



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KLAHANEE PARK HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

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Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on August 19, 2016 (the "Application"). The Tenant seeks the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order compelling the Landlord to comply with the *Act*, the regulations or a tenancy agreement;
- an order granting recovery of the filing fee; and
- other unspecified relief.

The Tenant attended the hearing on her own behalf and was assisted by her mother, L.M. The Landlord was represented at the hearing by T.A. All parties giving oral testimony provided a solemn affirmation.

On behalf of the Landlord, T.A. testified that no evidence was received from the Tenant. The Tenant stated during the hearing that her documentary evidence was submitted to the Residential Tenancy Branch but was not served on the Landlord. The Tenant's documentary evidence was not present in the file during the hearing. Accordingly, the Tenant's documentary evidence has been given no weight in this Decision.

The Landlord's oral testimony and documentary evidence confirmed the Tenant received the Landlord's evidence package on September 7, 2016. I find that the Tenant received the Landlord's evidence package on that date.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to an order compelling the Landlord to comply with the *Act*, the regulations or a tenancy agreement?
2. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The Tenant lives in the rental unit with her children. They have a pet cat, which she testified has lived with them for approximately three years. The Tenant seeks an order permitting her to keep her cat.

The Tenant provided oral testimony confirming that, in November 2013, the property manager at the time conducted a one-day pet registration in the amenity room of the building. Tenants who had pets in their rental units contrary to the tenancy agreements in place were required to register their pets with the Landlord by providing a photograph of the pet and pay a pet damage deposit.

The Tenant testified she was unable to register her cat in person as she was away from the building on the day of the registration. However, she testified that she submitted an email to the previous property manager, including a photograph of her cat. She acknowledged she did not pay a pet damage deposit.

The registration process described by the Tenant was confirmed in a letter from the Landlord to the Residential Tenancy Branch, dated September 27, 2016, which stated:

Tenants who were allowed to keep their unapproved pets were required to submit a pet deposit, and have a picture of their pet taken by the prior administrator. This tenant claims that she “sent an email to the prior Administrator with a picture of the pet”. There is no documentation of this in her file. If she had been given permission to keep this pet then he would have required a pet deposit and all of this would have been documented in her file (This is the case for 12 other tenants who currently have pets).

Tenant claims she sent the prior Administrator an email, and that he informed her that her cat would be registered, however, she has not provided proof of such approval.

[Reproduced as written.]

As indicated in the Landlord's letter, there was no evidence in support of the Tenant's claims in the Landlord's file. The Landlord now wishes to enforce the pet clause contained in the tenancy agreement.

The Landlord submitted a copy of the tenancy agreement into evidence. Clause 12(c) of the tenancy agreement addresses pets as follows:

Except for guide animals, the tenant may not have a cat or dog in the rental unit. The tenant may keep fish, one bird, or one small caged mammal. If the tenant has a pet, the tenant agrees to abide by the rules and regulations of the landlord with respect to pets, as amended from time to time.

[Reproduced as written.]

The Landlord has taken steps to enforce the tenancy agreement. In a letter dated July 22, 2016, the Landlord's agent advised the Tenant that she would have to find a new home for the cat. This letter was followed up by a second letter, dated July 27, 2016, giving the Tenant until August 31, 2016 to find a new home for the pet.

The Tenant responded to the Landlord's letters in writing. In a letter dated July 31, 2016, included with the Landlord's documentary evidence, the Tenant wrote:

...I was given permission by [the previous property manager], to keep my cat. He stated he would put this in my file so I could be "grandfathered" as a pet owner along with a number of other residents who had similar issues. In November of 2013, [the previous property manager] sent a notice to all pet owners that "all pets must be registered at the office before December 15, 2013". On Saturday, November 23, 2013 they provided this day for tenants to collectively register their pets in the amenity room and they would take pictures. I was not able to attend this day so I e-mailed my registration along with a picture of my cat. I was informed by [the previous property manager] that my cat would be

registered. I have proof on my phone that I sent this picture and registration.

[Reproduced as written.]

The Landlord's agent highlighted the lack of documentary evidence from the Tenant in support of the claims made by the Tenant as part of her oral testimony.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 62 of the *Act* permits me to make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with the *Act*, the regulations or a tenancy agreement.

Further, Residential Tenancy Branch Policy Guideline 28 provides guidance with respect to pet clauses in tenancy agreements. It states:

In some cases a landlord may know of a pet being kept by a tenant in contravention of a pets clause and do nothing about it for a period of time. The landlord's mere failure to act is not enough to preclude him or her from later insisting on compliance with the pets clause. However, a delay may indicate that the pets clause is not considered by the landlord to be a material term of the tenancy agreement.

As well, if a landlord is aware of the breach of a pets clause and does not insist on compliance and does something which clearly indicates that the pet is acceptable, the landlord may be prohibited from ending the tenancy for that breach. This is called "waiver". It is important to note that it is not a waiver of the pets clause itself, but only a waiver of the landlord's right to terminate the lease for that particular breach.

Where a landlord makes a clear representation to the tenant that the pet is acceptable, the landlord may later be prevented from claiming the pets clause has been breached.

It is always acceptable and advisable for the parties to write down and sign an agreement that pets or a certain pet is acceptable despite a pets clause in the tenancy agreement.

[Reproduced as written.]

I find that the Tenant's cat has lived in the rental unit for approximately three years, but that the Tenant did not complete the registration process to have her cat "grandfathered" in November 2013.

By issuing the letters dated July 22 and 27, 2016, the Landlord took steps to enforce the pets clause contained in the tenancy agreement. I find that, in accordance with Policy Guideline 28, the Landlord is not prevented by the passage of time from enforcing the tenancy agreement, and that there is insufficient evidence before me to conclude the Landlord has waived entitlement to enforce the pets clause.

Further, I find that the Tenant has provided insufficient evidence to satisfy me that she is entitled to an order permitting her to keep her cat in the rental unit. As acknowledged by the Tenant, she did not complete the registration process by paying a pet damage deposit. As a result, the Tenant's Application is dismissed, without leave to reapply.

As the Tenant has not been successful, I decline to award recovery of the filing fee.

Conclusion

The Tenant'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: October 11, 2016

Residential Tenancy Branch

