# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**:

MNSD, MNDC, FF

**Introduction**

This hearing was convened in response to an application by the tenant on August 24, 2011 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A Monetary Order for damage or loss ($1950) - Section 67;
2. An Order for the return of the security deposit / pet damage deposit ($709) - Section 38
3. An Order to recover the filing fee for this application ($50) - Section 72.

Both parties were represented at today's hearing and were given full opportunity to present all relevant evidence and testimony in respect to their claims and to make prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

**Issue(s) to be Decided**

Is the tenant entitled to the monetary amounts claimed?

**Background and Evidence**

There is considerable disputed evidence in this matter. However, the undisputed facts before me are as follows. The tenancy began on November 01, 2010 as a fixed term tenancy, but ended on July 31, 2011 in accordance with a Mutual Agreement to End a Tenancy completed July 06, 2011. The landlord collected a security deposit of $975 at the outset of the tenancy and subsequently accepted a $300 pet damage deposit in March 2011. There was *a move in* inspection conducted at the outset of the tenancy - but not finalized by agreement /signatures of the parties until February 23, 2011. None the less, the tenant does not agree the signed report reflects the condition of the move in inspection. There was *no move* out inspection conducted by the parties at the end of

the tenancy. However, the landlord claims they conducted the move out inspection on their own. I do not have benefit of the landlord's results of their move out inspection; none the less, the landlord subsequently sent the tenant an itemized list of deficiencies with the cost for the remediation of the deficiencies totalling $709; and, a further subsequent cheque for the purported balance of the deposits in the amount of $603.36. The tenant provided the landlord with their forwarding address on August 07, 2011, and the landlord agrees they received it on that date by e-mail.

The tenant claims that at the end of the tenancy they attempted to participate in a condition inspection, but the landlord did not allow them to participate, so they left. The landlord claims the tenant appeared for the move out inspection and they awaited the tenant to join them in a formal inspection, but the tenant did not join them. Both parties claim that they each, respectively, made numerous attempts by phone calls and e-mail to arrange for a mutual inspection with the other party.

The tenant claims that the parties entered a mutual agreement to end the tenancy July 31, 2011; however, felt "pressured" to sign an addendum to the Mutual Agreement to End document to ensure an end to the tenancy on July 31, 2011– providing the landlord with an additional month's rent of $1950, which the landlord retains and the tenant wants returned. The landlord testified that the additional month's rent of $1950 expressed in the parties addendum as, "the full amount of August 2011 rent ($1950)", was a means to mitigate revenue losses as the tenant wanted to end the tenancy early.

## Analysis

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

In respect to the return of the security deposit, **I find** there is no proof that the right of the tenant to the return of the security deposit has been extinguished in accordance with Sections 24, 35, or 36 of the Act.

I accept that e-mail communication between the parties is how the parties chose to communicate, and that for the purposes of this matter, e-mail communication is equivalent to *in writing*. I find the landlord received the tenant's forwarding address on August 07, 2011.

**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 find that the landlord failed to repay the deposits, 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 portion of the security deposit and pet damage deposit. At the end of the tenancy, the landlord was obligated under section 38 to return the sum of the security and pet damage deposit in the amount of $1275.

By their application and testimony, I find that the tenant has waived their entitlement to the doubling provisions of Section 38 of the Act. The landlord has returned a portion of the deposits in the amount of $603.36 – which the tenant has received by means of an apparent bona fide cheque. As a result I find the tenant has established an entitlement claim for the balance of **$671.64.** Should the cheque in the amount of $603.36 prove to be non-negotiable, the tenant has leave to apply for this amount.

In respect to the amount of $1950 paid for the "the full amount of August 2011 rent ($1950)", I find the parties mutually agreed to end the tenancy July 31, 2011. The Mutual Agreement to End a Tenancy states that the tenancy agreement will legally terminate and come to an end, at the time stipulated by the parties. **Section 44** of the Act states, in part, that a tenancy ends if,

**44(1)(c)** the landlord and tenant agree in writing to end the tenancy".

I find that the tenancy legally ended July 31, 2011, and the tenant's obligation of rent beyond July 31, 2011 terminated on that date. Therefore, it is only appropriate that I return the $1950 paid to the landlord for, "the full amount of August 2011 rent ($1950)", back to the tenant. The tenant is awarded **$1950**.

As the tenant has been successful in their application, the tenant is furthered entitled to recovery of the **$50** filing fee, for a total entitlement of **$2671.54.**

***Calculation for Monetary Order***

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|---|---|
| Rent paid for a period after legal termination of tenancy agreement. | $1950.00 |
| Filing Fee for the cost of this application | 50.00 |
| **Total Monetary Award to tenant** | **$2671.64** |

**Conclusion**

I grant the tenant an order under section 67 for the sum of **$2671.64**. 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*.