



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Kaquo Forestry & Natural Resources Development Corp.

## **DECISION**

Dispute Codes      MNR, OPB, OPR, FF

### Introduction

The landlords apply for an order of possession. The landlord's representative consented to that order, subject to a preliminary objection regarding jurisdiction.

The landlords also seek a monetary award for utility charges and for loss of rental income resulting from the alleged repudiation of a tenancy agreement or agreements.

The landlord's representative objected that the property is vacation property and so is exempt from the operation of the *Residential Tenancy Act* (the "Act").

### Issue(s) to be Decided

Is this dispute within the jurisdiction of the *Act*? If so, does the relevant evidence presented at hearing show on a balance of probabilities that the tenant has breach a tenancy agreement and, if so, what if any damages have the landlords suffered?

### Background and Evidence

The rental unit is a four bedroom, condominium townhouse. The landlords say that it is their summer home and that during the off season they rent it to others through an online rental agency.

In late September 2014 the corporate tenant began to rent the property for two of its employees Mr. A.K. and Mr. R.S. Ms. T., an authorized representative of the corporate tenant indicated that her company wished to rent the premises until the end of May, 2015

The landlords, use to using a standard form, short term, vacation rental agreement, prepared a series of one month tenancy agreements using that standard form, through to and including the month of May 2015. Ms. T. signed them on behalf of the corporate tenant.

Each tenancy agreement was for the duration of one month, with no provision regarding whether the tenancy continued for a periodic term or whether the tenants must move out at the end of the term. The monthly rent was \$2200.00. A security deposit of US\$1000.00 was paid.

In December 2014 Ms. T. emailed the landlords giving notice that the corporate tenant's employees would be moving out at the end of December and to keep the security deposit against compensation that might be due.

The landlords reactivated their standing, on-line listing for the rental property, adjusting the dates available for rental to include the remaining terms of the leases. As of this hearing date the property has not been re-rented.

### Analysis

Counsel for the tenant submits that this is a vacation property and so does not come under the jurisdiction of the *Act*.

Section 4 (e) of the *Act* provides that the *Act* does not apply to "living accommodation occupied as vacation or travel accommodation."

A living accommodation may be different things at different times. In this case, though the rental unit was usually offered as a vacation home, it was clearly rented as and occupied as a residential accommodation and it comes under the umbrella of the *Act*. I therefore dismiss the tenant's initial objection about jurisdiction.

I find that the series of leases prepared by the landlords were a clumsy attempt to capture the true intention of the parties to lease the premises for a fixed term to the end of May 2015. Whether or not the corporate tenant could end one month long lease, it was still obliged under the next ensuring lease in the series.

The tenant has repudiated the fixed term tenancy and the landlords are entitled to damages.

The landlords claim the remainder of the rents accruing to the end of May. There was little evidence to suggest that a renter will or will not be found before then, thereby mitigating the landlords' loss. They have lost January and February rental income and, I find, will likely lose March rental income as well. The evidence does not permit me to do more than speculate beyond that and speculation is not a good ground for an award.

The landlords also claim for utility costs which were the tenant's responsibility under the lease. There was no evidence before me to show what those costs were or whether they had been paid or not. A claim for recovery of utility costs is a claim for liquidated damages and an estimate or approximation of those costs will not suffice.

It is not known whether the tenant was being billed directly for the costs or whether the landlords were passing on the bills to the tenant for payment or whether the strata corporation was somehow involved. If the tenant was not receiving the utility bills directly it is incumbent on a landlord seeking to recover those charges to present the bill to the tenant for payment within a reasonable time.

In the circumstances I dismiss the landlords' claim for recovery of utility bills, but with leave to re-apply if and when an exact amount has been determined and payment demanded of the tenant.

### Conclusion

This tenancy relationship has ended. The landlords are in possession. No order of possession is lawfully required.

I grant the tenants a monetary award of the equivalent of three month's rent totaling \$6600.00, plus recovery of the \$100.00 filing fee.

I authorize the landlords to retain the US\$1000.00 security deposit, which I assess a value of C\$1060.00 as of the September 2014 date of payment, in reduction of the amount awarded. There will be a monetary order against the landlord for the remainder of \$5640.00.

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 06, 2015

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Residential Tenancy Branch

