



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was scheduled to hear the tenant's application to cancel a Notice to End Tenancy and recover the filing fee paid for this application. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

At the beginning of the hearing I determined that the tenant had not received a Notice to End Tenancy; rather, the tenant had received letters concerning a rent increase and a pet deposit. The details of dispute on the Application for Dispute Resolution indicate the matter under dispute is a rent increase and requirement to pay a pet deposit and I amended the application to show that the tenant is seeking the landlord to comply with the Act, regulations or tenancy agreement.

Issue(s) to be Decided

1. Has the landlord increased the rent in a manner that does not comply with the Act?
2. Is the tenant entitled to recover overpaid rent from the landlord?
3. Does the landlord have the right to seek a pet deposit from the tenant?

Background and Evidence

The tenancy commenced in the summer of 2004 and at that time the rent was set at \$1,400.00 per month and the tenant paid a \$700.00 security deposit. In the next couple of years the rent was increased to \$1,460.00 and then in 2007 or 2008 the rent was increased to \$1,520.00. The landlord served a Notice of Rent Increase upon the tenant for the increase to \$1,520.00. On September 1, 2010 the landlord wrote a letter to the tenant seeking to increase the rent to \$2,100.00. During subsequent verbal discussions, the tenant agreed to pay \$1,570.00 per month starting December 1, 2010. The landlord did not serve the tenant with a Notice of Rent Increase for the increase to \$1,570.00. The tenant has paid rent of \$1,570.00 for the months of December 2010, January 2011 and February 2011.

On December 2, 2010 the landlord verbally requested a pet deposit from the tenant. On December 14, 2010 the landlord wrote a letter to the tenant requiring payment of a pet deposit of \$785.00 by January 15, 2011. On January 16, 2011 the landlord wrote to the tenant advising the tenant to vacate the rental unit by February 14, 2011 due to the tenant's failure to pay the pet deposit.

The tenant is seeking authorization to have the rent returned to \$1,520.00 per month and recover the overpayments of \$50.00 paid for the months of December, January and February 2011.

The tenant also submits that she should not have to pay a pet deposit because she was permitted to have two cats when she entered into the tenancy agreement. One of the two cats has since died but she still has the other cat. The tenant claims the landlord has been fully aware that the tenant has had a cat, and at one time two cats, in the rental unit throughout the tenancy. The tenant provided detailed descriptions of times the landlord was in the rental unit and commented on the cat bowls and even petted the cats.

I noted that neither party had provided a copy of a written tenancy agreement. The tenant testified that she believed she signed a tenancy agreement in 2004 but could not locate a copy of it. The tenant testified that the tenancy agreement did not prohibit her from having pets and that the tenant asked the landlord if she was permitted to have cats when viewing the rental unit and the landlord agreed that she could. The landlord testified that there was no written tenancy agreement and denied giving the tenant permission to have cats.

The landlord also made the following submissions. The landlord issued the September 1, 2010 letter in an attempt to start negotiations for a rent increase with the tenant. The tenant consented to a \$50.00 increase starting December 1, 2010 and rent should remain at \$1,570.00 based on that agreement. Since there is no written tenancy agreement the landlord cannot end the tenancy for breach of a material term regarding the cat; however, the landlord should be permitted to require a pet deposit.

The landlord denied that she was aware that the tenant has had a cat or cats in the unit since 2004. The landlord claims she discovered the tenant had a cat in December 2010 when she saw it through the tenant's window.

The tenant had provided two written statements as evidence that the tenant has had a cat in the unit since the tenancy began. One letter was written by a neighbour and one

letter was written by the tenant's co-worker. The tenant was prepared to call in her two children as witnesses to keeping of a cat in the unit. The landlord's responded by stating that the tenant must have been hiding the cat from her since the tenancy began.

Analysis

Sections 41 through 43 of the Act and sections 22 and 23 of the Residential Tenancy Regulation provide for rent increases. The amount of a rent increase is limited to the amount permitted by the Residential Tenancy Regulation (which was 3.2% for 2010 and 2.3% for 2011) or the amount agreed to by the tenant in writing, or the amount authorized by the Director under a landlord's application for an additional rent increase. The Act also provides that any rent increase requires the landlord to give the tenant a Notice of Rent Increase in the approved form at least three months in advance.

In this case, the landlord has increased the rent more than the amount allowed by the regulations and the landlord did not have the tenant's written consent for a greater amount. Nor did the landlord have the authorization of the Director to impose an additional rent increase.

In addition to collecting a rent increase that exceeded the allowable amount, the landlord did not serve the tenant with a Notice of Rent Increase at least three months in advance.

In light of the above findings, the landlord has not complied with the requirements of the Act with respect to increasing the rent. Pursuant to section 43(5) of the Act the tenant is entitled to recover the rent increase from rent otherwise payable to the landlord. Based upon the evidence before me, I am satisfied the tenant has overpaid \$150.00 in rent since December 2010 and I authorize the tenant to deduct that amount from her next month's rent payment. Further, the tenant is not required to pay rent in excess of \$1,520.00 per month until such time the landlord legally increases the rent.

The parties are informed that the landlord remains at liberty to issue a Notice of Increase that complies with the Act or make an application for an additional rent increase with the Residential Tenancy Branch.

With respect to a pet deposit the Act limits the times when a landlord may require a pet deposit. A landlord must not require a pet deposit except when the parties enter into a tenancy agreement, or, if the tenant acquires a pet during the term of the tenancy, when the landlord agrees that the tenant may keep the pet on the property.

At issue is whether the tenant acquired a pet during the tenancy. The tenant has submitted she has had pets since tenancy agreement was entered into with the landlord's knowledge and consent. The landlord denies the tenant's version of events.

Upon consideration of all of the evidence before me, I prefer the tenant's version of events over that of the landlord's. The tenant provided detailed descriptions as to conversations the landlord and tenant had about the tenant's cat(s), who was present on those occasions and the landlord observation of the cats and cat bowls in the tenant's unit. In addition, the tenant had two written statements from other parties attesting to the tenant have cats in the unit since the tenancy began and willingness to call other witnesses to confirm the tenant has had cats in the unit since the tenancy began. In contrast the landlord denied seeing any cats or cat bowls and claims the tenant must have been hiding the cat(s) from her since 2004. I find it unlikely the tenant could hide one or two cats from the landlord since 2004. Therefore, I find the tenant's evidence outweighs the landlord's denial of having any knowledge of a pet in the unit until December 2010.

In light of the above, I accept that the landlord knew of the pets when the tenancy commenced and did not require the tenant to pay a pet deposit at that time. Therefore, I find the landlord is now precluded from requiring a pet deposit from the tenant for the cat the tenant currently has. If the tenant acquires a new cat the landlord may require a pet deposit.

I award the tenant the cost of filing this application and the tenant may deduct \$50.00 from her next month's rent.

Conclusion

I have authorized to deduct a total of \$200.00 from her next month's rent in satisfaction of this application. The tenant is not required to pay monthly rent in excess of \$1,520.00 until such time the landlord legally increases the rent. The tenant is not required to pay a pet deposit for the cat she currently has residing in the 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 11, 2011.

Residential Tenancy Branch