

## **DECISION**

**Dispute Codes:** MNDC and FF

### **Introduction**

This application was brought by the landlord on October 13, 2009 seeking a Monetary Order for loss of rent after the tenants vacated on short notice. The landlord also seeks to recover the filing fee for this proceeding from the tenants and authorization to retain the security deposit in set off against the balance owed.

### **Issues to be Decided**

This application requires a decision on whether the landlord is entitled to a Monetary Order for loss of rent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

### **Background and Evidence**

This tenancy began on July 1, 2007 and ended on September 30, 2009. Rent was \$900 per month and the landlord holds a security deposit of \$450 paid on or about July 1, 2007.

During the hearing, the landlord gave uncontested evidence that the tenants had given written notice on September 18, 2009 that they would be vacating the rental unit on October 1, 2009.

The landlord submitted into evidence a signed agreement between him and the tenants which stated that if the tenants surrendered the security deposit, the landlord would waive any claim for loss of rent.

The landlord stated that he had presented the offer to the tenants on September 25, 2009. He stated, and the tenant agreed, that on or about September 27, 2009, the tenants advised him that they would be declined the offer and that they would be seeking return of the security deposit.

The landlord submitted invoices from two publishing companies showing that he had begun advertising the rental unit as soon as possible in September. Unable to find a tenant for October, he filed for dispute resolution for loss of rent for October on October 8, 2009.

The landlord stated that he received the original agreement which he had offered on September 25<sup>th</sup> and the tenants had declined on September 27<sup>th</sup> on January 25, 2009 and the tenants had signed it.

## **Analysis**

Section 45 of the *Act* which sets out the requirements for a tenant's notice to end tenancy states that tenants must give at least one full month notice following the next rent due date after notice is served.

In this instance, I find that notice was given on September 18, 2009 and did not meet the requirements of section 45 of the *Act*.

Section 7 of the *Act* states that where one party to a rental agreement suffers a loss due to a breach by the other, the non-complaint party must compensate the party suffering the loss. This section also requires that the party suffering the loss must do whatever is reasonable to minimize the loss.

In this matter, I find that the late notice caused the loss of rent for October 2009. I further find that the landlord attempted to minimize the loss by advertising early.

As to the tenants signing the offer to settle matters by surrender of the security deposit, I find it to be of no effect, given that it was presented four months after they had rejected it, and after the landlord had been forced to make application for dispute resolution.

Accordingly, I find that the landlord is entitled to the rent for October 2009, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off as follows:

Loss of rent for October 2009	\$900.00
Filing fee	<u>50.00</u>
Sub total	\$950.00
Less retained security deposit	- 450.00
Less interest (July 1, 2007 to date)	- <u>10.20</u>
<b>TOTAL</b>	<b>\$439.80</b>

## **Conclusion**

In addition to authorization to retain the security deposit plus interest in set off, the landlord's copy of this decision is accompanied by a Monetary for \$439.80, enforceable through the Provincial Court of British Columbia, for service on the tenants.

February 4, 2010