Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, CNC, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- an Order of Possession for cause, pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for the application from the tenants, pursuant to section 72.

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated April 13, 2015 ("1 Month Notice"), pursuant to section 47; and
- authorization to recover the filing fee for the application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses.

Both parties confirmed receipt of each other's application for dispute resolution hearing packages ("Tenants' Application" and "Landlord's Application"). In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other's application.

At the outset of the hearing, the tenants confirmed that they would be vacating the rental unit on May 31, 2015. The tenants confirmed that they wished to withdraw their application to cancel the landlord's 1 Month Notice. The landlord confirmed that she wished to withdraw her application for an order of possession for cause. Accordingly, these portions of each party's application are withdrawn.

Issues to be Decided

Is the landlord entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

Both parties agreed that this tenancy began on March 1, 2015 for a fixed term of one year, after which it transitioned to a month-to-month tenancy. Monthly rent in the amount of $2,650.00 is payable on the first day of each month. A security deposit of $1,325.00 and a pet damage deposit of $800.00 were paid by the tenants. The landlord confirmed that she still retains the tenants' security deposit but that she never cashed the tenants' cheque for the pet damage deposit. Both parties provided copies of the written tenancy agreement with their applications.

The landlord seeks a monetary order of $1,000.00 from the tenants for strata fines that she says she has to pay on behalf of the tenants. The landlord testified that the tenants brought in one dog to the rental unit that exceeded the height and weight restrictions according to the strata bylaws. The landlord stated that the tenants were restricted to two dogs of not more than 30 pounds each in weight and not more than 20 inches each in height. The landlord indicated that the tenants breached the strata bylaws and the tenancy agreement.

The tenants indicated that they declared their two dogs from the beginning of this tenancy, as they never tried to hide this information from the landlord. The tenants stated that they chose this rental unit because it was pet-friendly and they provided a detailed description regarding their dogs in their tenancy application and in their email to the landlord about viewing the rental unit. The tenants also provided a copy of the landlord's advertisement for this rental unit indicating "pets allowed." No restrictions are noted on this advertisement. The tenants also provided a copy of their email, dated February 5, 2015, indicating that they have two dogs, including a "9 year old mid sized dog...very well trained and accustomed to apartment living. Totally understandable if that's a…no…" The tenants stated that the concierge at the rental building saw them walking their dogs every day and they did not try to hide their dogs. The landlord stated that it was the concierge that informed her that the tenants had an oversized dog in the rental unit.

The landlord stated that the rules regarding pets were contained within the tenancy agreement, when she wrote this information in herself. The tenants claimed that the landlord handwrote this information in after they signed the tenancy agreement on February 7, 2015, and before the landlord gave them a copy on March 16, 2015. The tenants stated that they did not question the landlord about changing the tenancy agreement without their knowledge or permission, until March 28, 2015. They indicated that they did not tell the landlord right away because she had a strata corporation hearing regarding their dogs on March 17, 2015 and they did not want to anger her before the results were obtained on March 27, 2015.

Both parties provided printouts of a number of text messages between the parties, regarding the oversized dog in the rental unit. The landlord indicated that she also had verbal conversations with the tenants about the dog. The landlord provided a copy of a letter, dated March 11, 2015, from the strata corporation to the landlord, indicating that the tenants are violating the strata bylaws with their oversized dog. The letter warns that strata bylaw violation fines will be issued if the dog is not removed within 30 days. The landlord indicated that the tenants provided her with a doctor's note that the dog was an emotional support dog and that she presented this letter to the strata corporation. The landlord provided a copy of a letter, dated April 1, 2015, to the tenants, stating that the strata corporation had not accepted the tenants' application to have the dog declared as an emotional support dog, which would likely have allowed the dog to stay in the rental unit despite the height and weight restrictions. The letter further states that a certificate for a guide dog would need to be obtained by the tenants if they wished to make this application. The letter warns that the tenants have until April 11, 2015 to remove the dog before future action would be taken by the landlord and the strata corporation.

The landlord provided a copy of a letter, dated April 27, 2015, from the strata corporation to the landlord, which imposed fines of $200.00 per week for the weeks of April 12 and 19 and any following weeks of violation. The landlord indicated that she is willing to pay for the April 2015 strata fines on behalf of the tenants and she is not seeking the $400.00 charged for that month. The tenants indicated that the landlord apologized to them for being unaware of these bylaws and that she agreed to pay these April 2015 fines because of her mistake. The landlord claims that she is only seeking $1,000.00 in strata fines for the five weeks in May 2015.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced

here. The principal aspects of the landlord's claim and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenants caused her a loss in strata fines by having pets in the rental unit.

To prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

The landlord did not provide a letter from the strata corporation that shows that she was charged for strata fines for May 2015. The landlord stated that she has not paid any strata fines on behalf of the tenants for April or May 2015. Therefore, I find that the landlord has failed to provide documentary evidence to show that the loss exists or the actual amount of the loss; namely, that she was charged $1,000.00 in strata fines for May 2015 due to the tenants' dog being in violation of the strata bylaws.

The landlord did not provide a copy of the tenancy agreement to the tenants within 21 days after it was signed, as per section 13(3) of the *Act*. The landlord did not provide a copy of the strata bylaws to the tenants at any time during this tenancy. The landlord did not attach the strata rules regarding pets to the tenancy agreement, despite the fact that it specifically states in her tenancy agreement that any rules regarding pets are to be in writing, signed by the tenants and attached to the tenancy agreement.

Regardless of the time as to when the information about the pets was included in the tenancy agreement, as the tenants claim that the landlord added the information in after they signed the agreement, the landlord did not perform an inspection of the tenants'

two dogs when she collected the pet damage deposit, as per section 23(2) of the *Act*. If the strata bylaws were so stringent regarding the height and weight of dogs and the fines were so high at $200.00 per week for breach of these bylaws, it was incumbent upon the landlord to ensure that the pets conformed to the strata bylaws for the pet damage deposit she was collecting. The landlord stated that she trusted the tenants and did not perform a pet inspection because she had never performed an inspection with previous tenants. The landlord indicated that the strata bylaws regarding pets had changed so she was unsure of the exact restrictions. Yet, the landlord testified that the bylaws changed approximately eight years ago, which I find is ample time for the landlord to familiarize herself with the changes, particularly given the serious consequences of the $200.00 per week fine for violations.

By collecting the pet damage deposit, I find that the landlord accepted the tenants' dogs into the rental unit and that she waived her right to enforce the strata bylaws against the tenants' oversized dog. Although the landlord did not cash the pet damage deposit cheque, she still accepted it from the tenants and she did not return it to the tenants at any time prior to this hearing. The tenants claim that they were not told about a pet damage deposit until they started to write post-dated rent cheques to the landlord. The landlord collected this deposit on February 7, 2015, well before this tenancy began on March 1, 2015. I find that the landlord did not provide sufficient notice to the tenants at the beginning of this tenancy, that dogs were restricted in height and weight as per the strata bylaws. The landlord was given notice about the tenants' dogs by way of their tenancy application. The tenants also provided notice in their email to the landlord indicating that they had a 9 year old mid-sized dog and that they would understand if the landlord refused to rent the place to them on this basis.

I also find that the landlord did not minimize her losses as required by section 7(2) of the *Act*, as she failed to provide sufficient notice of the bylaws to the tenants, failed to perform an inspection of the dogs, and failed to take immediate action to evict the tenants. Although the tenants moved into the rental unit on March 1, 2015, the landlord waited until April 13, 2015 to issue the 1 Month Notice to evict the tenants. Further, the landlord filed her application more than two weeks later on April 28, 2015, after receiving the tenants' application, as she notes that her application is a cross-reference to the tenants' application file number in the "details of the dispute" section of her application.

Therefore, on a balance of probabilities and for the reasons stated above, I dismiss the landlord's claim for a monetary order of $1,000.00 for strata fines from the tenants.

As the landlord was unsuccessful in her application, I find that she is not entitled to recover the $50.00 filing fee from the tenants.

As the tenants withdrew their application to cancel the 1 Month Notice, I was not required to make a decision on the merits regarding their application. Accordingly, I find that the tenants are not entitled to recover the $50.00 filing fee for their application from the landlord.

Conclusion

The tenants' application to cancel the landlord's 1 Month Notice is withdrawn. The tenants' application to recover the filing fee is dismissed.

The landlord's application for an order of possession for cause is withdrawn. The remainder of the landlord's application is dismissed without leave to reapply.

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: May 27, 2015

Residential Tenancy Branch