



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES LIMITED and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords filed on January 22, 2021, under the *Residential Tenancy Act* (the “Act”) for a monetary order for compensation for monetary loss or other money owed and for the return of their filing fee. The matter was set for a conference call.

The Landlord’s Agent (the “Landlords”), both Tenants and the Tenants’ Legal Counsel (the Tenants”) attended the conference call hearing and were affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties agreed that they had received each other’s evidence packages. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue – Jurisdiction

Jurisdictional issues were also brought up by the Tenants at the outset of the hearing. The Tenants testified that the issue applied for by the Landlords falls under a separate employment contract they have with the Landlords and that, therefore, this matter was outside of the jurisdiction of the Residential Tenancy Act.

Both parties agreed that the Landlords had also filed a claim with the British Columbia Small Claims Court and that those proceedings were on hold pending a jurisdictional decision from the Residential Tenancy Branch.

The Tenants testified that they rented the property from the Landlords knowing that the property required extensive renovations. The Tenants testified that in addition to their tenancy agreement, they signed a separate employment agreement, in which they agreed to provide construction labour renovate the rental property at a reduced hourly rate in exchange for the Tenants' ability to rent out the secondary rental unit, contained on the rental property, once the renovations were completed. The Tenants submitted copies of two tenancy agreements into documentary evidence; one signed by both these parties to rent the property and the second signed by the Tenant that included an employment clause.

The Tenants' submitted that due to the contract for employment and the inclusion of rental income as a benefit of this employment, that this matter was outside of the jurisdiction of the Residential Tenancy Branch (RTB).

The Landlords testified that they agree with the Tenants' testimony in that they did enter into a signed Tenancy agreement with the Tenants and that they did also hire the Tenants to complete renovations to both the upper and lower units contained on this rental property. However, The Landlords testified that the employment agreement was a verbal agreement to exchange construction labour for an hourly wage and that there was never an agreement to allow these Tenants to rent out the secondary rental unit as a portion of their compensation for the construction work.

The Landlords testified that this tenancy ended due to an order of possession issued by the RTB to the Landlord that had been obtained as a result of these Tenants renting out the secondary rental unit contained on the rental property, without the written consent of the Landlords. The Landlords submitted a copy of the decision and order of possession that they had received as a result of the previous proceedings with the RTB into documentary evidence.

The Landlords testified that the claim they have before the RTB in these proceedings is related to their loss of rental income due to the Tenants' breach of the *Act* during their tenancy and that this matter does fall under the jurisdiction of the RTB.

These parties have offered conflicting verbal testimony regarding the existence of an employment agreement between them that included a compensation benefit in the form of rental income to these Tenants. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their

testimony to establish their claim. As it is the Tenants who have put forward the argument that the RTB does not have jurisdiction over the Landlord's claim, I find that it is the Tenants who hold the burden to provide sufficient evidence over and above their testimony on the matter of jurisdiction.

I have carefully reviewed the documentary evidence submitted by the Tenants, and the only document before me in these proceedings that speaks to an employment agreement between these parties is the second tenancy agreement submitted by the Tenants. I note that this agreement includes a provision for the employment of one of the Tenants for construction labour at the rate of \$16.00 per hour and the ability to sublet a portion of the rental property and retain the rent for that sublet. However, this second tenancy agreement has not been signed by the Landlords. In the absence of either of the Landlords' signature on this document, I find that there is no evidence before me to show that this Landlord and Tenant had entered into an employment agreement that included compensation in the form of rental income to these Tenants in exchange for construction labour.

Therefore, I find that the Tenants have not provided sufficient evidence to show that the issues contained in the Landlords' application do not fall under the jurisdiction of the *Act*.

As the Landlords had applied for the recovery of lost rental income due to this tenancy, I find that the *Residential Tenancy Act* does apply, and I accept jurisdiction over this matter.

Issues to be Decided

- Are the Landlords entitled to monetary compensation for monetary loss or other money owed under the *Act*?
- Are the Landlords entitled to the return of their filing fee for this application?

Background and Evidence

Having considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement records that this tenancy began on October 15, 2016, as a month-to-month tenancy. Rent in the amount of \$1,200.00 was payable on the fifteen of

each month, and the Tenants paid a security deposit of \$600.00 at the outset of this tenancy. Both parties submitted a copy of the tenancy agreement into documentary evidence. The parties agreed that there are two self-contained units on this rental property that share a common entrance and hallway.

The Tenants testified that they rented the entire property for \$1,200.00 per month, which included upper and lower unit contained on the rental property. The Tenants testified that they had agreed to exchange cheap construction labour costs for the benefit of being able to sublet the secondary rent unit and keep the rent once the renovations were completed.

The Landlords testified that they rented the upper rental unit to the Tenants through the tenancy agreement and that there was no verbal or written addendum to this tenancy agreement granting permission to the Tenants to rent out of the secondary unit on the rental property. The Landlords testified that they had hired the Tenants, under a separate verbal employment contract, to renovate both units on the rental property. The Landlords testified that they had paid in full the Tenant who provided the construction services for their contracted work in June 2018.

The Landlords testified that in March 2018, they discovered that the Tenants had sublet the secondary rental unit on the rental property without their consent. The Landlords testified that they attempted to resolve the illegal sublet with the Tenants but that after 12 months of negotiations, when they still could not reach an agreement, they issued a One-Month Notice to end the tenancy to the Tenants on April 20, 2019. Both parties agreed that this tenancy ended due to an order of possession issued by the Residential Tenancy Branch to enforce the Landlords' One-Month Notice. A copy of the decision issued to enforce the Landlord notice was entered into evidence by the Landlords.

The Landlords are claiming for \$16,200.00 in lost rental income for 18 months, between January 2018 to June 2019, at the monthly rate of \$900.00, the amount collected by these Tenants under their sublet, that have been previously determined in the RTB decision dated June 4, 2019, as a breach of section 34 of the *Act* [a sublet without the written consent of the Landlords]. The Landlords submitted a copy of the sublet tenancy agreement entered into between these Tenants and their sub-tenant into documentary evidence.

The Tenant testified that there could be no loss of rental income as the Landlords had rented them the entire property.

Analysis

Based on the above testimony, evidence, and on a balance of probabilities, I find as follows:

The Landlords have requested compensation to recover their loss of rental income between January 2018 to June 2019, in the amount of \$16,200.00. In this case, the Landlords are claiming that they were prevented from collecting rent on the second rental unit located on the rental property due to the Tenants subletting that unit without their permission, causing the above-noted loss in rental income.

Awards for compensation are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I accept the agreed-upon testimony of these parties that the Tenants have been previously found to be non-compliant with section 34 of the Act by subletting without the Landlord's written consent in a previous decision issued by the Residential Tenancy Branch.

However, the parties, in this case, offered conflicting verbal testimony regarding whether or not these Landlords had the right to rent out the secondary rental unit located on this rental property in a separate tenancy agreement from this tenancy. The Landlords are claiming that the tenancy agreement for this tenancy was to rent the upper unit only. The Tenants are claiming that they had rented the entire rental property, including the secondary unit, under their tenancy agreement.

Again, where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As it is the Landlords application, I find that the Landlords hold the burden of providing sufficient evidence over and above their testimony to establish their claims on this point.

I have reviewed the tenancy agreement signed between these parties, and I noted that the address of this rental unit recorded on this agreement is a street address only, with no mention of their being separate units on this property or any indicator that would define that these Tenants had rented only a portion of this property under this agreement.

As it was the Landlords who drew up the tenancy agreement, I find that the Landlords bore the obligation to ensure that the terms therein were certain and the obligation of the parties was well-defined. As this agreement makes no mention of there being more than one unit on this rental property, nor does this agreement clearly define that these Tenants were only renting a portion of this property, I find that I must apply the rule of *contra proferentem*, and that the ambiguity in this tenancy agreement must be resolved against the Landlords who drafted the tenancy agreement. Consequently, I find that the Tenants rented the entire rental property under this tenancy agreement and that the Landlords had no right to rent out the secondary rental unit on this property in a separate tenancy.

Therefore, I find that the Landlords could not have suffered a loss of rental income for this secondary unit during these Tenants' tenancy and that there can be no consequential loss of rental income. In accordance with this finding, I must dismiss the Landlords claim as they have failed to prove that they suffered a loss due to the Tenants breach of section 34 of the *Act* and are not due compensation as applied for under sections 7 and 67 of the *Act*.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlords have not been successful in

their application, I find that the Landlords are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The Landlords' application is dismissed.

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: June 7, 2021

Residential Tenancy Branch