

IN THE MATTER between **ROY L.N. GOOSE III**, Tenant, and **G.B.H. HOLDINGS 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 **INUVIK, NT.**

BETWEEN:

ROY L.N. GOOSE III

Tenant

- and -

G.B.H. HOLDINGS LTD.

Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 66(b) of the *Residential Tenancies Act*, the landlord shall return to the tenant all personal goods belonging to the tenant that are currently in the landlord's possession. The goods shall be released to the tenant without charge. The tenant shall pick up the possessions within fifteen (15) days of the receipt of this order.

2. Pursuant to section 18(5) of the *Residential Tenancies Act*, the landlord shall return to the tenant a portion of the retained security deposit in the amount of one hundred sixteen dollars and ninety cents (\$116.90).

DATED at the City of Yellowknife, in the Northwest Territories this 15th day of February, 2010.

Hal Logsdon
Rental Officer

IN THE MATTER between **ROY L.N. GOOSE III**, Tenant, and **G.B.H. HOLDINGS 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.

BETWEEN:

ROY L.N. GOOSE III

Tenant

-and-

G.B.H. HOLDINGS LTD.

Landlord

REASONS FOR DECISION

Date of the Hearing: February 10, 2010

Place of the Hearing: Yellowknife, NT via teleconference

Appearances at Hearing: Roy L.N. Goose III, tenant
Lois Kathrens, representing the landlord
Calvin Phare, representing the landlord

Date of Decision: February 11, 2010

REASONS FOR DECISION

The tenant filed an *Application to a Rental Officer* on October 22, 2009 seeking the return of his personal possessions held by the landlord and the return of his security deposit. The landlord filed an application on January 12, 2010 seeking payment of rent arrears, cleaning costs, key replacement costs and compensation for lost rent. Since both applications concern the same rental premises and tenancy agreement, with the consent of the parties, both applications were heard at a common hearing.

The tenant alleged that the landlord had disturbed his lawful possession of the premises by declaring the premises abandoned and taking possession of the premises while he was away hunting. The tenant stated that he no longer wanted his occupancy to be reinstated but wanted his personal property, which has been held by the landlord, returned without cost and his security deposit returned.

The tenant testified that he left on a hunting trip in May, 2009. He was uncertain of the day he left but acknowledged that the rent for May had not been paid. He was advised by the police in Tuktoyaktuk that they were in possession of his rifle and a knife which had been delivered to them by the landlord after declaring the apartment abandoned. The tenant testified that he called the landlord seven or eight days after leaving the apartment and was told that the apartment had been abandoned and his goods removed and stored. The tenant testified that he told the landlord at that time that he intended to return and pay the May, 2009 rent. The tenant stated that the rifle

was registered and the bolt was removed.

The tenant stated that he had provided a security deposit of \$2500.

The landlord's site manager testified that she last saw the tenant on May 7, 2009 and considered the premises abandoned on May 21, 2009. She acknowledged that the tenant called her on May 22, 2009 and stated that he intended to return and pay the outstanding May rent. The landlord's site manager stated that she made the decision to declare the apartment abandoned without entering the apartment. The tenant's personal property was removed from the apartment and stored by the landlord except for the rifle and a knife which were given to the police. The landlord filed an inventory of abandoned property with the rental office on May 21, 2009 although numerous items of furniture listed on the inventory allegedly belong to the landlord and were loaned to the tenant. The landlord confirmed that only the May, 2009 rent of \$1250 was outstanding.

The landlord stated that the required security deposit for the premises was \$1250 but that the tenant had provided only \$1000 of the required deposit which was paid in a single payment on November, 2008. The landlord provided the dates of all other payments during the term of the tenancy all of which were payments of rent.

Section 1(3) of the *Residential Tenancies Act* defines abandonment.

1.(3) For the purpose of this Act, a tenant has abandoned the rental premises and the residential complex where the tenancy has not been terminated in

accordance with this Act and

- (a) the landlord has reasonable grounds to believe that the tenant has left the rental premises; or**
- (b) the tenant does not ordinarily live in the rental premises, has not expressed an intention to resume living in the rental premises, and the rent the tenant has paid is no longer sufficient to meet the tenant's obligation to pay rent.**

The landlord claims she had not seen or heard from the tenant for fourteen days (May 8 - 21).

The tenant claims he was out of town for seven or eight days. Both parties acknowledge that they spoke on May 22, 2009 and the tenant expressed his intention to return to the premises and pay the outstanding May rent. Both parties acknowledge that the May rent was due and was not paid.

Was it reasonable for the landlord to consider the premises abandoned? In my opinion it was not, particularly after May 22, 2009 when the landlord discovered the tenant's whereabouts and intentions. At that time, the premises had not been re-rented and the tenant's possession could have been maintained. The facts of the matter do not, in my opinion, lead one to believe that the tenant had left the rental premises. It is clear that the tenant did express his intention to resume living in the rental premises. Therefore the criteria for abandonment were not met. It would have been prudent, in my opinion, to establish the tenant's return date during the May 22 conversation and not consider the premises abandoned unless the tenant failed to return by that date. The landlord could have also filed an application to a rental officer requesting termination of the tenancy agreement for non-payment of rent.

Since the premises were not abandoned or vacated by the tenant, the landlord had no right to remove the tenant's personal possessions and similarly has no right to demand removal or

storage costs prior to the return of his personal possessions. I assume that the rifle and knife were provided to the RCMP on the assumption that storing them could be unsafe. I also assume that, provided the knife and rifle are legal to possess, they are being held by the police and will be returned to the tenant on his request.

In the matter of the security deposit, I find that the landlord held a deposit of \$1000. Although the tenant felt he had provided a larger deposit, I find that the detailed payment information provided by the landlord and the lack of any contrary evidence from the tenant, such as a receipt or date of payment, support the landlord's testimony.

The landlord has retained the security deposit (\$1000) and accrued interest (\$11.14) deducting rent arrears for May, 2009 (\$1250), cleaning and key costs (\$200) and a full months rent for June, 2009 (\$1250) resulting in a balance owing the landlord of \$1688.86.

The landlord claims the full amount of rent for May, 2009 but, in fact, the tenant was only permitted possession until May 21, 2009 when the landlord declared the premises abandoned and took possession. In my opinion, the tenant is only liable for rent for the period May 1-21, 2009 which I calculate to be \$846.77

The cleaning and key replacement charges were not itemized. The landlord stated that they had to clean the apartment and replace keys that were not returned. The cleaning charges are denied as the tenant clearly had no opportunity to clean the apartment as the landlord had possession. I can

only estimate the key charges which I find reasonable at \$50.

The landlord claims the full months rent of \$1200 for June, 2009. This is not rent as the tenant was not in possession; it is compensation for lost rent. Section 62(1) holds a tenant liable for compensation for lost rent, subject to the landlord's efforts to mitigate loss, on the abandonment of rental premises by a tenant.

62. (1) Where a tenant abandons a rental premises, the tenancy agreement is terminated on the date the rental premises were abandoned but the tenant remains liable, subject to subsection 9(2), to compensate the landlord for loss of future rent that would have been payable under the tenancy agreement.

(2) Where, on the application of a landlord, a rental officer determines that a tenant has abandoned a rental premises, the rental officer may make an order requiring the tenant to pay to the landlord the compensation for which the tenant is liable by reason of subsection (1).

As it has been determined that the premises were not abandoned, there is no tenant liability for lost rent. The landlord's request for compensation for lost rent is denied.

I also find the interest on the security deposit from November 19, 2008 to May 21, 2009 to be \$13.67.

Taking the security deposit and accrued interest into consideration I find an amount due to the tenant of \$116.90 calculated as follows:

Security deposit	\$1000.00
Interest	13.67
Rent arrears	(846.77)
Key costs	<u>(50.00)</u>

Amount due tenant \$116.90

An order shall issue requiring the landlord to release the personal property removed from the premises and belonging to the tenant without charge. The tenant is obligated to pick up the possessions within fifteen days of the receipt of the order. If the tenant fails to retrieve the goods within fifteen days, the landlord may seek approval of the rental officer to dispose of them.

The landlord is also ordered to return a portion of the retained security deposit to the tenant in the amount of \$116.90.

Hal Logsdon
Rental Officer