



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SAANICH PENINSULA REALTY LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *MND, MNSD, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act*, for a monetary order for loss of income incurred by the landlord and for the recovery of the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of the claim.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented himself. The landlord was represented by their agent. As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income and for the recovery of the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The background facts are generally undisputed. The tenancy started on April 16, 2019. The rent was \$2,300.00 payable on the first of each month. The landlord is currently holding a deposit of \$1,150.00. There is no signed tenancy agreement. The parties agreed that on September 30, 2019, the tenant gave the landlord written notice to end the tenancy effective November 01, 2019.

The landlord stated that he started looking for a tenant immediately upon receiving the tenant's notice to end tenancy. The landlord stated that he did not find one for November 01, 2019. A new tenant was found for December 01, 2019.

On or about October 04, 2019, the tenant requested permission from the landlord to occupy the rental unit up to November 14, 2019. The landlord stated that he informed the tenant that the tenancy was on a month to month basis and ran from the first to the first of each month. The tenant stated that right through to November 01, 2019, the landlord did not mention that the tenant was obligated to pay rent for the entire month of November 2019 if he continued to reside in the rental unit up to November 14, 2019.

On November 14, 2019, the parties conducted a move out inspection. The landlord created a report and the tenant signed the move out portion of the report. The tenant stated that the landlord asked for his forwarding address and informed him that he would receive his deposit within two weeks.

The landlord agreed that during the last month of tenancy and on the date of the move out inspection, he failed to mention to the tenant, that the tenant owed rent for the latter part of November. The landlord added that he confirmed the tenant's forwarding address and mentioned that it takes about two weeks to process a cheque. The landlord testified that he did not promise the return of the deposit to the tenant because he had not yet spoken to the owner of the rental property.

The tenant stated that shortly after he moved out, he received mail from the landlord and assumed it was the return of the deposit but was surprised to find out that it was a notice of this hearing.

The landlord has applied to retain the security deposit of \$1,150.00 towards loss of income for the latter part of November 2019 plus the filing fee of \$100.00.

Analysis

Residential Tenancy Policy Guideline #3 deals with situations where a landlord seeks to hold a tenant liable for loss of rent after the end of a tenancy agreement.

Section 44 of the *Residential Tenancy Act* sets out when a tenancy agreement will end.

How a tenancy ends

44 (1)A tenancy ends only if one or more of the following applies:

(a)the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i)section 45 [*tenant's notice*];

Tenant's notice

- 45 (1)A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a)is not earlier than one month after the date the landlord receives the notice, and
 - (b)is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case the rent was due on the first of each month. The tenant gave notice on September 30, 2019 to end the tenancy effective November 01, 2019. The landlord accepted the notice. Therefore I find that the tenancy ended on November 01, 2019 in accordance with Sections 44 and 45 of the *Residential Tenancy Act*.

Pursuant to *Residential Tenancy Policy Guideline #3*, a tenant is not liable to pay rent after a tenancy agreement has ended. However if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises. In certain circumstances, a tenant may be liable to compensate a landlord for loss of rent.

The tenant paid rent for the period of November 01-15, 2019 which is the period that he occupied the rental unit after the tenancy ended on November 01, 2019. Since the tenancy had ended on November 01, 2019 with proper notice from the tenant, I find that the tenant acted in accordance with the tenancy agreement and the *Residential Tenancy Act*.

The landlord testified that he was unable to find a tenant for November 01, 2019 and therefore, I find that the loss of income suffered by the landlord for the latter half of November 2019, did not stem from a breach on the tenant's part of the tenancy agreement or the *Residential Tenancy Act*.

Accordingly the landlord is not entitled to his claim and must return to the tenant, the security deposit that he is currently holding in the amount of \$1,150.00. Since the landlord has not proven his claim, he must bear the cost of filing this application.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - a landlord's application to retain all or part of the security deposit, or
 - a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of the monetary claim. Because the landlord has not established his claim, it is appropriate that I order the return of the security deposit to the tenant.

Accordingly, I so order, and I grant the tenant a monetary order in the amount of \$1,150.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

I grant the tenant a monetary order in the amount of **\$1,150.00**.

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: January 21, 2020

Residential Tenancy Branch