



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Regarding RAAMCO INTERNATIONAL PROPERTIES CANADIAN LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD OLC FF

Introduction

The Application for Dispute Resolution (the “application”) was filed by the tenant under the *Residential Tenancy Act* (the “Act”) for a monetary order for the return of his security deposit and pet damage deposit, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, to recover the cost of the filing fee, and a request to fine the landlord \$5,000.00.

The tenant, a support person for the tenant, and two agents for the landlord (the “agents”) attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matters

At the outset of the hearing, the tenant was advised that I was not authorized to consider a fine of \$5,000.00 towards the landlord pursuant to Residential Tenancy Branch Policy Guideline 16 which states that “An arbitrator does not have the authority to award punitive damages, to punish the respondent.” As a result, the tenant’s request to fine the landlord \$5,000.00 is **dismissed without leave to reapply**.

In addition to the above, as the parties confirmed that the tenant continues to occupy the rental unit and taking into account the tenant’s testimony which indicated that the tenant applied for the return of his security deposit and pet damage deposit in error, I find the tenant’s application for the return of the security deposit and pet damage deposit are premature as the tenancy has not ended as of the date of the hearing. As a result, this portion of the tenant’s request will not be considered as part of this proceeding and is **dismissed with leave to reapply**.

Issue to be Decided

- Has the tenant provided sufficient evidence to support that the landlord should be directed to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

During the hearing the tenant presented a letter that the tenant admitted to placing in the common area and the elevator of the rental building. In addition, the tenant alleged that the landlord violated section 25 of the tenancy agreement which reads:

“25. COMMON AREAS. The tenant must not misuse or damage common areas of the residential property, but must use them prudently and safely and must conform to all notices, rules or regulations posted on or about the residential property concerning the use of common areas, including restriction of their use to tenants only and restriction on use by children. All such use will be at the sole risk of the tenant or the tenant’s guests.”

[reproduced as written]

The letter written by the tenant reads in part:

“...I’m filing legal documents with the Dispute Resolution Branch next week.

Please see the reverse for their implied and actual accusations used in a legal process that I’m holding them accountable for.

...

...While I don’t want to impose....I apologize and will....

...

I ask that you volunteer to be a reference/witness for me, in essence, that I’m an “OK” neighbour...”

[reproduced as written]

The tenant then referred to section 28(d) of the *Act* which states:

“Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(d) use of common areas for reasonable and lawful purposes, free from significant interference."

[reproduced as written]

The tenant alleged that his letter complied with section 28 and that the landlord was violating his rights by removing his letter from the common area and elevators.

The agents for the landlord deny any wrongdoing and stated that the tenant already has a small claims monetary claim against the landlord pending.

Analysis

Based on the above and the evidence provided, and on a balance of probabilities, I find the following.

I have reviewed the letter from the tenant and find that the tenant's letter is both inappropriate for posting in the common area and the elevator and that the tenant's application is both frivolous and an abuse of the dispute resolution process.

Based on the above, **I dismiss** the tenant's Application **without leave to reapply** pursuant to section 62(4)(c) of the *Act* which states:

Director's authority respecting dispute resolution proceedings

62 (4) The director may dismiss all or part of an application for dispute resolution if

(c) the application or part is frivolous or an abuse of the dispute resolution process.

[my emphasis added]

The tenant has failed to provide sufficient evidence to support his request for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement.

Given the above, **I do not grant** the tenant the recovery of the cost of the filing fee.

Conclusion

The tenant's application is dismissed as it is both frivolous and an abuse of the dispute resolution process.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 5, 2017

Residential Tenancy Branch