

IN THE MATTER between **JEFF HOLLETT**, Tenant, and **POLAR DEVELOPMENTS LTD.**, Landlord;

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

AND IN THE MATTER of a Hearing before, **HAL LOGSDON**, Rental Officer, regarding the rental premises at **YELLOWKNIFE, NT.**

BETWEEN:

JEFF HOLLETT

Tenant

- and -

POLAR DEVELOPMENTS LTD.

Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18(5) of the *Residential Tenancies Act*, the landlord shall return the retained portion of the security deposit to the tenant in the amount of four hundred ninety nine dollars and thirty two cents (\$499.32).

DATED at the City of Yellowknife, in the Northwest Territories this 20th day of January, 2004.

Hal Logsdon
Rental Officer

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JEFF HOLLETT

Tenant

-and-

POLAR DEVELOPMENTS LTD.

Landlord

REASONS FOR DECISION

Date of the Hearing: January 13, 2004

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Jeff Hollett, tenant
Lindsay Henderson, representing the landlord

Date of Decision: January 19, 2004

REASONS FOR DECISION

The tenant filed an application on December 16, 2003 requesting an order requiring the landlord to return the balance of the security deposit. The tenant also requested compensation of \$50 for fees related to placing a stop payment on the remaining post dated cheques supplied to the landlord. On December 19, 2003 the landlord filed an application requesting “validation” of their claim to retain \$499.32 of the security deposit. As both applications relate to the same premises and tenancy agreement, with the consent of the parties, both applications were heard at a common hearing.

The parties entered into a term tenancy agreement on April 15, 2003. The agreement was to run until April 30, 2004. The tenant provided a security deposit to the landlord in the amount of \$1720.

The tenant testified that he made an offer to purchase a home on September 26, 2003 which was to close on October 28, 2003 conditional upon him being able to successfully assign the tenancy agreement for the rental premises. He stated that his real estate agent referred a prospective assignee to the landlord and he indicated his intentions to assign the tenancy agreement on or about September 26, 2003. The tenant stated that both he and the real estate agent called the landlord repeatedly over the next ten days concerning the request to assign the agreement. The tenant stated that he extended the closing date of his offer several times to give the landlord more time to consider the assignment but finally the vendor refused to extend it further and the

prospective assignee found alternate accommodation. The tenant finally gave the landlord a notice of intent to vacate on November 30, 2003. The notice was received by the landlord on October 30, 2003.

After the tenant vacated the premises, the landlord retained \$499.32 and returned the balance of the deposit to the tenant. The statement of the security deposit, dated December 11, 2003 identified the deduction as "December Rent (Prorated for Dec 1 to 10)" An asterisk next to the item provided the additional information, "New Tenant occupied the suite effective December 10, 2003".

The tenant argued that the deduction was compensation for lost rent and could not be deducted from the security deposit. He also argued that the landlord failed to take reasonable steps to mitigate loss and should not be entitled to compensation.

The landlord stated that they never received a written request to assign the tenancy agreement and that it took considerable time to adequately screen potential tenants and assignees. The landlord argued that they were entitled to compensation for lost rent as the premises were not immediately re-rented after the tenant vacated and that they took reasonable steps to mitigate loss.

The landlord also stated that some of the deduction could be considered rent arrears as the tenant did not return the keys to the premises until December 2, 2003 and was technically still in

possession.

Section 18 of the *Residential Tenancies Act* sets out the allowable deductions from a security deposit at the end of a tenancy agreement.

A landlord may, in accordance with this section, retain all or part of the security deposit for repairs of damage caused by a tenant to the rental premises and for any arrears of rent.

Arrears of rent is rent which has come due and has not been paid. How much, if any, of the retained \$499.32 is rent depends on when the tenant gave up possession. The tenants notice states November 30, 2003 as the date the tenant intended to vacate. The landlord alleged that the tenant had the right of possession until December 2, 2003 as the keys were not returned until that day. Both parties agree that the final inspection of the premises was done on December 1, 2003 at the request of the landlord. If the final inspection was conducted on the morning of December 1, 2003, it can be assumed that the apartment was vacant at that time. If the keys were not returned, the landlord could have deducted the cost of lock changes from the deposit. I find the tenant vacated the premises on November 30, 2003 and find no rent arrears owing the landlord. Therefore it appears the \$499.32 is all compensation for lost rent.

Compensation for lost rent may be ordered by a rental officer but only on the application of a landlord. It may not be deducted from a security deposit. In asking a rental officer to “validate” the landlord’s retention of the security deposit for compensation for lost rent, the landlord is seeking approval for doing something which is contrary to the Act. Had the security deposit been

returned to the tenant and an application filed by the landlord seeking compensation for lost rent, then the application would be considered pursuant to section 62 of the *Residential Tenancies Act*. In my opinion the landlord's application seeks a remedy contrary to the Act and is made solely in an attempt to reverse the onus to initiate an application for remedy. In fact, the landlord has their compensation but they have come by it in an improper manner and now ask that it be deemed proper. In my opinion, the landlord's application can not be considered while they are holding the deposit and there is no requirement to consider other evidence relating to the tenant's efforts to assign the agreement or the landlord's efforts to mitigate loss.

The landlord's application is dismissed and an order shall issue requiring the landlord to return the retained portion of the security deposit in the amount of \$499.32 to the tenant. The costs of issuing stop payments on the tenant's post-dated cheques is denied. There is no provision in the *Residential Tenancies Act* permitting a rental officer to make such an order.

Hal Logsdon
Rental Officer