



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: O, FF

Introduction

This hearing dealt with the tenant's application for resolution of a dispute between the landlord and the tenants concerning the tenants keeping a pet in their rental unit. Both parties were adequately represented at the hearing and had an opportunity to be heard and respond to the submissions of the other party, including testimony from witnesses.

The Tenant's Application for Dispute Resolution identified the rental unit as the dispute address; however, in the details for dispute section of the application another tenant living in a different rental unit in the same residential building was also identified as an applicant. The tenant identified in the details section of the application did not make her own separate application for dispute resolution. As each tenancy is subject to the terms of their respective tenancy agreements, an Application for Dispute Resolution must pertain to only one rental unit. It is possible for two separate applications to be joined and heard at one hearing where the landlord is the same person and the issue is the very much the same; however, that was not done in this case. Therefore, I must sever the application of the tenants and this decision only applies to the rental unit identified in the applicable section of the Application for Dispute Resolution and identified above. I have considered the testimony of the other tenant that appeared at the hearing to be testimony of a witness.

Issue(s) to be Decided

1. Whether the tenancy agreement was altered after the tenants signed the agreement.

2. Whether the landlord may rely upon the term in the tenancy agreement with respect to the tenants keeping a pet in requiring the tenants to remove the pet from the rental unit.
3. Award of the filing fee.

Background and Evidence

Upon review of the undisputed evidence before me, I make the following relevant findings concerning the tenancy. The tenant appearing at this hearing has resided in the rental unit since May 1, 2004. The residential property was purchased by a new owner who entered into a new tenancy agreement with the tenant and his co-tenant. The tenancy agreement with the new owner was executed by the co-tenants and the owner on May 2, 2006. The tenancy agreement is the standard tenancy agreement generated by the Residential Tenancy Office. The Additional Terms section of the tenancy agreement does not indicate that there is an Addendum attached or additional terms; however, underneath the signature of the owner it says “no pets, no one else to move in”.

Approximately one year ago, the tenants took in an elderly cat. Recently, the landlord named in this decision took over the management of the rental property and the tenants were instructed that keeping a pet was in breach of their tenancy agreement and to remove the cat from their rental unit, otherwise they would be served with a Notice to End Tenancy. The tenant explained that he did not make an application for dispute resolution upon discovering the alteration in the tenancy agreement because at that time they did not have a pet and did not believe the clause to be enforceable by the landlord since other tenants in the building were permitted pets.

The tenant testified that when he and his co-tenant signed the tenancy agreement, there were no additional terms appearing beneath the owner’s signature. Rather, the tenant described how the tenants signed the agreement and the owner kept the

agreement before giving them a copy of the agreement a few days later. Only upon receiving a copy of the tenancy agreement did the tenants observe the statement appearing beneath the landlord's signature.

A former tenant of the residential property appeared on behalf of the tenants and testified that he also signed a tenancy agreement with the owner of the property and that the owner added a clause to the tenancy agreement after he signed it stating that no pets and no smoking were permitted.

Another tenant that currently lives in the same residential building also provided testimony that she is visually impaired and that the owner read the terms of the tenancy agreement to her before she signed it and the tenant does not recall the landlord saying anything about not being allowed to keep a pet. The witness also testified that she was provided a copy of the tenancy agreement she signed but that the landlord then replaced it with another copy and the tenant returned the original copy to the landlord. The tenancy agreement for this witness was submitted as evidence by the landlord and provides "no smoking, no pets, no one else to move in" under the owner's signature.

The tenants provided a notarized affidavit signed by both co-tenants, and both witnesses, that the tenancy agreements they signed with the owner were altered after they were signed to include a clause prohibiting pets.

The property manager testified that the owner had informed the property manager that the owner believed that the clauses appearing beneath her signature were there when the tenants signed their respective tenancy agreements. The property manager also produced the tenancy agreements that existed prior to the tenancy agreements entered into by the owner and those former tenancy agreements did not permit pets.

The tenant acknowledged that pets were not permitted under the terms of the former tenancy agreement but that when the owner purchased the property there was some discussion about permitting pets and that the owner had not provided a definite answer one way or another.

Analysis

Based on the preponderance of evidence before me, I find it more likely than not that the owner, who signed the tenancy agreements in the capacity of the landlord, altered the tenancy agreement after the tenants signed the agreement.

I find that the terms of the former tenancy agreement have no bearing on the terms of the existing tenancy agreement as the existing tenancy agreement replaced the former tenancy agreement in its entirety. As such, the terms agreed upon between the co-tenants and the owner under the tenancy agreement are the terms that are binding upon the parties, so long as the terms are not otherwise unenforceable, unconscionable or inconsistent with the Act.

A term added or altered in a tenancy agreement after it is signed by a party is not enforceable unless both parties to the tenancy agreement have agreed to the change. I have not been provided with sufficient evidence to find that the tenants agreed to any changes to the tenancy agreement after they signed it. Simply because the tenants did not dispute the added clause at an earlier date does not satisfy me that they actually agreed to the change to the tenancy agreement. Rather, I accept the tenant's testimony that they were of the position it was not enforceable since they had not agreed to the term upon signing the tenancy agreement. Therefore, I do not find the tenants agreed to the change to the tenancy agreement and the change made to the tenancy agreement by the landlord is invalid and unenforceable.

Based on my findings, the “no pets” clause is not enforceable against the tenants and keeping a pet is not a basis for the landlord to end the tenancy.

The tenants are awarded the costs for this application. The tenants are authorized to recover the \$50.00 filing fee from the landlord by reducing a subsequent month's rent. Alternatively, the landlord may pay the tenants \$50.00 within 30 days of receiving this decision in satisfaction of this award.

Conclusion

The “no pets” clause contained in the tenancy agreement is unenforceable as the clause was added after the tenants signed the tenancy agreement and the tenants did not agree to the change. The tenants are entitled to recover the filing fee from the landlord.

November 13, 2008

Date of Decision
