



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CYCLONE HOLDINGS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC, FF, O

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for: The tenants applied for:

- an order to have the landlord comply with the Act, regulation or tenancy agreement pursuant to Section 62 of the Act; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72; and
- an order seeking "other" remedy under the Act.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenants acknowledged receipt of evidence submitted by the landlord. The tenants did not submit any documentation for this hearing.

### Issues to be decided

Are the tenants entitled to an order to have the landlord comply with the Act, regulations or tenancy agreement?

Are the tenants entitled to the recovery of the filing fee?

Are the tenants entitled to "other" remedy under the Act?

### Background, Evidence

The landlord's testimony is as follows. The tenancy began on June 1, 2013 and is ongoing. The tenants were obligated to pay \$885.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$420.00 security deposit. The landlord testified that the tenants have not paid a pet deposit despite having pets. The landlord

testified that the previous manager “M” record keeping abilities was very poor to the extent that he was “let go”. The landlord testified that it has taken two years “to figure out what’s what”. The landlord testified that in September 2016 they sent out letters asking tenants to advise them of whether they had pets or not. As a result of that letter the landlord testified that the subject tenants have not paid a pet deposit and now requires it.

The tenants gave the following testimony. The tenants testified that they paid a security deposit and pet deposit when signing the lease in May of 2013. The tenants testified that M accepted cash payment for the deposit and advised the tenants that “S” in the office would give them a receipt. The tenants testified that S refused to provide a receipt and that despite numerous requests from the tenants; they never received a receipt for the pet deposit. The tenants testified that M was fired because of incidents like this and that he skipped out without paying his last months’ rent. The tenants testified that M and S were aware that they had pets the entire tenancy and has not been an issue until the past couple of months.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant’s claim and my findings around each are set out below.

Section 20 of the Act addresses the issue before me as follows

### **Landlord prohibitions respecting deposits**

**20** A landlord must not do any of the following:

- (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;

The tenants testified that both M and S were aware that they had pets from the outset of the tenancy. VR stated that if the tenants paid M cash, “he probably ran off with it”. VR confirmed that M was the manager and representative of the company at the time the tenants signed the agreement. VR also conceded that M was terminated from his employment for poor performance and poor record keeping. Both parties agreed that M was a less than ideal manager.

Based on all of the testimony before me, and on a balance of probabilities, the tenants have failed to provide sufficient evidence that they have paid a pet deposit. However, they have provided sufficient evidence to satisfy me that the landlord was aware that they had pets at move in. The tenants were clear, concise and credible when giving testimony; alternatively, I found VR to be inconsistent with the company policies regarding pets and the timeline of events and therefore cannot rely on his testimony. In addition, the landlord was very clear that M was less than an ideal manager, hence his release from employment. The tenants have lived at this property for over three and half years without any issue in regards to their pets. I find that the landlord has not acted in accordance with section 20 of the Act as to when they are entitled to obtain a pet deposit and further find that through their own poor recordkeeping and passage of time, have waived their right to obtain a pet deposit by requesting it three and half years later.

The tenants are not required to pay a pet deposit.

As the tenants have been only partially successful in their application they must bear the cost of the filing fee.

### Conclusion

The tenants are not required to pay a pet deposit.

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: December 08, 2016

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Residential Tenancy Branch