



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNSD FFT

### **Introduction**

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

- authorization to obtain a return of all or a portion of their pet damage deposit pursuant to section 38; and
- from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

At the beginning of the hearing the landlord testified that her surname was incorrect in the tenants' application. As both parties were not opposed, the tenants' application was amended to reflect the landlord's proper surname.

The landlord confirmed receipt of the tenants' application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

### **Issues(s) to be Decided**

Are the tenants entitled to the return of their pet damage deposit?

Are the tenants entitled to recover the filing fee for this application from the landlord?

### **Background and Evidence**

This month-to-month tenancy began in July of 2013, with monthly rent set at \$850.00. The tenants testified that they had originally paid a security deposit in the amount of \$425.00, which

was returned to them at the end of the tenancy when they moved out in March of 2016. In their application, the tenants provided March 15, 2016 as the last date of this tenancy, although the tenants testified that they had moved out and returned the keys by March 4, 2016. Both parties confirmed the provision of the tenants' forwarding address to the landlord, and the return of the security deposit. The tenants testified that a \$425.00 pet damage deposit was paid after the tenancy had begun, but they had never received this deposit back.

The current landlord took over this tenancy with her sister when her father, the original landlord, passed away in November 2014. The landlord submitted a copy of a handwritten list of deposits for her father's rental units, and testified that there was no record a \$425.00 pet damage deposit was ever paid.

The tenants testified that they had acquired 4 cats during this tenancy, and this is why they paid the pet damage deposit at a later date. The tenants testified that this payment was paid in cash, and receipts were never issued by the landlord except in the first 3 months of the tenancy. The tenants testified that they also had never received a copy of a written tenancy agreement, and thus had no proof of payment other than a signed witness statement and bank statement to support that \$500.00 was lent to the tenants.

The tenants are requesting the return of their pet damage deposit, as well as compensation for the landlord's failure to comply with section 38 of the *Act*.

### **Analysis**

Section 38(1) of the *Act* requires that landlords, within 15 days of the end of the tenancy or the date on which the landlord receive the tenants' forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenants' security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenants' provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenants agree in writing the landlords may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlord had only returned the tenants' security deposit within 15 days of the provision of their forwarding address. I accept the tenants' sworn testimony that a pet damage deposit in the amount of \$425.00 was paid during this tenancy, but due to the circumstances the new landlord had no record of this pet damage deposit. I find that the previous landlord failed to provide the tenants with a receipt or copy of the tenancy agreement as required by sections 26(2) and 13(3) of the *Act*. In the absence of these documents, the

tenants were not able to support that the pet damage deposit was paid, and the new landlord had returned only the \$425.00 deposit as they had no record of any further monies paid.

I do not find that the landlord failed to comply with section 38(1) of the *Act* as the landlord had no way to confirm that a pet damage deposit was previously paid by the tenants to the previous landlord. Accordingly, I dismiss the tenants' application for compensation under section 38 of the *Act*. I accept the sworn testimony of the tenants that they had paid a pet damage deposit in the amount of \$425.00, and I order that this amount be returned to them.

As the tenants were partially successful in their application, I find that the tenants are also entitled to recover half of the filing fee from the landlord.

### **Conclusion**

I issue a Monetary Order in the tenants' favour in the amount of \$475.00 for the return of their pet damage deposit and recovery of half of the filing fee for their application.

I dismiss, without leave to reapply, the tenants' application for compensation under section 38 of the *Act*.

The tenant(s) are provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division

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 10, 2018

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Residential Tenancy Branch