



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

**Dispute Codes** MND, MNR, MNDC, MNSD, Ff

## **Introduction**

This hearing was convened upon the joint applications filed by the landlord and the tenant.

The landlord seeks:

1. A monetary Order for damage to the unit, site or property.
2. A monetary Order for unpaid rent or utilities; and
3. A monetary Order for money owed or compensation for damage or loss under the Act.

In total the landlord is seeking \$25,000.00

The tenant seeks

1. A monetary Order for the return of all or part of a pet damage deposit or security deposit.

In total the tenant is seeking \$25,000.00.

Both parties appeared at the hearing and gave evidence under oath.

## **Summary Background and Evidence**

The landlord testified that the parties entered into a 6 month lease for the rental property in which the tenant agreed to pay a \$50,000.00 lump sum plus \$40,000.00 in rent payable at either \$8,000.00 per month over a 5 months or \$6,666.67 per month over 8

months. Of the \$50,000.00 lump sum payment due December 1, 2009 the tenant was to actually pay only \$15,000.00. This was the balance owing after the tenant made agreed upon deductions from the lump sum payment of a "...15,000 advance paid by the tenant to the landlord..." and "...20,000..." in commission to the tenant.

The rental property is located in Whistler and the term of the tenancy was to take place during the Olympics. The rental unit was fully furnished including bed linens and other household goods. The landlord testified that the tenant was to sublet the rental unit and this is why he was to earn a commission. The landlord testified that this rental unit was rented to this tenant together with another property. In or about November 1, 2010 the tenant's law firm issued a cheque from it's trust account to the landlord's lawyer in the sum of \$82,000.00 however that cheque was returned due to insufficient funds. The landlord testified that a new cheque was issued which was honoured on November 12 or 13, 2010. The tenant also made a further payment in the sum of \$26,300.00 on December 2, 2010. The landlord testified that the two payments which totalled \$108,300.00 were for the two properties although neither party provided evidence to show how the sums were apportioned.

The tenancy agreement submitted in evidence shows that the security deposit was "N/A". There is a notation which states "letter on file see addendum". With respect to the damage deposit the attached addendum signed by the parties on December 1, 2009 states:

8. The damage deposit is in the form of commitment from the subletting corporation that is transferable to the owner.

The landlord testified that the tenant re-rented the rental unit and collected rents from the occupants but did not make all payments as agreed to the landlord. The landlord says the tenant did make monthly rental payments for the months of January, February and March each in the sum of \$8,000.00 but he did not pay rent for April or May. The landlord says the tenant used the monies he kept to buy a home for himself. The

landlord therefore claims \$16,000.00 in rent for April and May and \$9,000.00 in damage and cleaning losses and commissions for a total claim of \$25,000.00.

The tenant says the homes were under foreclosure and this is why the landlord demanded an up-front “bonus” in order to stave off the foreclosure proceedings. The tenant agrees that \$20,000.00 was to come to him in commission. The tenant says he did not pay April or May’s monthly rental payment because he had already overpaid the rents due on the property by making the up-front payments of \$82,000.00 on November 12 and of \$26,300.00 on December 2, 2010. The tenant agrees that these sums were provided in payment of two rental properties but they were not apportioned. Therefore, of the total payment of \$108,300.00, the tenant originally apportioned \$41,000.00 to this property but submits it could be proportioned as half to each property or \$54,150.00 to each property. The tenant says that these up-front payments were originally made with respect to three properties but the third property arrangement fell through. The tenant says if all figures are added up as agreed the total cost of this tenancy arrangement would have been:

Bonus Sum of \$50,000.00 less 15,000 advance by tenant to landlord and less 20,000 in commission due to tenant = balance due of lump sum payment due by tenant to landlord	\$15,000.00
Rent of \$8,000.00 per month x 5 months	40,000.00
Total cost to tenant to rent the property for the fixed term	\$55,000.00

The tenant claims he has made all rental payments and has, in fact, overpaid for the lease as follows:

Bonus Sum \$50,000.00 due less 15,000 advance by tenant to landlord and less 20,000 in commission due to tenant as set out above	\$15,000.00
Rent paid \$8,000.00 per month for the months of January through March inclusive (3 months x \$8,000.00)	24,000.00
Half of the two lump sum payments previously made to be applied to this tenancy agreement	54,150.00
<b><i>Total payments made by tenant</i></b>	<b><i>\$93,150.00</i></b>
Less amount actually due under the terms of the agreement and as set out above	-55,000.00
Resulting in an overpayment having been made by the tenant with respect to this property of	\$38,150.00

The tenant says that because he had already paid more than the cost of the lease he did not make April or May's rental payments. The tenant says that although the result is that the landlord actually owes him \$38,150.00 he has claimed only \$25,000.00 in this application because that is the maximum claim allowed under the *Residential Tenancy Act*.

### **Analysis**

Section 4 of the *Residential Tenancy Act* sets out "What this Act does not apply to" it states in part:

**4** This Act does not apply to

(e) living accommodation occupied as vacation or travel accommodation

While the Act does not apply to vacation or travel accommodation, policy states that the Act would apply to summer cottages and winter chalets that are rented other than on a vacation or travel basis for a fixed term of one year if they are not rented on a vacation basis.

In this matter the subject property is in Whistler, the tenancy coincided with the Olympics and the term was fixed at 6 months. The parties agree the tenant was renting

the property with the intent of subletting the property. The parties agree that the tenant was also renting at least one other property from the landlord for the same time period which he also intended to sublet. The tenancy agreement shows that the tenant would be paid a commission of \$20,000.00 by the landlord for services rendered in subletting the property. The evidence also shows that a security or damage deposit, common in a true residential tenancy, was not paid. With respect to the issue of a damage deposit the agreement addendum states only that:

8. The damage deposit is in the form of commitment from the subletting corporation that is transferable to the owner.

Based on this evidence I find that this was tenancy agreement involved living accommodation occupied as vacation or travel accommodation during the Olympics and as such I decline jurisdiction.

### **Conclusion**

Both applications are dismissed.

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