# DECISION

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

## Introduction

This application was brought by the landlord seeking a Monetary Order for loss or damages under the legislation or rental agreement on the grounds that the tenants left the rental unit without giving proper notice. The landlord also requested authorization to retain the tenant's security deposit in set off and to recover the filing fee for this proceeding.

## Issues to be Decided

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

## Background and Evidence

This tenancy began on April 1, 2009 and ended on October 31, 2009. Rent was $1,300 per month and the landlord holds a security deposit of $650 paid on February 25, 2009.

This dispute arises from the fact that the tenants gave notice to end the tenancy on September 30, 2009 to take effect on October 31, 2009 by email, a service method not included in the prescribed service methods listed under section 88 of the *Act*.

During the hearing, the landlord gave evidence that she had advertised on the internet advertising site, "Kiiji" starting October 1, 2009 but had not been able to find a new tenant until February 2010. Therefore, the landlord claims loss of rent for November 2009 on the grounds of insufficient service.

The tenant submitted into evidence a copy of his email sent to the landlord on September 30, 2009 giving the notice for October 31, 2009. He also submitted a copy of the landlord's reply to him, also dated September 30, 2009 advising the tenant that email notice was not sufficient and directing him to place written notice in his mail box and that she would "grab it from there."

The landlord did not pick it up and stated that she had sent a second email to the tenant on September 30, 2009 recanting the offer to pick the notice up. However, neither party submitted a copy of the second email of September 30, 2009.

The landlord did submit a copy of an email to the tenant on October 8, 2009 stating that she had reviewed the notice left in the mail box and she was of the belief that the notice remained improperly served.

**Analysis**

Section 45 of the *Act* sets out the requirements for a tenant's notice to end a tenancy and provides that such notice must be given before the next rent due date, give at least a full month's notice and include information prescribed by section 52 of the *Act.*

I find that the notice the tenant left in his mail box conforms with those requirements.

Section 90 of the *Act* sets out when a document is deemed to be received depending on the method of service and ranges from immediate for personal service to five days after for mailing.

Section 71 of the *Act* provides the director's designate with some discretionary authority to deal with exceptional questions of service as follows:

(2) In addition to the authority under subsection (1), the director may make any of the following orders:

> (a) that a document must be served in a manner the director considers necessary, despite sections 88 *[how to give or serve documents generally]* and 89 *[special rules for certain documents]*;
>
> (b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;
>
> (c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

While email is not among the methods of service prescribed under Section 88 of the *Act,* I find that omission intends eliminate the possibilities that a legal document such as notice may not go to the correct recipient or be received on time.

However, in this instance, I find that the landlord not only acknowledged receipt of the tenant's notice on September 30, 2009, but she also directed him on an appropriate method to meet her needs by placing it in his own mail box. The tenant complied and I accept his evidence that if the landlord had directed him to deliver the notice to her in person, he would have complied as well.

Clearly, the landlord has been placed at no disadvantage by the method of service. She received the tenant's notice on September 30, 2009 and replied to him at shortly after 1 p.m., and the tenant followed her direction to the letter.

Therefore, I find that the landlord was not disadvantaged by the tenant's technical error in method of service and I exercise the discretion granted by section 71(2)(c) and find that the tenant's notice was sufficiently served for the purposes of the *Act.*

**Conclusion**

The landlord's application is dismissed without leave to reapply, the landlord remains responsible for her own filing fee, and the security deposit remains to be returned to the tenants in accordance with section 38 of the Act.

March 11, 2010