



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 9005 SKIER'S REST LANE WEDGEWOODS LTD. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFT MNDCT MNSD

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- return of the security deposit pursuant to section 38;
- a monetary order for compensation for failing to timely return the security deposit pursuant to section 38; and,
- reimbursement of the filing fee pursuant to section 72.

This matter was originally heard on September 13, 2019. The tenant attended the original hearing but the landlord did not attend the original hearing. A decision and order was rendered on September 16, 2019. The landlord filed a review consideration following the original decision. A decision was rendered on September 30, 2019 granting the landlord's review consideration and the review hearing was conducted herein.

The tenant's lawyer and agent appeared on behalf of the tenant. A representative appeared on behalf of the landlord. Both parties had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The respondent acknowledged receipt of the applicant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

### Preliminary Matter: Jurisdiction

The landlord raised an issue question the application of the *Act* to this matter. Section 4 states that the *Act* does not apply to accommodations primarily occupied for business. The landlord testified that the property was used as a temporary vacation rental before

the tenancy started. However, both the landlord and the tenant testified that the tenant stated that he was going to occupy the property as a personal residence and not operate a vacation rental. The tenant's agent said that the tenant and his family did occupy the rental unit and they did not advertise the property as a vacation rental or rent or sublet the property out to others. The parties also used a residential tenancy agreement form to record their agreement. I find that the parties entered a residential tenancy agreement.

The landlord also argued that the termination of the agreement after only six weeks evidences that this was not a residential tenancy agreement. I am not persuaded by this argument. As I have found that the parties had commenced a residential tenancy agreement, I find no legal support that this tenancy relationship can change to temporary vacation rental agreement simply because the tenancy agreement ended after a relatively short period of time.

I find that the parties had a residential tenancy relationship and, accordingly, I find that the Residential Tenancy Branch does have the jurisdiction to resolve this dispute.

#### Preliminary Matter: Non-appearance of the tenant

The landlord objected that the tenant did not personally appear. Rather, the tenant has his lawyer and agent appear on his behalf. The tenant's agent stated that he had authority from the tenant to represent him at the hearing. Residential Tenancy Branch Rules of Procedure No. 6.7 states that a party may be represented by an agent or lawyer. Accordingly, I find that it was permissible for the tenant to be represented at the hearing by the tenant's agent and lawyer.

I advised the landlord that could request an adjournment and a request a summons of the tenant if he wanted to examine the tenant in the hearing. The landlord did not request an adjournment so the hearing proceeded.

#### Issue(s) to be Decided

Should the original corrected Decision and Order of this matter be confirmed, varied or set aside?

### Background and Evidence

The tenant's agent testified that the parties entered a tenancy agreement with monthly rent of \$12,000.00 and security deposit of \$12,000.00. These terms were reflected in the written tenancy agreement.

The tenant's agent also testified that landlord requested a \$4,000.00 cash 'signing fee'. The \$4,000.00 fee was not stated in the tenancy agreement. The tenant provided an email from the landlord dated March 15, 2018 which stated:

The monthly amount is based on \$12,000 and a security/damage deposit for \$12,000. At the start we would like \$4000 in cash as a signing fee.

Therefore please prepare a check for \$24,000 ... and cash of \$4000.

The tenant's agent testified that the tenant provided the landlord with a cheque in the amount of \$24,000.00 and cash in the amount of \$4,000.00 when the tenancy agreement was signed.

The landlord argued that the \$4,000.00 cash fee was actually a rent payment. The landlord argued that the rent was \$16,000.00 for the first month and then \$12,000.00 for each subsequent month. The landlord did not provide any documentary evidence corroborating this assertion. The tenant's agent denied this contention.

The remaining evidence presented did not contradict the findings in the original hearing.

### Analysis

I find that the landlord did not provide sufficient evidence in support of a different outcome than in the original Decision rendered September 13, 2019. I do not find the landlord's contention that the \$4,000.00 payment was for rent to be credible. The tenancy agreement states that rent was \$12,000.00 and the landlord's own email states that the \$4,000.00 payment was a signing fee. I find that the \$4,000.00 payment was a signing fee as found in the original hearing.

As a result of all the above, the original Decision and Order dated September 13, 2019 stand and are **hereby confirmed**.

Conclusion

The original Decision and Order dated September 13, 2019 stand and is **hereby confirmed**.

**This Decision is final and binding on the parties.**

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: December 11, 2019

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Residential Tenancy Branch