



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MNR, FF

### Introduction

This was a hearing with respect to the landlord's application for a monetary order and an order to retain the tenant's security deposit. The hearing was conducted by conference call. The landlord's agent called into the hearing. The tenant attended and was represented by her father, acting as her agent.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

### Background and Evidence

The rental unit is an apartment in North Vancouver. The tenancy began on February 15, 2013 for a fixed term ending July 31, 2013, and thereafter on a month to month basis. Monthly rent was \$1,125.00, payable on the first of each month. The landlord received a security deposit of \$562.50 on January 26, 2013. The respondent was not the original tenant. She assumed the tenancy agreement on April 16, 2013 and the original tenancy agreement was amended to remove the former tenant and name the tenant as the sole tenant of the rental unit.

According to the landlord's agent the tenant failed to pay rent for July and the landlord served the tenant with a 10 day Notice to End Tenancy for unpaid rent dated July 2, 2013. The tenant gave the landlord a cheque in payment of July rent dated July 5, 2013, but according to the landlord that the tenant's cheque was returned: "NSF".. The Notice to End Tenancy required the tenant to move out of the rental unit by July 15, 2013. The tenant did not pay the rent within five days of receiving the Notice to End Tenancy and she did not apply to dispute the Notice. According to her agent, the tenant moved out of the rental unit on July 28, 2013.

In this application for dispute resolution the landlord has claimed a monetary award in the amount of \$2,315.00, made up of unpaid rent for July in the amount of \$1,125.00, a

\$20.00 late fee for July, a \$25.00 NSF cheque charge and loss of rent in the amount of \$1,125.00 for August as well as a \$20.00 late charge for August. The landlord submitted and served an amended application. The amendment enlarged the claim by \$471.00; the landlord added the following to its claim:

- |                          |          |
|--------------------------|----------|
| • Carpet cleaning        | \$68.25  |
| • Drape/blind cleaning   | \$68.25  |
| • Painting/wall repair   | \$105.00 |
| • Garbage removal        | \$31.50  |
| • General suite cleaning | \$168.00 |

The tenant's agent submitted that the tenant took over the remainder of the lease, which was to end on July 31, 2013. The tenant disputed the landlord's claim for lost rent for August on the basis that the fixed term tenancy ended on July 31, 2013. The tenant's agent said that despite several requests, the tenant was not given a copy of the tenancy agreement after she signed it. According to the tenant she acquired a pet after she moved into the rental unit and inquired whether the landlord would charge her a pet deposit and she was told that a pet deposit would not be charged. Then on July 5, 2013, when she gave the landlord a cheque for July rent she was told that she was not allowed to have a pet in the rental unit and she was going to be evicted. When the tenant learned that the landlord would not allow her to keep her pet in the rental unit she stopped payment of the cheque in payment of July rent. According to the tenant the landlord's agent again refused to give her a copy of the tenancy agreement. The landlord's representative testified that she never gave the tenant permission to have a pet and when she learned that the tenant had a pet without permission she told the tenant that she needed written permission to have a pet. The landlord's representative said that she assumed the tenant received a copy of the tenancy agreement from the former tenant when she took over his tenancy.

The tenant disputed the landlord's additional claims. With respect to the claim for painting the landlord said that the original tenant had painted some walls a non-standard colour and because the tenant assumed the tenancy agreement and the deposit, it was her responsibility to return the walls to their original colour. The tenant submitted that the painting was not her responsibility,

### Analysis

The tenant's position is that she had the landlord's approval to have a pet and that she was justified in ending the tenancy when the approval was withdrawn. The tenant also took the position that the tenancy was for a fixed term ending July 31, 2013 and she was therefore not obliged to give notice ending the tenancy. When the tenant assumed the tenancy, she signed a form of Residential Tenancy Amendment Agreement and she

also signed and initialled the original tenancy agreement. When she signed the tenancy agreement, she also initialled beside the clause in the agreement dealing with pets. The clause provided in part that:

The tenant agrees that if they wish to acquire a pet at a period during their tenancy and thus did not pay a pet deposit at the start of their tenancy; the tenant is required to obtain written approval from management to house a pet and is required to pay a pet damage deposit and sign a pet agreement addendum upon approval of management. Violation of this material term may result in a notice to end tenancy.

I do not accept the tenant's claim that she received verbal permission from the landlord's representative to have a pet. It is not credible that the landlord's representative would have made such a statement contrary to the landlord's established policy with respect to pets and further, the supposed verbal consent runs afoul of the "parole evidence rule", a principle of evidence with specific application to the interpretation of written contracts which may be concisely stated as follows:.

It has long been a substantive rule of law in the English speaking world that in the absence of fraud or mutual mistake, oral statements are not admissible to modify, vary, explain or contradict the plain terms of a valid written contract between two parties.

The written tenancy agreement did not authorize a pet and I find that the tenant did not receive permission to have a pet. I find that the tenant was not entitled to end the tenancy without notice and without paying rent for July because the landlord objected to her pet. The tenancy agreement did not require the tenant to move out at the end of the fixed term, rather it provided that the tenancy may continue on a month to month basis and in these circumstances the tenant was obliged to give one month's notice in writing if she wished to end the tenancy. The fact that the landlord served the tenant with a Notice to End Tenancy for unpaid rent does not excuse the tenant from her obligation to give written notice and in the absence of notice the landlord is entitled to claim loss of revenue for the month of August, subject to its duty to mitigate its damages by taking reasonable efforts to re-rent the unit. I am satisfied that the landlord attempted to re-rent the unit for August, but was unsuccessful.

The landlord has claimed amounts for cleaning and painting. The landlord claimed part of the total repainting bill because an extra coat was required over the areas where there had been a colour change by the former tenant. Because the tenant assumed the original lease and security deposit, I find that she stepped into the shoes of the former tenant and became responsible for his obligations, including the claimed repainting cost. The landlord claimed for cleaning charges and carpet cleaning charges. I find that the

landlord's carpet cleaning charge of \$68.25 is reasonable, I do not find that the landlord has shown that the unit cleaning, window cleaning and blind cleaning were justified in the amounts claimed. I note that the claimed amounts were set out on the landlord's form of condition inspection and deposit deduction statement, even though the charges had not yet been incurred or invoiced; the cleaning invoice was dated August 7, 2013, so clearly it could not have been available when the condition inspection and deposit form was completed on August 1, 2013. I find that the amounts claimed for cleaning are excessive, there was insufficient evidence to support a charge for garbage removal and this claim is denied. I find that some cleaning was required at the end of the tenancy, but I limit the amount awarded to the sum of \$75.00. This includes the cost of blind cleaning and the separate claim for blind cleaning is denied. I award the landlord the following:

• July rent plus NSF and late fees:	\$1,170.00
• August rent loss:	\$1,125.00
• Painting:	\$105.00
• Carpet cleaning:	\$68.25
• Cleaning:	\$75.00

Total:	\$2,543.25
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### Conclusion

The landlord is entitled to recover the \$50.00 filing fee for this application, for a total award of \$2,593.25. I order that the landlord retain the security deposit in the amount of \$562.50 in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$2,030.75. 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: September 23, 2013

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Residential Tenancy Branch

