, 2010, I have exercised my discretion under section 46(3)(c) of the *Act* and amended the landlord's application to request a monetary order for loss or damages under the legislation or rental agreement.

### **Issues to be Decided**

This application requires a decision on whether the landlord is entitled to a Monetary Order for loss or damage under the legislation or rental agreement and recovery of the filing fee for this proceeding.

### **Background and Evidence**

This tenancy began on April 1, 1999. Rent was \$3,394 per month and the landlord holds a security deposit of \$1,500, of which \$1,300 was paid on or about April 1, 1999 and \$200 of which was paid on or about April 1, 2006. The tenant vacated the rental unit on December 31, 2009.

The tenant is actually a sub-tenant and the landlord rents or leases the rental unit from its owner.

The landlord submitted into evidence a fixed term rental agreement covering the period from April 1, 2008 to March 31, 2009 and the tenancy operated month to month after that.

During the hearing, the landlord gave evidence that his claim arises from the fact that the tenant did not give a full month's written notice in advance of the next rent due date as required under section 45 of the *Act*. He stated that the tenant had advised him by telephone calls of November 30, 2009 and December 1, 2009 that she would be vacating the rental unit on December 31, 2009. The tenant subsequently provided written notice, but not in time.

The tenant gave evidence that she has been in contact with the family of the property owner and was given assurance that the landlord's rent cheque for January had been returned to him.

When asked what monetary losses he had suffered, the landlord alluded to rent differential but did not specify the loss and did not contest the tenant's evidence that his January cheque had been returned to him.

The landlord provided no evidence that he had attempted to find a new tenant.

## Analysis

Section 7 of the *Act* sets out the liability for loss or damage of parties to a rental agreement under the legislation and provides that:

- 1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In this instance, I accept the evidence of the tenant that the property owner returned the landlord's cheque for the January rent, and I am unable to ascertain that the landlord suffered any loss or damages. As the tenancy was on a month to month status at the end of the tenancy, the written notice received in December would have saved the tenant from any liability for the landlord losses beyond January 2009.

In addition, the landlord submitted no evidence that he had met the requirement to minimize any loss under section 7(2) of the *Act* by way of advertisements to try to find a new tenant and stated that he was waiting for the hearing before doing so.

Therefore, I must dismiss the landlord's claim. However, as the tenant concurred that she had given notice by telephone, and subsequently in writing but late, I find the landlord is entitled to recover the \$50 filing fee for this proceeding from the tenant and order that he may do so by retaining that amount from the security deposit..

For the convenience of the parties, the balance of the security deposit is as follows:

First security deposit	\$1,300.00
Interest (April 1, 1999 to date)	138.17
Additional security deposit	200.00
Interest (April 1, 2006 to date)	6.83
Sub total	\$1,645.00
Less \$50 landlord may retain for recovery of the filing fee	- 50.00
<b>Balance due to tenant</b>	<b>\$1,595.00</b>

The parties were advised of the application of section 38 of the *Act* concerning disposition of the security deposit and of the tenant's obligation to provide the landlord with her new address in writing in requesting its return.

## **Conclusion**

The landlord's request for monetary compensation is dismissed on the grounds that he has shown no initiatives to minimize his loss or damages, and in fact, has shown no loss or damages. However, as the tenant gave late notice which led to the application, the landlord is authorized to recover the filing fee by retaining \$50 from the tenant's security deposit.

January 18, 2010.