DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was convened in response to an application by the tenant for a monetary order for the return of the security deposit and compensation under section 38, as well as an application for the return of $400 the tenant claims the landlord should have returned at the end of the tenancy. The application is inclusive of an application for recovery of the filing fee for the cost of this application.

Both, the tenant and the landlord were represented at today's hearing and each provided prior submissions and testimony.

Issue(s) to be Decided

Is the tenant entitled to double the security deposit amount claimed?
Is the tenant entitled to the monetary amount claimed?

Background and Evidence

The undisputed facts before me as provided by both parties, are as follows.

The tenancy began on August 1, 2009 as a 1 year fixed term tenancy, and ended on November 15, 2009 as result of the tenant acting upon the landlord 1 Month Notice to End (Notice to End) with an effective date of November 30, 2009.

The landlord collected a security deposit of $800 at the outset of the tenancy. The landlord also requested and accepted an additional immediate deposit of $800 purportedly to be held by the landlord for use as the last month's rent for the tenancy. The tenant determined to vacate the rental unit earlier than the Notice to End prescribed. There was no move out inspection conducted at the end of the tenancy. The landlord requested an inspection for November 12, 2009 for which the tenant was

not prepared, and the landlord left on a trip on November 13, 2009 – the tenant vacated November 15, 2009. Both parties agree that during the tenancy their primary form of communication was via e-mail. As a result, the tenant sent the landlord their forwarding address via e-mail on November 18, 2009 and again on December 02, 2009. The landlord testified that she received and was in possession of the tenant's forwarding address in writing on December 02, 2009.

The tenant testified that one half of the $800 given to the landlord at the start of the tenancy, for the last month's rent, should be returned to her as she determined to vacate in the middle of the month and not at the end of the month as articulated in the 1 month Notice to End. The landlord disputes the tenant's claim – stating the tenant made a choice to vacate early and determined to vacate

Analysis

On preponderance of the evidence and on the balance of probabilities, I have reached a decision.

The Act does not prohibit landlords and tenants from contracting for the pre-payment of rent - in this case the prepayment of the last month of rent – unless such a term is *"unconscionable"* as per section 6(3) of the Act. The parties' signed addendum to their tenancy agreement states the tenant to pay for the last month of the lease – pre-determined to be July 2010. In this case, I find this term, as expressed in the agreement and as intended by the parties, is not so patently unfair to either party to be *"unconscionable"* . Nonetheless, I find the landlord's Notice to End sought to invoke the last month of the tenancy to be November 2009, and the tenant conceded to the landlord's Notice to End by not disputing it. I find the last month of the tenancy was November 2009, and the landlord appropriately assigned the prepaid rent to that month. I find the tenant is not entitled to any purported unused portion of that month's rent. Therefore, **I dismiss** this portion of the tenant's application without leave to reapply.

Section 38(1) of the Act provides as follows **(emphasis for ease)**

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I accept the parties' testimony and agreement that in the context of their tenancy and their relationship, e-mail was their primary conduct for communication. I accept their testimony in finding that the tenant gave the landlord their forwarding address in writing, and that the landlord was in possession of it on December 02, 2009. I further find that the tenant's right to claim the security deposit have not been extinguished and that the tenant did not assign any portion of the deposit to the landlord.

I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit,** pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of $800 and was obligated under section 38 to return this amount. The amount which is doubled is the $800 original amount of the deposit – with no interest applicable. As a result I find the tenant has established an

entitlement claim for **$1600** and is further entitled to recovery of the **$50** filing fee for a total entitlement of **$1650.**

Conclusion

I grant the tenant an order under section 67 for the sum of **$1650**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.