



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes FFT, MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on July 17, 2018 (the “Application”). The Tenant applied for compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenant appeared at the hearing. The Managers appeared at the hearing for the Landlord.

I confirmed that the rental unit is a motel room and confirmed the full address for the rental unit with the parties. The full address is reflected on the front page of this decision. I also confirmed the correct spelling of the Landlord’s name and amended the Application to reflect this. This is reflected in the style of cause.

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Tenant had submitted evidence prior to the hearing. The Landlord had not. I addressed service of the hearing package and evidence. The Managers confirmed they received the hearing package. They had not received the Tenant’s evidence. The Tenant confirmed he did not serve his evidence on the Landlord. I heard the parties on whether the evidence should be admitted or excluded despite it not being served on the Landlord in accordance with the Rules of Procedure. I determined it was necessary to exclude the evidence given the Managers had not received it and therefore could not address it during the hearing. I found it would have been unfair to admit the evidence in the circumstances.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

As stated, the rental unit is a motel room. No tenancy agreement was submitted as evidence. I addressed the issue of whether there was a tenancy agreement in this matter and whether the *Residential Tenancy Act* (the “Act”) applied in the circumstances with the parties.

The Tenant submitted that there was a tenancy agreement between him and the Landlord in relation to the rental unit. He said he paid monthly rent to the Landlord for one and a half years. He submitted that this implies there was a tenancy agreement. The Tenant testified that he rented the rental unit in the fall of 2016. He said there was no discussion about a term but that it was implied that it was a month-to-month tenancy. The Tenant testified that rent was \$750.00 per month due on the 17th of each month. The Tenant said he did not pay a security deposit or pet deposit. The Tenant testified that the rental unit was his home and that he did not have another residence. He said he used his father’s address as a mailing address, but he did not live there. The Tenant confirmed that he had his own kitchen and bathroom in the rental unit.

Manager P.B. agreed that the Tenant was a tenant. He then said maybe the Hotel Act applies. When asked for clarification on his position, Manager P.B. accepted that the Act applied to the circumstances.

The Managers did not take issue with the testimony of the Tenant in relation to the tenancy agreement. The Managers said they do not know what the agreement was because they took over from other managers in August of 2017.

The Tenant sought the following compensation which was outlined in a letter sent to the Managers and submitted as evidence:

1. \$750.00 rent for June 17 – July 17;
2. \$1,500.00 rent for July 17 – September 17;
3. \$250.00 for food;
4. \$75.00 for storage locker;
5. \$100.00 for the filing fee; and
6. \$110.00 for the cost of a process server.

The basis for the Tenant's request for compensation is that he was evicted from the rental unit without notice. He testified that a bed bug issue arose in the rental unit through no fault of his. He said that on July 13, 2018, he went into the rental unit. He testified that P.B. saw him in the rental unit and told him he was being evicted. He said P.B. put a lock on the door of the rental unit such that he could not access the unit. He said he had no warning that he was being evicted.

The Tenant testified that, upon being evicted, he had nowhere to go. He said he slept in his vehicle for three days. He testified that it was impossible to find a new place given the town is a summer destination for tourists. He said he could not afford the rent at most places because the rates were summer/tourist rates. The Tenant explained that he is on a fixed income. He testified that he found a new place after three days; however, rent was \$650.00 per week for the first two weeks and then changed to \$850.00 per month. He said this was "a steal compared to other places" at the time. The Tenant said it took him six weeks to find affordable housing.

The Tenant testified that the Landlord evicted him illegally and without notice and that this caused financial loss and stress. The Tenant said he removed his belongings from the rental unit and had to put them in a storage locker because they did not all fit in his vehicle. He said he had to give away his bike.

The Tenant said he is requesting compensation for food in the amount of \$250.00 for five days given the Landlord locked him out such that he was unable to access the food he had in his fridge and freezer. He also said he had nowhere to cook food when he was evicted. He pointed out that he had paid rent for this period of time.

The Tenant testified that he had paid rent up to July 17, 2018 when he was evicted on July 13, 2018. He said the Landlord never provided him with a refund for the last week he had paid rent but did not live at the rental unit.

P.B. testified that on July 8, 2018, the Tenant told the Managers there was a bug in his room and so they entered the rental unit to investigate. He said the rental unit was

infested with bed bugs. P.B. testified that he made a deal with the Tenant that they would do what they could about the bed bugs. He said he told the Tenant he may have to move out and that it depended on how bad the infestation was. P.B. testified that the infestation required pest control to spray July 13th, 25th and August 8th. P.B. said there was no way the Tenant could have moved back into the rental unit during this time as the Tenant had to be out of the unit for five days after each spray.

P.B. said the Tenant agreed he would stay out of the rental unit for five days and said he would stay in his vehicle. P.B. testified that, when he went to check on the room after the first spray, the Tenant was in the room. P.B. said the Tenant could have died in the room because of the spray and that he does not feel he should be responsible for someone's death. P.B. said the spray is very toxic. P.B. testified that he got mad at the Tenant. He said he put a lock on the door because he could no longer trust the Tenant. P.B. said the Tenant left in a huff and never came back.

T.H. testified that the furniture in the rental unit had to be thrown out and both managers said the Tenant had nothing to come back to.

The Managers agreed they gave no written notice to the Tenant ending the tenancy. The Managers agreed they evicted the Tenant and said they had no choice. I asked the Managers what section of the *Act* they said authorized them to end the tenancy in the circumstances described and P.B. said he had "never read that act". P.B. said the situation was a health hazard to him and everyone. P.B. said the Managers could have given the Tenant a 30-day notice but the rental unit would have been unlivable.

I had read out the test for compensation to the parties at the outset of addressing the Tenant's request. I asked the Managers if they had submissions on the last three parts of the four-part test. P.B. said him and the Tenant had a verbal agreement and the Tenant did not abide by it. He said the health board would have shut the room down. He said the Managers have to look out for the health of the Tenant and everyone else. P.B. acknowledged that he did not know where the bed bugs came from and that the bed bugs were not the fault of the Tenant or Landlord.

In reply, the Tenant testified that pest control told him he could re-enter the rental unit six hours after the spray. He said he would have been willing to leave the rental unit for six hours as needed.

Analysis

As explained to the Tenant during the hearing, I decline to award reimbursement for the process server as I view this as the cost of preparing for these proceedings which I do not find parties are entitled to.

In relation to the remainder of the request, section 7(1) of the *Act* states that a party that does not comply with the *Act*, *Regulations* or a tenancy agreement must compensate the other party for damage or loss that results. Section 7(2) of the *Act* states that the other party must mitigate the damage or loss.

Section 67 of the *Act* states that "...if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party".

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order 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.

Rule 6.6 of the Rules of Procedure states that it is the party making the claim that has the onus to prove it.

A landlord can only end a tenancy in accordance with the *Act*. Part 4 of the *Act* sets out how to end a tenancy. Further, section 52 of the *Act* outlines the requirements for a notice to end tenancy which, when issued by a landlord, must be in writing and in the approved form.

The Tenant submitted that the Landlord evicted him illegally. The Managers acknowledged that they did not give the Tenant written notice to end the tenancy. I also understood the Managers to agree with the timeline of events stated by the Tenant in relation to them telling him to leave and putting a lock on the door July 13, 2018.

I find that the Managers ended the tenancy when they put a lock on the door of the rental unit making the unit inaccessible to the Tenant. I accept that the Managers did not end the tenancy in accordance with the *Act* given they did not give the Tenant written notice to end the tenancy based on any of the sections outlined in Part 4 of the *Act* in relation to how a landlord is permitted to end a tenancy. Therefore, I find the Managers breached the *Act* by ending the tenancy in the way they did. I also find that this was an egregious breach of the *Act* in that the Managers gave no written notice and gave what I understood to be half-a-day verbal notice in a situation where it is not clear they had any grounds to end this tenancy.

I accept that the Tenant suffered loss because of the way in which the Managers ended the tenancy. I accept that he had to sleep in his vehicle for three nights. I accept that he had a difficult time finding another place to stay given the location and time of year. I accept that he could not afford most places. I accept that he found a place at the cost of \$650.00 per week, almost the cost of his entire rent for the month at the rental unit address. I accept that he paid \$650.00 per week in rent for two weeks and then \$850.00 per month at the new place. I accept that this situation caused him financial loss and stress given the circumstances. The Managers did not dispute this testimony of the Tenant.

I find the Tenant is entitled to compensation for this loss. I find it is not possible to determine how long this tenancy would have lasted had the Managers not ended it in breach of the *Act*. However, considering the circumstances surrounding the end of the tenancy, and the loss described above, I find the \$1,500.00 requested to be more than reasonable.

There is no issue that the Tenant lost access to the unit from July 13, 2018 to July 17, 2018 despite having paid rent for this period. I find the Tenant is entitled to reimbursement for this period which I have calculated and rounded up to be \$121.00 based on five days of rent. I decline to award the Tenant reimbursement for the remainder of the rent from June 17th to July 12th as he had use of the rental unit for this period and because he indicated that he was not claiming for the week he had to stay in his vehicle leading up to July 13, 2018.

I also accept that the Tenant had food in the rental unit at the time he was locked out by the Managers. I accept the Testimony of the Tenant that he had to stay in his vehicle for three days. The Managers did not dispute this. The Tenant sought \$250.00 for the food and for loss of access to cooking facilities. Given the Managers did not dispute the amount requested for food, I find the Tenant is entitled to this amount. Further, I find the \$250.00 requested to be a reasonable amount in the circumstances.

I accept that the Tenant had to put his belongings in a storage locker because they would not fit in his vehicle. This accords with common sense. The Managers did not dispute this. I accept that the storage locker cost \$75.00, again, the Managers did not dispute this amount. I find this amount to be reasonable. I find the Tenant is entitled to reimbursement for this cost.

In summary, I find the Tenant suffered the loss described because of the Managers ending the tenancy without complying with the *Act*. I find the Tenant is entitled to the following compensation:

1. \$121.00 rent for July 13 – July 17;
2. \$1,500.00 compensation for the tenancy ending in breach of the *Act*;
3. \$250.00 for food; and
4. \$75.00 for storage locker.

As the Tenant was successful in this application, I grant him reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to a Monetary Order in the amount of \$2,046.00.

Conclusion

The Tenant is entitled to a Monetary Order in the amount of \$2,046.00 and I grant the Tenant a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 27, 2018

Residential Tenancy Branch