



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Wilson Rentals Ltd.  
and [tenant name suppressed to protect privacy]

## **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 security deposit or pet damage deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

NM ('landlord') testified on behalf of the landlord in this hearing, and was given full authority to do so. KS appeared for the tenants. 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.

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 2019, and ended on December 31, 2019. The landlord had collected a security and pet damage deposit in the amounts of \$842.50 each deposit. The tenants provided her forwarding address to the landlord's

agent on December 21, 2019 by way of text message, and only received the security deposit portion of her deposits back.

The landlord's agent testified in the hearing that he is agreeable to return to the tenants the pet damage deposit in full, and stated that the tenants had provided the landlord with the wrong forwarding address. The landlord provided a photo of the envelope with the address provided by the tenant in her text message. The postage stamp is dated January 23, 2020.

The tenant confirmed that the address provided to the landlord was incorrect, but is requesting that the landlord pay for the filing fee. The tenant testified that despite the provision of the incorrect address, the landlord was able to return to the security deposit portion, which contradicts the landlord's testimony that they had no means to return the remaining pet damage deposit. The tenant provided a photo of the cheque dated January 7, 2020 for \$842.50, as well as a copy of the tenancy agreement that confirms that the tenants had paid the landlord both deposits. The tenant testified that she had attempted to contact the landlord through various methods such as email, voicemail, and through the building manager before filing this application.

### **Analysis**

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's 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 tenant's 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 tenant's 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 tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that it was undisputed that the tenants had failed to provide the correct forwarding address to the landlord. As the provision of a valid forwarding address is a requirement of section 38 of the *Act*, I find that the tenants are not entitled to compensation under section 38 of the *Act*.

As the landlord had agreed in the hearing to return the tenant's pet damage deposit, the tenants will be provided with a monetary order for the return of their pet damage deposit.

The tenants also requested the recovery of the filing fee. The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. Although the tenants did, in error, provide the landlord with the incorrect forwarding address, I find that the landlord was able to return to the tenants their security deposit. I find that is clear based on the tenancy agreement that the tenants had paid both deposits, and only one deposit was returned to them at the end of the tenancy. I do accept that the landlord had attempted to send the tenants the remaining pet damage deposit, and had agreed in the hearing to the return of the deposit as well. I find that both parties had committed errors which resulted in the tenants' filing of this application. On this basis, I find that the tenants are entitled to recover half of the filing fee for this application.

### **Conclusion**

I issue a **\$892.50** Monetary Order to the tenants for the return of their pet damage deposit, and recovery of half of the filing fee. The tenants' application for compensation under section 38 of the *Act* is dismissed without leave to reapply.

The tenants are provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: July 2, 2020

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Residential Tenancy Branch