



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REZEEN REALTY INC and [tenant
name suppressed to protect privacy]

DECISION

Dispute Codes PSF, MNDCT, FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on December 22, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to provide services or facilities required by tenancy agreement or law;
- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The Tenant as well as the Landlord's agent, M.K., appeared at the appointed time of the hearing and provided affirmed testimony.

The Tenant testified that he served the Landlord with the Application package and documentary evidence on December 28, 2018 by Registered Mail. P.K. confirmed receiving the mailing on December 31, 2018. In return, P.K. testified that he served the Landlord's evidence to the Tenant in person on January 19, 2019. The Tenant confirmed receipt. Therefore, pursuant to Sections 88 and 89 of the Act, I find the Application package and documentary evidence were sufficiently served between the parties for the purposes of the Act.

The Parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order to provide services or facilities required by tenancy agreement or law, pursuant to Section 62 of the Act?
2. Is the Tenant entitled to a monetary order for damage or compensation, pursuant to Section 67 of the Act?

3. Is the Tenant entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties agreed to the following; the tenancy began on August 1, 2018. Rent in the amount of \$1,620.00 is due to the Landlord by the first day of each month, as well as a security deposit in the amount of \$810.00 was paid to the Landlord. A tenancy agreement between the parties was submitted by the Tenant in support.

The Tenant testified that since the start of his tenancy, he has experienced issues surrounding garbage and debris being discarded onto his fifth floor balcony. The Tenant stated that he has found cigarette butts, Kleenex, a lid to a paint bucket and most concerning, a hypodermic needle. The Tenant indicated that this has been an ongoing issue which has resulted in the Tenant and his guests feeling unsafe to use the balcony. The Tenant has provided pictures of the discarded material on his balcony in support.

The Tenant has indicated that the onsite property manager has indicated that this has been an ongoing problem which began prior to the Tenant taking possession of his suite. The Tenant indicated that the property manager suspects who is discarding their garbage on the Tenant's balcony, however, has been unable to take action without it being witnessed firsthand. The Tenant feels as though it is not his responsibility stand guard on his balcony in order to witness someone in the act of discarded their garbage on his balcony.

The Tenant is seeking a permanent solution to the ongoing issue, and states that he has approached the building manager as well as M.K. to discuss potential remedies. The Tenant stated that he has been unable to use his balcony for six months. The Tenant estimates that the balcony is 1/6 of the overall square footage of his rental unit. Therefore, the Tenant is also seeking monetary compensation in the amount of \$3,240.00, which is 1/6 of his rent over the 1 year term of his tenancy.

In response, M.K. stated that he was made aware of the issue on November 15, 2018, at which point he approached the building strata manager as well as the owner of the building to discuss potential remedies. M.K. admits that there has been a slow response from the strata manager in regards to how to best handle this situation.

M.K. testified that there had been discussion around sending out a memo to the suite directly above the Tenant's rental unit to caution them against discarding garbage onto the lower balcony. M.K. was not certain if this actually occurred.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

With respect to the Tenants Application for an order to provide services or facilities required by a tenancy agreement or law, I find that the Tenant has provided insufficient evidence to demonstrate that he no longer has any access to his balcony. While the Tenant chooses to refrain from using the balcony due to the fact that it is littered with debris, does not constitute a loss in service or facility required by the tenancy agreement or law.

In relation to the monetary compensation sought by the Tenant, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Tenant's claim seeking compensation for damage or loss in the amount of \$3,240.00 I find that while there has been insufficient evidence to prove that the Landlord has taken appropriate action against those responsible for discarding their debris onto the balcony of the Tenant's rental unit, I find that the Tenant has not demonstrated that the Landlord has breached any particular section of the *Act*. The

Tenant has also provided insufficient evidence to demonstrate that he has incurred any damages or loss.

I dismiss the Tenant's claim for compensation relating to damage or loss, with leave to reapply should the Landlord not take steps to address the issue of discarded debris on the balcony of the Tenant's rental unit.

Seeing as the Tenant was not successful in their Application, the Tenant is not entitled to the return of the filing fee.

Conclusion

I dismiss the Tenant's application for an order to provide services or facilities required by tenancy agreement or law, without leave to reapply.

I dismiss the Tenant's Application for compensation relating to damage or loss, with leave to reapply should the Landlord not take steps to address the issue of discarded debris on the balcony of the Tenant's rental unit.

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: February 20, 2019

Residential Tenancy Branch