



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, MNDC, OLC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord carries on its business on August 27, 2014.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to levy an additional charge for the tenant to have a pet?
- b. Whether the tenant is entitled to a monetary order and if so how much?
- c. What is the current rent?
- d. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

In February 2013 the tenant agreed with the landlord to rent the rental unit on a one year fixed term basis for \$680 per month. However, the landlord demanded and the tenant agreed to pay a \$35 per month additional charge for being permitted to keep her cat. The tenant produced

copies of advertisements in which the landlord indicates that “cats are okay, \$35 per month extra. Sorry no dogs.”

In February 2013 the female tenant and the landlord signed a written tenancy agreement that provided the tenancy would commence on March 1, 2013, end on February 28, 2014 and the tenant would have to vacate after that time. The rent was indicated to be \$680 per month. However, that was crossed out and replaced by \$715. Another term in the agreement provided that the landlord could charge an additional \$75 per month for an additional occupant. The tenant paid a security deposit of \$340 and a pet damage deposit of \$340 at the start of the tenancy.

On January 30, 2014 the parties signed a second written tenancy agreement that provided the tenancy would start on March 1, 2014 and end on February 28, 2015 at which time the tenant would have to vacate. The tenancy agreement also included a provision that the tenant would have to pay \$75 for an additional occupant. The tenancy agreement refers to the security deposit and pet damage deposit. The rent is increased by \$10 per month to \$725.

The tenant paid the rent including the \$35 additional pet charge since she moved in or for the last 20 months. She now submits that the landlord does not have a right to charge an extra charge as a pet fee. The tenant seeks reimbursement of the \$35 pet charge multiplied by the 20 months she has paid it for a total of \$700.

Relevant Legislation:

The definition of “rent” and “pet damage deposit” is found in section 1 of the Act.

"rent" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:

- (a) a security deposit;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2) (k) [*regulations in relation to fees*];

"pet damage deposit" means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for damage to residential property caused by a pet, but does not include

- (a) a security deposit, or
- (b) a fee prescribed under section 97 (2) (k) [*regulations in relation to fees*];

Section 5 and 6 of the Residential Tenancy Act provides as follows:

This Act cannot be avoided

- 5** (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
- (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Enforcing rights and obligations of landlords and tenants

- 6** (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.
- (2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58
- (1) [*determining disputes*].
- (3) A term of a tenancy agreement is not enforceable if
- (a) the term is inconsistent with this Act or the regulations,
 - (b) the term is unconscionable, or
 - (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Section 18 to 20 of the Residential Tenancy Act provides as follows:

Terms respecting pets and pet damage deposits

- 18** (1) A tenancy agreement may include terms or conditions doing either or both of the following:
- (a) prohibiting pets, or restricting the size, kind or number of pets a tenant may keep on the residential property;
 - (b) governing a tenant's obligations in respect of keeping a pet on the residential property.
- (2) If, after January 1, 2004, a landlord permits a tenant to keep a pet on the residential property, the landlord may require the tenant to pay a pet damage deposit in accordance with sections 19 [*limits on amount of deposits*] and 20 [*landlord prohibitions respecting deposits*].
- (3) This section is subject to the rights and restrictions under the *Guide Animal Act*.

Limits on amount of deposits

- 19** (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.
- (2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Landlord prohibitions respecting deposits

- 20** A landlord must not do any of the following:
- (a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement;
 - (b) require or accept more than one security deposit in respect of a tenancy agreement;
 - (c) require a pet damage deposit at any time other than
 - (i) when the landlord and tenant enter into the tenancy agreement, or
 - (ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property;
 - (d) require or accept more than one pet damage deposit in respect of a tenancy agreement, irrespective of the number of pets the landlord agrees the tenant may keep on the residential property;
 - (e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

Analysis:

This is a difficult case. While there is no provision in the Residential Tenancy Act that prohibits an additional charge for pets, in my view such a charge is inconsistent with the Act and is not enforceable by virtue of section 6 of the Act for the following reasons:

- The Residential Tenancy Act attempts to balance between the rights of tenants and the rights of landlords. It clearly limits provisions parties can put into their tenancy agreements.
- Section 18 to 20 of the Act gives the landlord the right to prohibit pets or restrict the kind or number of pets. It also goes on and provides that a landlord may require the tenant to pay a pet damage deposit. However, the Act provides that a landlord can only charge up to a maximum of ½ month rent as a pet damage deposit.

- The Act does not authorize or permit the landlord to make an extra charge for a pet although in other situations an extra charge is permitted. For example the Act permits an extra charge for an additional occupant..
- In my view the purposes of section 18 to 20 would be subverted if the landlord were permitted to make an extra charge for a pet. The Act limits the landlord to charging $\frac{1}{2}$ of a months rent as a pet damage deposit. This limitation is a protection for the tenants. This purpose would be totally defeated if the landlord can charge an additional monthly charge for pets.
- In this case the tenant has paid a pet damage deposit of \$340. In addition she has paid a further charge of \$35 per month totalling \$700. This is inconsistent with the purposes of the Act.
- The definition of “rent” does not include money paid for the purposes of allowing a pet to live with the tenant.
- I do not accept the evidence of the landlord that the landlord is not charging an additional fee for pets but rather has different charges for different tenancy situation. This testimony is inconsistent with the first tenancy agreement and the advertisements that were placed. The landlord had the opportunity to present evidence of other rental units in the building who are paying the same rent but do not have pets. The landlord did not present any such evidence.
- I do not accept the submission of the landlord that this is a fixed term tenancy and he can charge whatever he wants for rent and the tenant is free to agree or not. The landlord cannot make demands that are inconsistent with the Residential Tenancy Act.

Monetary Order:

I determined the tenant is entitled to recover \$35 per month multiplied by 20 months (March 1, 2013 to October 31, 2014) for a total of \$700.

I determined the \$10 per month increase from the first to the second fixed term tenancy agreement is a valid increase. I determined monthly rent commencing November 1, 2014 to the end of fixed term is \$690 (\$725 - \$35 pet charge = \$690) plus the additional person charge of \$75 for a total of \$765.

It is unclear from the materials whether the tenant has agreed to an additional legal charge levied by the landlord. If the tenant has made such an agreement they are obliged to follow through on it.

Conclusion

I ordered the landlord(s) to pay to the tenant the sum of \$700 plus the sum of \$50 in respect of the filing fee for a total of \$750. I further ordered that the monthly rent including the \$75 per month additional person charge is \$765 per month.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: October 20, 2014

Residential Tenancy Branch

