

Is Trying to Collect Unpaid Rent Considered Harassment?

By CD Publications

Illinois: A federal court dismisses a tenant's lawsuit seeking damages against a landlord and its property managers as well as their attorney overall phone calls made in an effort to collect unpaid rent and a letter from the attorney regarding the tenant's security deposit.

The tenants leased an apartment and began complaining to the managers about problems he said he was having in his apartment. When the problems were not addressed "to his satisfaction" by the two managers, he started withholding rent payments.

One of the managers filed an eviction action against him for possession based on the failure to pay rent. The court entered a default judgment against the tenant for possession and unpaid rent after he failed to appear for court.

The tenant filed for bankruptcy protection and vacated the apartment. He did not appeal the state court's decision. But he sent a letter to the manager who sued him demanding she return his security deposit and personal property he left in the apartment.

The tenant threatened to sue the manager and her attorney if his deposit and personal items were not returned. But the tenant said he would "entertain offers to settle the litigation for a decent dollar amount."

The landlord's attorney responded to the tenant's demand and sent him a letter detailing how his security deposit had been applied towards his unpaid rent and repairs. The letter informed the tenant this deposit would not be returned.

The letter contained what the court called a "prominent disclaimer" stating the letter was not to be construed as an attempt to collect the debt, and it instructed the tenant not to send any money to the landlord.

After he received the letter with the security deposit itemization, the tenant sued the managers and their attorney alleging the letter from the attorney and their "harassing" phone calls violated the federal Fair Debt Collections Practices Act (FDCPA). The lawsuit also asserted various state law claims under the city's landlord-tenant statutes.

The federal court dismissed the FDCPA claim for "failure to state a claim" because the "defendants' conduct did not fall within the statute." The two managers were his creditors and not debt collectors, the court rules. In addition, the letter from the attorney was not an attempt to collect a debt, which is required in order to trigger FDCPA protections.

The federal court agreed the letter from the landlord's attorney was "simply an explanation" as to why his security deposit was not returned and not a demand for payment.

The court also refused to exercise supplemental jurisdiction over the remaining state law-based claims and dismissed the entire lawsuit. The tenant appealed the trial court's decision dismissing his lawsuit.

The appellate court agrees with the trial court that the attorney's letter didn't violate the FDCPA. The FDCPA prohibits false, deceptive, or misleading representations in connection with the collection of a debt as well as unfair or unconscionable collection practices by a third party-debt collector.

A letter which informs the plaintiff of the current status of his or her account and does not demand payment is not a communication in connection with the collection of any debt and does not fall within the protections of the FDCPA.

The appellate court agrees the letter “explicitly stated that it was not a collection letter, and it strains credulity to suggest that many persons would view it otherwise.”

The two property managers could not be sued for FDCPA violations since they were not third party debt collectors.

Lesson: The federal courts agree the managers did not violate the FDCPA by trying to collect the unpaid rent. The FDCPA only applies to third parties hired to collect a debt for a creditor. The landlord's attorney did not violate the FDCPA because the letter did not demand payment. It simply explained how the tenant's security deposit was applied. The debt was probably discharged in the bankruptcy anyway, but at least the landlord was able to keep the tenant's security deposit.

Kenneth A. McCready, Plaintiff-Appellant v. Karen Jacobsen, et al., Defendants-Appellees. 2007. U.S. App.

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