Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDCT, FFT

Introduction

In this dispute, the tenant sought compensation in the amount of $300.00 and recovery of the filing fee in the amount of $100.00 against his former landlord, pursuant to section 67 and 72 of the *Residential Tenancy Act* (the "Act").

The tenant applied for dispute resolution on December 4, 2019 and a dispute resolution hearing was held at 1:30 PM on January 21, 2020. The tenant, a witness for the tenant, and two employees for the landlord attended the hearing. All parties were affirmed, and I gave all parties full opportunity to be heard, to make submissions, and to call witnesses. No issues of service were raised by the parties.

It should be noted that at the start of the hearing, several other participants for an unrelated dispute had called into this hearing. The arbitrator in that hearing was able to find a new teleconference line and hearing before me formally started at 1:36 PM.

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred but have only considered evidence relevant to the issues of this application.

Finally, I note that the legal name of the corporate landlord was corrected and is properly referenced in this decision.

Issues

1. Is the tenant entitled to compensation in the amount of $300.00?

2. Is the tenant entitled to recovery of the filing fee in the amount of $100.00?

Background and Evidence

The tenant testified that the tenancy started in January 2019 and ended on November 30, 2019. On or about November 25, 2019, the tenant had hired a professional cleaner (J.H.) to come and clean the rental unit, before the tenant vacated the rental unit. According to the tenant, the landlord's employee, the building manager (V.S.) showed up and harassed the cleaner. The landlord's employee entered the rental unit without permission on three separate occasions on the day in question.

According to the cleaner, the landlord's employee told the cleaner what to do and how to clean the rental unit. He also told the cleaner that he was not allowed in the building. The cleaner, who is by all accounts a professional cleaner and who appears to know what he's doing, did not appreciate the landlord's employee giving him direction. The building manager told the cleaner he was not allowed in the building. After some confusion, the cleaner spoke to the tenant who spoke to the landlord's property manager. The landlord's property manager then spoke to the building manager (the landlord's employee) who allowed the cleaner back into the building the next day in order to complete the cleaning.

In his testimony, the property manager (C.T.) testified that the tenant had completed an "Information Sheet" (submitted into evidence and referred to) in which it was indicated that the tenant "would appreciate a preliminary meeting with the building manager to discuss what they feel needs to be done or cleaned by [the tenant]." The "YES" answer under this statement was checked, indicating that the tenant wanted a preliminary meeting with the building manager. (I note that the tenant did not dispute this aspect of the landlord's testimony or the evidence.)

The property manager also testified that the tenant texted the building manager (V.S.) at 10:11 AM on November 25, 2019. A copy of the text messages was submitted into evidence, and in which the following dialogue appears (relevant excerpt):

Tenant:	Good morning Mr. [V] My cleaner is coming today Can you meet him today ?
V.S.:	Sure, text me before he arrives about 20 minutes.

Finally, the property manager expressed confusion as to what the tenant was claiming for and explained that clearly the whole issue was one of misunderstanding and miscommunication; the tenant confirmed that he was asking for the cost of the cleaning as damages.

Under cross-examination by the property manager, the tenant stated that “I was a little upset” and “pissed off” about the interaction that had ensued between the building manager and the cleaner, and, with the general inconvenience of the entire incident.

The building manager recounted his version of events, which was that he met the tenant and then the cleaner before the cleaning took place. While he did not directly dispute that he gave direction to the cleaner about how to clean the rental unit, he expressed empathy with why a cleaner “would be upset because that is his business.” He insisted that he was never rude to the cleaner, but that the cleaner was “very abrasive.”

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria to be awarded compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

Regarding the primary “claim,” the tenant submits that he is entitled to $300.00 because the landlord broke the law. Based on the oral testimony and documentary evidence presented, I cannot reach such a conclusion. The tenant has, I find, presented no cogent argument as to how the landlord breached the Act, the tenancy agreement, or the related regulations.

While the landlord’s property manager allegedly “harassed” the tenant’s cleaner, harassment in and of itself (if it did, in fact, occur) — where the harassment does not impede a tenant’s right to possession of a rental unit or with a tenant’s legal rights under the Act — is not a compensable claim. The tenant has not suffered any provable monetary loss, and there is no breach of the Act or tenancy agreement that might give rise to damages, including even nominal damages. This appears to be a case of two personalities clashing (the cleaner apparently felt “harassed” by the building manager who described the cleaner as “very abrasive”). Clearly, these two gentlemen did not “click.” However, a personality clash between a tenant or guest of a tenant and the landlord is not something for which I award compensation. And, it should be stressed that any alleged direction purportedly given by the building manager did not, I find, interfere with the tenant’s legal rights under the Act.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving his claim for damages related to “harassment.”

Regarding the second aspect of the tenant’s claim, the “unauthorized access” by the building manager into the rental unit, I refer to section 29(1)(a) of the Act which states:

> A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies: (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

In this case, the Information Sheet clearly establishes that the tenant gave his permission for the landlord’s building manager to enter the rental unit. While the language in the Information Sheet does not provide explicit permission to physically enter the rental unit (the language would benefit from some clarity), it does establish that there is to be a preliminary meeting “to discuss what they feel needs to be done or cleaned by me” and would imply that entry into a rental unit is intended. A plain language reading of the Information Sheet leads me to conclude that the tenant gave permission for the building manager to enter the rental unit on the day in question. And,

while the Information Sheet itself does not specify a date (again, it would benefit from having greater clarity in this regard), the text conversation between the tenant and the building manager solidifies the date on which the landlord may enter the rental unit.

Based on the above, I find that the landlord's building manager did indeed have permission to enter the rental unit (on all three visits) and as such there is no breach of this section of the Act that gives rise to compensable damages.

Thus, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving his claim for damages based on a breach of the Act.

As the tenant was unsuccessful in his application, I dismiss his claim for recovery of the filing fee under section 72 of the Act.

Conclusion

This application is dismissed without leave to reapply.

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: January 21, 2020

Residential Tenancy Branch