DECISION

Dispute Codes: MNDC, O and FF

Introduction

Application was made by the tenants on March 13, 2011 seeking a Monetary Order for $25,000 comprised of $22,759.10 for loss of quiet enjoyment resulting from the landlord's alleged breach of the rental agreement, $2,180.90 in moving expenses and $60 for cleaning of the rental unit on commencement of the tenancy. In addition, the tenants seek recovery of the filing fee for this proceeding.

Issues to be Decided

This application requires a decision on whether the tenants are entitled to a Monetary Order for the claims submitted taking into account whether damage or losses have been proven, whether they are attributable to the landlord and whether the applicants have taken reasonable measures to minimize the claimed losses.

Background and Evidence

This tenancy began on June 1, 2003 and ended on October 31, 2010. Rent was $1350 at the beginning of the tenancy rising to $1,509 at its conclusion and the landlord held a security deposit of $675 which is not at issue in the present application.

During the hearing, the tenants gave evidence that the application was based on a breach of the rental agreement by the landlord in permitting pets in the rental building. Over and above the standard pet clause in the rental agreement which states that pets were not permitted unless there was written consent to the contrary, the parties had also initialled the notation, "No pets," on the first page of the rental agreement.

The tenants stated that in spite of this clear agreement that the building did not permit pets, they had as early as the spring of 2004 seen pets in the building. The tenants cited having see a pet bird, a cat and a lap dog. They said the issue of pets had been

critically important to them as they are sensitive to dander and fur. The tenants also reported incidents of sharing an elevator with other persons accompanied by pets.

The landlord stated that his company has owned the building since before the subject tenancy began and that the “no pets” policy has always been and remains strictly enforced to the extent that even visitor’s pets are strongly discouraged. He stated that he had never received written notice from the tenants of their complaints, and if they had reported the claimed indifference to their complaints by the building caretakers, he would have acted immediately. The landlord stated that he would be inspecting three rental units cited by the applicant tenants as soon as the 24-hour notice requirement would permitted.

The caretaker gave evidence that he has no knowledge of pets in the building. The tenants stated they did not know the caretaker who was present, but both he and the landlord gave evidence that he was the primary caretaker and had worked in the building for all of the tenancy.

Analysis

The “no pets” notation on the first page of the document is somewhat ambiguous in meaning either the applicant tenants did not have permission to have a pet or no pets were not permitted in the building. However, if I accept the notation as meaning as a building wide prohibition and it is a material term of the rental agreement, I must invoke the principle that materiality diminishes over time if the term is not upheld.

The tenancy began in the summer of 2003. By spring of 2004, the tenant s stated that they saw a pet and had cause to believe the landlord was in breach of the agreement. If they had at that time provided that landlord written advice that they considered the landlord to be in breach of a material term, they could have made application for remedy under the *Residential Tenancy Act*.

The tenants stated that they had not done so because they could not afford to move at the time. However, they could have sought moving expenses in a contemporary application as they have in the present one.

I find it patently unreasonable that the tenants have now made application for compensation for a breach of the rental agreement occurring six or seven years after it was first perceived.

I must find that by their delay, the tenants have failed to take reasonable steps to minimize their claim damage or loss as required under section 7(2)(b) of the *Act.*

Similarly, I find it unreasonable that the tenants have submitted a claim for $60 for cleaning they did in June of 2003.

For these reasons, the application is dismissed in its entirety without leave to reapply and the tenants remain responsible for their own filing fee.

Conclusion

This application is dismissed without leave to reapply.

June 23, 2011