



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, FF

### Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent and utilities. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The applicant is a ski association and the person appearing on behalf of the applicant is the Vice-President of trails and facilities (both are herein referred to as the applicant).

### Issue(s) to be Decided

Has the applicant shown that a tenancy agreement formed? If so, has the applicant established an entitlement to recover rent, utilities, and other losses from the respondent?

### Background and Evidence

I was provided the following undisputed testimony by the parties: The applicant permitted the respondent to occupy living accommodation located on or adjacent to a property used for skiing on November 20, 2011. The applicant and respondent had a discussion pertaining to a living/working agreement on or about November 25, 2011. Both parties understood at that time that the respondent may "work off" all or a portion of rent owed in lieu of paying cash to the applicant. In December 2011 and January 2012 the applicant presented the respondent with two written agreements but the respondent refused to sign either one. The respondent did pay a security deposit and paid no rent to the applicant during the time he occupied the accommodation. The respondent vacated the accommodation on March 18 or 19, 2012.

The applicant submitted that during the discussion of November 25, 2011 the applicant went over several points associated with terms of a tenancy, including a monthly rental rate of \$400.00 and that the respondent was in agreement with those terms. The respondent refused to sign the first agreement presented to the respondent for a

number of reasons, including: misspelling of his name; requirement to purchase a generator; obtain a membership with the association; WCB coverage; and, the rate of compensation for caretaking duties.

After further discussions between the parties the applicant presented a modified agreement to the respondent including a reduction in the rent to \$300.00 per month. The respondent did not sign that agreement and was still in disagreement with certain terms, including the rate of compensation for caretaking duties.

With this application, the applicant was seeking compensation for the following amounts:

<u>Item</u>	<u>Explanation/Calculation</u>	<u>Amount claimed</u>
Water	Tanks filled three times x \$100 each	300.00
Propane	One fill up + estimated cost to top up tank	620.91
Sewer	Cost to empty holding tank	548.80
Applicant's time	Attending property, meeting with respondent and filing dispute	165.00
<b>TOTAL CLAIM</b>		<b>\$ 2,919.91</b>

It was undisputed that during the period of time the respondent occupied the accommodation the respondent performed some caretaking duties at the property; however, the parties did not agree upon a value of the work performed.

The respondent submitted that the parties had "loose discussions" concerning the amount of monthly rent payable for the living accommodation but was of the position that an agreement had not been reached. The respondent explained that he was not in agreement with terms discussed with him November 25, 2011. Rather, he explained that during discussions the applicant would tell the respondent what the applicant wanted and the respondent was merely acknowledging that he was hearing what the applicant was saying.

The respondent was of the position the applicant was looking for someone to live at the property and provide security for the property and the machinery, which he did. The respondent provided an example of a situation where his presence likely deterred trespassers from coming on to the property. The respondent placed a value upon the security service in excess of any rent or utilities owed to the applicant.

The respondent also submitted that most places he has lived in the past have been rent-free in exchange for working on the property where he lives. The respondent acknowledged that he would have likely agreed to pay a monthly amount of \$200.00 and responsibility for the water he consumed but that his time was worth much more than the \$10.50 per hour offered by the applicant for security and caretaking duties.

The applicant responded by stating it was not hiring a security guard. The applicant referred to the written agreements he had presented to the respondent for signature as evidence a tenancy formed. Also provided as evidence were letters exchanged between the parties after the respondent vacated the property.

The written agreements prepared by the applicant are entitled "Caretaker Contract between [name of respondent] and [name of applicant]". Included in the agreements are the following statements:

- ...insurance will not cover the caretaker when he is working off his rent or living on the site.
- The caretaker will be required to provide his own Workers Compensation...
- Rent will be \$400.00 per month plus utilities...
- The [applicant] agrees to allow [the respondent] to work on the trails system in lieu of rent until the end of December 2011...Until then, a wage rate of \$10.50 per hour worked will be applied to the monthly rent....This may change once we get a professional opinion (It may be that the caretaker will have to pay his rent to [the applicant] and [the applicant] will, in turn, pay for work done by the caretaker.) We will sort this out.
- The caretaker duties, in addition to living on site, will be to keep the gates locked and to generally monitor the use of the trails and protect the facility from vandalism and unauthorized use. "Keep an eye on things".

### Analysis

The Act, and my authority to resolve disputes, applies to residential tenancy agreements. A tenancy agreement, as defined by the Act, means an agreement, whether written, oral, express or implied, between a landlord and a tenant respecting possession of a rental unit. My authority under the Act does not apply to other agreements such as contracts for employment or contracts for services.

The applicant presented written documents that he purported to represent the verbal agreement between the parties. If I accept the applicant's position that the written

agreements reflect the verbal agreements, then I find I cannot enforce the agreements as I find that the payment of rent, or working in lieu of paying rent, is so co-mingled that I would have to make a determination as to the services or work performed by the respondent. I refer to the statements outlined in the background in making this determination, especially the statement that the caretaker duties appear to include living on the site.

As stated above, it is beyond my authority and the jurisdiction of the Act to make findings with respect to contracts for services or employment. As I have found that I cannot isolate a tenancy agreement from a contract for services or employment, I refuse to take jurisdiction to resolve this dispute. The parties are at liberty to seek remedy in the appropriate forum.

### Conclusion

I have declined to accept jurisdiction to resolve this dispute.

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: May 2, 2012.

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Residential Tenancy Branch