



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: MNDCT

Introduction

The Application for Dispute Resolution filed by the Tenant seeks a monetary order in the sum of \$10,000.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord carries on business on May 1, 2019.

Preliminary Matters:

The representative of tenant stated they provided the landlord with documentary evidence and uploaded the evidence to the file. The evidence did not reach the file. The landlord stated they received the following:

- Two receipts for a TV rental totalling \$155.25. One was for the period March 15 to 20 and the second was for the period March 20, to 27. The receipts were in the sum of \$74.49 and \$80.76.
- Receipts from the TM totalling \$1386.90. The receipts covered the period March 28, 2019 to April 11, 2019.
- A monetary order worksheet making the following claims:
 - Cost of the Thunderbird motel totalling \$1386.
 - Cost of a student movers \$100
 - Cost of motel in Victoria for the period April 11 to May 24 totalling \$2670.
 - Cost of meals \$1500,
 - Cost of staying at home with mother \$3000

- Laundry costs \$15
- Cost of meals at \$5 per meal
- Cost of moving storage \$70 per month
- Compensation for stress
- A letter from a doctor

Issues to be Decided

The issue to be decided is whether the tenant is entitled to a monetary order and if so how much?

Background and Evidence:

The tenancy began on October 10, 2018. The tenancy agreement provided that the tenant(s) would pay rent of \$700 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$350.

The tenant suffers from a number of disabilities. On March 10, 2019 he was admitted to hospital and diagnosed with brain cancer. He was discharged from hospital on March 24, 2019. He spent a few days at home with his mother. He testified the landlord refused to permit him to move back into his rental unit. On March 28, 2019 he took up residence in the T Motel. He subsequently moved to a motel in Victoria on April 13, 2019 to be close to treatment and stayed there for approximately 6 weeks.

The tenant testified he paid the rent to the landlord for all of March. The landlord would not permit him to return to his rental unit. He was able to retrieve his belongings at the end of March 2019. The landlord gave his mother a one month Notice to End Tenancy for cause at the end of on March 16, 2019.

The tenant testified the complaints of the landlord about the conduct of the tenant are caused by his OCD problems requiring him to clean and the loud noises resulted because he was falling because of seizures.

The landlord gave the following evidence:

- The tenant previously lived in another building owned by the landlord. He told them he attempted to live with his mother but he needed more space.
- The landlord was aware that the tenant suffered from a number of health issues prior to moving into the rental unit.

- The tenant's conduct became more erratic in the last few months of his tenancy. He was obsessively cleaning his balcony and this led to complaints from the downstairs tenant.
- The police were called a number of times. They talked to him through the door but told the landlord that they did not think that he was a danger to himself or others.
- Neighbours called the landlord on March 10, 2019 and they told the landlord that he was yelling out of his window that he intended to kill one of the landlords.
- The police were called. This time 4 officers attended. They gained access as the landlord unlocked the door. The tenant was taken away in handcuffs and taken to hospital.
- The landlord locked the door. The officer in charge subsequently came back and asked to gain access to the rental unit. The landlord opened the door. The officer retrieved a number of large knives including one knife that was attached to a 5 foot broom handle. The landlord noticed a number of puncture marks in the walls of the rental unit.
- The landlords testified the tenant's erratic behaviour included throwing eggs at others, noises, threats and compulsively cleaning the balcony.
- Witness #1 testified about the tenant's erratic behaviour including the throwing of egg shells, bananas, cleaning etc. She also heard him yell "I hope someone kills you." There was a number of banging noises from his room.
- The landlord pointed out that the letter from the tenant's doctor which she received from the tenant as part of the materials for this hearing stated that it was likely the tenant would not be discharged for an extended period of time.

The tenant testified the landlord's changed the locks and would not allow them in. The landlords testified they gave the tenant's mother access but needed to be there when she was in the rental unit. The tenant's mother took some of his belongings out about 4 or 5 days after he was admitted into hospital. She also visited the rental unit a couple of other times before assisting in the move out at the end of March.

Analysis:

I determined the landlord did not have a legal right to deny the tenant and his mother access to the rental unit as they did. Section 44(1) provides as follows:

How a tenancy ends

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 [tenant's notice];
- (i.1) section 45.1 [tenant's notice: family violence or long-term care];
- (ii) section 46 [landlord's notice: non-payment of rent];
- (iii) section 47 [landlord's notice: cause];
- (iv) section 48 [landlord's notice: end of employment];
- (v) section 49 [landlord's notice: landlord's use of property];
- (vi) section 49.1 [landlord's notice: tenant ceases to qualify];
- (vii) section 50 [tenant may end tenancy early];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

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The tenant had a legal right to remain in the rental unit until the landlord first obtained an Order of Possession after a hearing at the Residential Tenancy Branch, a Writ of Possession from the Supreme Court of British Columbia and retained the services of a

bailiff if the tenant refused to leave. In emergency situations such as the situation alleged by the landlord the landlord could have applied for an early end to the tenancy.

I determined that the tenant is entitled to compensation. Policy Guideline #16 sets out the factors required in determining the amount of compensation and includes the following:

C. COMPENSATION

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. 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.

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D. AMOUNT OF COMPENSATION

In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

With regard to each of the tenant's claims I find as follows:

1. I dismissed the claim of \$155 for the rental of a television. The period claimed relates to the period of time the tenant was in the hospital. The tenant failed to present sufficient evidence to prove that the hospital would permit him to take in his own television or that the landlord refused to permit him to take his television to the hospital.
2. I determined the tenant is entitled to \$1386.90 for the period of time he stayed at the T.M. in his own community from March 28, 2019 to April 11, 2019. I accept the testimony that the tenant provided the receipts for this claim to the landlord. This expense was caused by the action of the landlord in wrongfully preventing the tenant access to the rental unit.
3. I determined the tenant is entitled to \$100 for the cost of student movers. While the tenant failed to provide receipts for this claim the amount claimed is reasonable. I accept the evidence of the tenant that this amount was paid. The tenant was unable to move himself because of his poor health.
4. I dismissed the claim of \$2670 for the cost of a motel in Victoria from the period of April 11, 2019 to May 24, 2019 for the following reasons. Firstly, the tenant failed to provide receipts for this claim. Secondly, the tenant was required to move to Victoria to receive daily medical treatment. The tenant failed to prove that he would have commuted to Victoria on a daily basis if he could stay in his rental unit.
5. I dismissed the claim for the cost of meals @\$5 a meal as the tenant failed to provide receipts. The amount claimed is not reasonable. The tenant failed to provide sufficient evidence to establish a claim that he incurred expenses for food that exceeded what he would normally pay for the cost of food.
6. I dismissed the claim of \$15 for the cost of laundry as this claim was not proven.
7. I dismissed the claim for the cost of a storage locker as the tenant failed to provide receipts to prove this claim.
8. I dismissed the claim for compensation for stress as the tenant failed to provide sufficient evidence to prove this claim.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$1486.90.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail 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 final and binding on the parties.

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: July 15, 2019

Residential Tenancy Branch