



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DUNCAN MOTEL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR OPR RP ERP RR PSF

Introduction

The tenant who is the applicant did not attend this hearing, although I left the teleconference hearing connection open until 9:45 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. on November 20, 2018. The respondent landlord attended the hearing and gave sworn testimony. He was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord provided evidence that he served the 10 Day Notice to End Tenancy dated September 28, 2018 to be effective October 8, 2018 (as automatically corrected by section 53 of the Act) personally on September 28 and the tenant served him personally with the Application for Dispute Resolution dated October 11, 2018. I find the documents were legally served pursuant to section 89 of the *Residential Tenancy Act*. The tenant claims compensation under the Act for damages. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for unpaid rent pursuant to section 46;
- b) To order the landlord to make emergency repairs to cure a bed bug infestation;
- c) To obtain an Order of Possession for the rental unit as the tenant was forced to leave;
- d) To obtain permission to sublet pursuant to section 34 as permission has been unreasonably withheld by the landlord; and
- e) To obtain compensation for losses suffered due to the landlord's actions.

Issue(s) to be Decided:

Do I have jurisdiction in this matter? If so, has the landlord proved on the balance of probabilities that there is unpaid rent so sufficient cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Has the tenant proved on the balance of probabilities that the landlord has violated the Act or tenancy agreement by not performing emergency repairs and/or by evicting them without waiting for legal process? If so, are they are entitled to compensation and in what amount?

Background and Evidence

Only the landlord attended the hearing and was given opportunity to be heard, to provide evidence and to make submissions. The landlord said this residence was a motel which rented rooms by the night. He requested an amendment to the landlord's name to show the name of the motel. The amendment was granted.

He said the applicant was not a tenant as they operate under the Hotel Keepers Act and may ask guests to leave if they do not pay the room fees. The applicant has been living at the motel for several months but there was no tenancy agreement and no security deposit. The landlord cleans the room, provides supplies such as towels and toilet paper and coffee regularly as it is a motel. The applicant first lived in one room without a kitchen and paid weekly, then asked to pay the monthly rate of \$900. Another room at \$1200 monthly had a kitchen but was being treated for bed bugs; the tenant requested that room and said the bed bugs would not bother him. The landlord said he was reluctant to rent the applicant the \$1200 room as he thought the applicant may not be able to afford it; however, the applicant insisted he could afford it and began occupying it in September 2018. He was unable to pay rent for September so the 10 Day Notice was served for unpaid rent.

In rebuttal to the tenant's claims, the landlord said they did not force him to leave. He saw the applicant and his girlfriend packing up and leaving voluntarily and saw him hitch hiking later. He said they did not have much food and they got it from the food bank so he does not understand how they can be claiming reimbursement for that. Regarding the bed bugs, the landlord said they were treating for them when the tenant insisted on moving into that room. They have had others stay since for one or two nights and had no complaints so the treatment appears to have been successful.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

The landlord contends this arrangement with the applicant was not a tenancy governed by the *Residential Tenancy Act* as they are governed by the *Hotel and Innkeeper's Act*. I find Policy Guideline considers Tenancy Agreements and Licenses to Occupy. It notes the definition of "tenancy agreement" in the Act includes a license to occupy. It states

A license to occupy is a living arrangement that is not a tenancy. Under a license to occupy, a person, or "licensee", is given permission to use a site or property, but that permission may be revoked at any time. Under a tenancy agreement, the tenant is given exclusive possession of the site for a term, which can include month to month. The landlord may only enter the site with the consent of the tenant...

Some of the factors that may weigh against finding a tenancy are:

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Payment of a security deposit is not required.

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The owner, or other person allowing occupancy, retains access to, or control over, portions of the site.

The owner, or other person allowing occupancy, retains the right to enter the site without notice.

I find the weight of the evidence is that this arrangement was, at the highest, a license to occupy and not a tenancy. There was no tenancy agreement, no security deposit, the room charge could be paid nightly, weekly or monthly, the motel staff entered the room without consent to clean and provide supplies and no notice period was required for a resident to vacate. As it was a license to occupy, I find the landlord had the right to revoke it at any time for non payment of room charges.

I find insufficient evidence to support the applicant's application for damages or repairs. I find he left voluntarily, was not forced out and has not provided any invoices to support his claim of lost food and/or other expenses. He has also provided insufficient evidence of the need for repairs. I dismiss the application without leave to reapply.

Conclusion:

I dismiss this application without leave to reapply. The filing fee was waived.

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: November 20, 2018

Residential Tenancy Branch