



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This was a hearing with respect to an application by the tenants for a monetary award. The hearing was conducted by conference call. The named tenant and landlord called in and participated in the hearing.

### Issue(s) to be Decided

Is the landlord entitled to levy and additional monthly charge for the tenant to have a pet?

Are the tenant's entitled to a monetary award for the refund of monthly payments said to be a non-refundable pet fee?

Are the tenants entitled to any additional compensation?

### Background and Evidence

The tenancy began on August 11, 2012 for a fixed term ending August 31, 2013. The monthly rent was \$1,235.00, payable on the fourth day of each month. The tenancy agreement contained the following provision:

5. PETS ARE NOT ALLOWED WITHOU WRITTEN PERMISSION FROM LANDLORD. As additional rent, Tenant agrees to pay a non-refundable pet fee of \$25.00 per month for each pet. All pets on the property not registered under this Lease shall be presumed to be strays and will be disposed of by the appropriate agency as prescribed by law..

The agreement then referred to the tenant's two cats noted to have been approved by the landlord. The monthly payment of \$1,235.00 was inclusive of the monthly pet fee. The tenants paid the pet fee in the amount of \$50.00 per month for the ensuing 12 months of the tenancy. The tenancy continued on a month to month basis after the

expiry of the fixed term. The tenants received a notice of rent increase effective September 1, 2014. The base rent of \$1,185.00 was raised by \$26.07 per month to \$1,211.07. The tenants paid the increased rent commencing September 1, 2014, but they ceased paying the \$50.00 monthly pet fee.

The tenants gave written notice and moved out of the rental unit on November 30, 2014. They provided the landlord with their forwarding address and requested the return of their: "Damage/Security and Pet Damage Deposit". The tenant received a cheque in the amount of \$600.00 being the refund of their security deposit. In their application for dispute resolution the tenants requested payment of the total amount of \$600.00 paid as monthly pet fees over the course of the tenancy. The tenants requested double the amount of the payment based on their submission that the landlord had collected what amounted to a pet deposit that was not returned at the end of the tenancy in accordance with section 38 of the *Residential Tenancy Act* and it should therefore be doubled as provided by section 38(6).

The landlord submitted that the payment was not intended to be a deposit and should not be treated as one. The landlord noted that the monthly payment was said to be a fee and was non-refundable, so it was not a deposit. The landlord contended that the Act permits a landlord to charge fees, including the fee charged in this case.

Relevant Legislation:

The definition of "rent" and "pet damage deposit" is found in section 1 of the Act.

**"rent"** means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:

- (a) a security deposit;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2) (k) [*regulations in relation to fees*];

**"pet damage deposit"** means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for damage to residential property caused by a pet, but does not include

- (a) a security deposit, or

(b) a fee prescribed under section 97 (2) (k) *[regulations in relation to fees]*;

Section 5 and 6 of the Residential Tenancy Act provides as follows:

**This Act cannot be avoided**

- 5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
- (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

**Enforcing rights and obligations of landlords and tenants**

- 6 (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.
- (2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) *[determining disputes]*.
- (3) A term of a tenancy agreement is not enforceable if
- (a) the term is inconsistent with this Act or the regulations,
  - (b) the term is unconscionable, or
  - (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Section 18 to 20 of the Residential Tenancy Act provides as follows:

**Terms respecting pets and pet damage deposits**

- 18 (1) A tenancy agreement may include terms or conditions doing either or both of the following:
- (a) prohibiting pets, or restricting the size, kind or number of pets a tenant may keep on the residential property;
  - (b) governing a tenant's obligations in respect of keeping a pet on the residential property.
- (2) If, after January 1, 2004, a landlord permits a tenant to keep a pet on the residential property, the landlord may require the tenant to pay a pet damage deposit in accordance with sections 19 *[limits on amount of deposits]* and 20 *[landlord prohibitions respecting deposits]*.
- (3) This section is subject to the rights and restrictions under the *Guide Animal Act*.

### **Limits on amount of deposits**

- 19** (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.
- (2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

### **Landlord prohibitions respecting deposits**

- 20** A landlord must not do any of the following:
- (a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement;
  - (b) require or accept more than one security deposit in respect of a tenancy agreement;
  - (c) require a pet damage deposit at any time other than
    - (i) when the landlord and tenant enter into the tenancy agreement, or
    - (ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property;
  - (d) require or accept more than one pet damage deposit in respect of a tenancy agreement, irrespective of the number of pets the landlord agrees the tenant may keep on the residential property;
  - (e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

Section 97 of the *Residential Tenancy Act* provides the power to make regulations, including, as set out in section 97(2))(k): “respecting refundable and non-refundable fees that a landlord may or may not impose on a tenant and limiting the amount of a fee that may be imposed;”

Section 7 of the Residential Tenancy Regulation prescribes the non-refundable fees that may be charged by a landlord. The allowable fees that may be charged are as follows:

- 7 (1) A landlord may charge any of the following non-refundable fees:
- (a) direct cost of replacing keys or other access devices;
  - (b) direct cost of additional keys or other access devices requested by the tenant;
  - (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
  - (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
  - (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;
  - (f) a move-in or move-out fee charged by a strata corporation to the landlord;
  - (g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.
- (2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

### Analysis

There is no provision in the Act or the regulation that authorizes a landlord to charge a non-refundable pet fee, whether or not the fee is recurring. The charge levied by the landlord was also characterized as a payment of rent. I have had the benefit of considering another arbitrator's decision addressing a similar charge. The following quote is a portion of the arbitrator's analysis in an earlier decision:

While there is no provision in the Residential Tenancy Act that prohibits an additional charge for pets, in my view such a charge is inconsistent with the Act and is not enforceable by virtue of section 6 of the Act for the following reasons:

- The Residential Tenancy Act attempts to balance between the rights of tenants and the rights of landlords. It clearly limits provisions parties can put into their tenancy agreements.
- Section 18 to 20 of the Act gives the landlord the right to prohibit pets or restrict the kind or number of pets. It also goes on and provides that a landlord may require the tenant to pay a pet damage deposit. However, the Act provides that a landlord can only charge up to a maximum of  $\frac{1}{2}$  month rent as a pet damage deposit.
- The Act does not authorize or permit the landlord to make an extra charge for a pet although in other situations an extra charge is permitted. For example the Act permits an extra charge for an additional occupant.
- In my view the purposes of section 18 to 20 would be subverted if the landlord were permitted to make an extra charge for a pet. The Act limits the landlord to charging  $\frac{1}{2}$  of a month's rent as a pet damage deposit. This limitation is a protection for the tenants. This purpose would be totally defeated if the landlord can charge an additional monthly charge for pets.
- The definition of "rent" does not include money paid for the purposes of allowing a pet to live with the tenant.

I agree with and adopt the above reasoning. I find that the *Residential Tenancy Act* and the *Residential Tenancy Regulation* do not permit a landlord to charge non-refundable pet fees and I find that an additional charge for pets as rent or otherwise, is inconsistent with the Act and unenforceable for the reasons stated above.

### Conclusion

I do not accept the tenants' submission that the non-refundable pet fee should be considered as a security deposit or pet deposit and doubled pursuant to section 38 of the Act. It was never described as a deposit and was said to be non-refundable; I find

that the tenants' claim must be limited to the recovery of the amount of the improper charges without an added penalty.

I find that the tenants are entitled to recover the sum of \$600.00 paid as pet fees and they are entitled to recover the \$50.00 filing fee for this application, for a total award of \$650.00. This order may be registered 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*.

Dated: October 02, 2015

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Residential Tenancy Branch

