

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenant moved into the rental unit on April 21, 2009 under a fixed term lease which expired in November 2009. The tenancy continued on a month to month basis after the lease expired. The tenant paid \$850.00 per month in rent. On January 12 the tenant gave the landlord notice that she would be vacating the rental unit by February 1. The landlord testified that within one week of the date she received the tenant's notice she began advertising the rental unit but was unable to re-rent the unit until mid-March. The landlord seeks to recover \$850.00 in lost income for the month of February. The parties agreed that the tenant did not pay a security deposit. The landlord asked me to order the tenant to pay the security deposit and submitted receipts for travel, hotel and meal expenses incurred when the landlord attended the rental unit to prepare it for occupancy by the next tenant.

The tenant testified that when she initially entered into the tenancy agreement, she told the landlord that the radio station at which she was employed would be closing in February and that she would not be living in the unit past that time. The tenant stated that this was the reason why they entered into a 6 month lease rather than a one year lease. The tenant further stated that in the fall of 2009 she had another discussion with

the landlord when the landlord listed the rental unit for sale. The tenant testified that in the fall she told the landlord that she would not be living in the house past February and that the landlord had replied that she hoped to have sold the house in January, so it should not be a problem. The landlord could not recall the conversations. The tenant claimed that because the property had been listed for sale, she was entitled to give the landlord a 10-day notice.

### Analysis

Section 45 of the Act requires a tenant who ends a tenancy to give one full month notice. Any notice given by the tenant in January could not have been effective earlier than the end of February. Although it is possible for parties to verbally agree that no notice is required or that the tenancy ends on a certain date not specified in the tenancy agreement, in this case I am unable to find that such an agreement took place. The Act does permit tenants who have been given a two month notice to end tenancy to give the landlord a ten day notice to vacate the unit earlier than the date specified on the landlord's notice, but in this case the landlord did not serve the tenant with a two month notice. I find that the tenant failed to give the landlord adequate notice that she was vacating the rental unit. I find that the landlord acted reasonably to minimize her losses but was unable to re-rent the unit for the month of February and accordingly I find that the tenant must be held liable for the landlord's loss of income for that month. I award the landlord \$850.00.

The landlord did not collect a security deposit at the outset of the tenancy and although she had the option of pursuing the tenant for that deposit during the tenancy, once the tenancy has ended a deposit cannot require a deposit. Section 20(a) of the Act prohibits the landlord from requiring a security deposit at any time other than when the parties enter into a tenancy agreement. The expenses for which the landlord wishes to be compensated are her cost of doing business as a landlord. The landlord chose to operate a business at a distance from where she lived and cannot hold the tenant responsible for the cost of travel to and from that business, nor for the cost of housing or

feeding the landlord while she attended to her business. The landlord's claim for an order for the security deposit is dismissed.

I find that the landlord is entitled to recover the \$50.00 filing fee paid to bring her application and I award the landlord \$50.00.

I note that in her application, the landlord also requested an award for \$10.00 in unpaid rent for January. Due to my oversight, this claim was not discussed during the hearing. However, the tenant submitted evidence showing that in May she paid the \$10.00 to the landlord by way of a cheque which was sent via registered mail. While it appears that this debt has been acknowledged and satisfied, in the event the landlord did not receive the cheque or was unable to negotiate it, I dismiss that claim with leave to reapply.

### Conclusion

The landlord has been awarded \$900.00. I grant the landlord a monetary order under section 67 for \$900.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: May 27, 2010

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