



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION  
And [Tenant's name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** *MNSD, MND, MNDC, FF*

### **Introduction**

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order for cleaning costs, liquidated damages, return of a rental incentive and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of the claim.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Has the landlord established a claim against the security deposit and if so in what amount? Is the landlord entitled to the recovery of the filing fee?

### **Background and Evidence**

The tenancy started on July 01, 2012 for a fixed term of six months. The rent was \$1,100.00 payable on the first of each month. Prior to moving in the tenant paid a security deposit in the amount of \$550.00. The tenancy agreement contained a clause regarding the payment of liquidated damages in the event the tenant ends the tenancy prior to the end of the fixed term.

In May 2012, the tenant's friend viewed the rental unit on behalf of the tenant and signed a tenancy agreement along with a one page addendum. The landlord filed a copy of the addendum which is undated. The landlord did not file a copy of the tenancy agreement signed by the tenant's friend. The addendum contains the terms and conditions regarding the rental incentive.

On July 01, 2012, the tenant moved in and signed a tenancy agreement that same day. The tenant stated that she was given a move in bonus of \$200.00 which was deducted off the first month's rent. The tenant stated that the tenancy agreement did not contain the addendum that the landlord has filed into evidence.

On September 30, 2012, the tenant gave the landlord written notice to end the tenancy effective October 31, 2012, two months prior to the end date of the fixed term. The parties worked together to re-rent the unit and were successful in finding a tenant for November 01, 2012.

At the time of the move out inspection, the tenant agreed to allow the landlord to retain a portion of the security deposit for the cost of cleaning and liquidated damages, in the total amount of \$481.00.

The tenant stated that when she went to return the keys to the resident manager, she was provided with a copy of the undated addendum signed by her friend. The addendum contains a term that requires the tenant to pay back the move in bonus of \$200.00 if the tenant ends the tenancy prior to the end date of the fixed term.

The tenant stated that she had not seen the addendum prior to the day she handed in the keys of the rental unit. The resident manager stated that a copy of the addendum was provided to the tenant's friend. The tenant argued that had she known that she would have had to pay an additional \$200.00, she would have continued to stay to the end of the fixed term, which was two months away.

The landlord is claiming a total of \$181.00 for cleaning, \$300.00 for liquidated damages, \$200.00 for the return of the move in bonus and \$50.00 for the filing fee.

### **Analysis**

Based on the landlord's evidence and testimony of both parties, I find that the tenant did not dispute the cost of cleaning and liquidated damages. Therefore the landlord has established a claim in full for the same (\$481.00).

The tenant disputed the return of the move in bonus. Based on the evidence in front of me, I find that the stand alone addendum filed into evidence was done so without the original tenancy agreement it was attached to. The addendum is undated and signed by the friend of the tenant, about a month prior to the start of the tenancy.

The tenant signed a tenancy agreement at the time she moved in unit. This tenancy agreement did not contain an addendum. Therefore it is more likely than not that the tenant was not aware of the terms and conditions of the benefit of accepting a move in bonus. As the tenant testified, if she was aware of having to return \$200.00, she would have not ended the tenancy just two months prior to the end of the fixed term.

Based on the testimony of the tenant, I find that she did not sign an addendum and on a balance of probabilities was unaware of the conditions of accepting a move in bonus. Accordingly, I must deny the landlord's claim for the return of the rental incentive, in the amount of \$200.00.

Since the landlord has not proven the only aspect of her case that was in dispute, she must bear the cost of filing this application.

Overall the landlord has established a total claim of \$481.00 which consists of \$181.00 for cleaning plus \$300.00 for liquidated damages.

I hereby order that the landlord retain \$481.00 from the security deposit and return the balance of \$69.00 to the tenant within 15 days of receiving this decision.

### **Conclusion**

The landlord must return \$69.00 to the tenant within 15 days of receipt of this decision.

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: February 15, 2013