Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, O, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought an Order that the Landlord comply with the *Residential Tenancy Act,* the *Residential Tenancy Regulation,* and the tenancy agreement and to recover the filing fee paid for his application.

Both parties appeared at the hearing. The Landlord was represented by the property manager, D.H., who gave affirmed testimony. The Tenant appeared on his own behalf. Both parties were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Landlord be ordered to comply with the *Residential Tenancy Act,* the Regulation or the tenancy agreement, by allowing the Tenant to keep a dog in the rental unit?

2. Is the Tenant entitled to recovery of his filing fee?

Background and Evidence

The case before me involves a 21 year long tenancy. The Tenant testified that he moved into the rental unit November 1, 1995. A copy of the tenancy agreement was provided in evidence, although the Tenant stated until he commenced these proceedings he did not have a copy of his agreement, having misplaced it some years ago. The Tenant stated that currently pays $680.00 in monthly rent which includes a parking stall.

Clause 18 of the tenancy agreement provides as follows:

> 18. **PETS.** Having regard to the enjoyment, quiet possession and health requirements of other occupants in the residential property, as well as the nature of the property, the Tenant shall not keep, or allow to be kept, any animals or pets, domestic or wiled, fur bearing or otherwise, **unless specifically permitted in writing by the Landlord.**

The Tenant testified that despite the above clause, he had a dog for 8 years of his tenancy, and that his previous dog, L., passed away October 2015. The Tenant testified that he then got another dog, H., on June 26, 2016. He confirmed that both dogs are similar shepherd-cross breeds. Although not provided in evidence, during the hearing he referred to a Canada Customs document confirming June 26, 2016 as the date his current dog, H., was brought into Canada.

The Tenant testified that when he got H, he did not obtain written permission from the Landlord as at that time there were four other dogs in the building and it was his information that those renters also did not have permission.

The Tenant further testified that during the eight years he had a dog at no time did the Landlord or the Management tell him he was not permitted to have a dog. The Tenant stated that approximately fifteen years ago the current management company took over management of the building such that at all material times they were aware that he had a dog.

The Tenant further stated that he did not seek permission from the Landlord for H. as he was doing as all other tenants have done in the past. He also stated that to his knowledge other tenants have cats and iguanas and he was not aware that the Landlord had a strict species specific “no dog” policy. The Tenant testified that to his knowledge there are approximately 45 units in the building in which the rental unit is located and that there are a total of four dogs in the building.

Introduced in evidence by the Tenant was a memo from N.P. the Building Manager, dated March 6, 2013 which reads as follows:

> *"…*
>
> *TO: ALL TENANT WHO OWN OR SIT DOGS.*
>
> *PLEASE BE REMINDED THAT, AT [NAME OF RENTAL BUILDING], ALL DOGS MUST BE ON A LEASH AT ALL TIMES WHEN ON COMMON PROPERTY.*
>
> *IT IS ALSO MANDATORY, FOR HEALTH AND OTHER REASONS, TO CLEAN UP AFTER YOUR DOG. IT IS NOT THE RESPONSIBILITY OF MANAGEMENT TO DO THIS FOR YOU. PLEASE SHOW CONSIDERATION FOR YOUR NEIGHBOURS AND MANAGEMENT BY BEING A RESPONSIBLE PET OWNER.*
> *…*

The Tenant also introduced in evidence a letter dated July 4, 2016 from D.H. to the Tenant wherein D.H. writes as follows:

> "*…*
> *This is to inform you that I have received 2 complaints regarding continuous barking and whining from a dog that is apparently in your suite. As you may or may not be aware, [name of rental building] does not permit tenants to keep dogs in their suite while living in the building. While you may have had a dog before, this does not mean that you are permitted to own a new dog now. therefore, if you have not already done so, I am requesting that you have the dog removed from the suite immediately if you wish to continue living at [name of rental building].*
> *…"*

The Tenant stated that the first time he was made aware that the Landlord had a strict no dog policy was when he received a memo dated July 26, 2016. This memo was introduced in evidence and reads as follows:

> *"…*

2. ***Dogs—****The owners of [name of rental building] have made it abundantly clear that they do not want to have dogs in the building. All tenancy agreements within the past few years have a "No Pet" clause and this is non-negotiable. However, allowances have been made for tenants, who prior to this mandate have had or currently have a dog, to allow that tenant to keep that dog until either the tenant vacates the premises or the dog dies. If the dog dies or the dog owner relocates the dog, permission to replace the dog with another one will not be granted; there are no exceptions.*
   …"

The Tenant stated that he did not have a copy of his tenancy agreement until he received the Landlord's materials in the course of this application as it has been 21 years since his tenancy began and he had misplaced his tenancy agreement.

While smoking was not an issue before me, the Tenant points out that the July 26, 2016 memo also communicates that the Landlord has a strict no smoking policy, yet his tenancy agreement makes no mention of smoking.

The Tenant stated that if he is unsuccessful with his current application he will find another home for his dog while he continues to look for a residence to purchase. He stated that with new rules regarding mortgage eligibility he is not certain what he can afford in terms of purchasing a property.

D.H. testified on behalf of the Landlord. He confirmed that he has been the property manager since July 2009.

D.H. stated that he was not aware that the Tenant had a dog for approximately eight years. D.H. confirmed that he does not live in the same building as the Tenant and is an off-site property manager. D.H. testified that the resident manager, N.B. was aware the Tenant had a dog.

When I asked the Landlord whether the resident manager, N.B., by being aware the Tenant had a dog for eight years implicitly gave permission to the Tenant to have a dog, D.H. responded "I can't answer that".

D.H. stated that it is the Landlord's position that the Tenant is not permitted to have a dog, and noted that the Tenant admitted in his testimony that he did not have written permission to have his dog.

D.H. stated that he was not aware how many renters had dogs, but that he was willing to accept the estimate of the Tenant that approximately four other renters have dogs.

D.H. further confirmed that he sent three letters to the Tenant regarding the dog and the Tenant did not respond to the letters until he filed this application. D.H. stated that the Landlord may have been willing to work with the Tenant regarding the issue had he responded, but found it off-putting that the Tenant simply brought forward this application.

In reply the Tenant stated that he was home when the first notice (July 4, 2016) was provided and the Landlord "stuffed the notice in the door jam" rather than speaking with him directly. The Tenant stated that he decided that the best way to deal with this would be to apply for Dispute Resolution and keep his distance. He stated that following the letter, he did speak with N.B., the resident manager, and she said she would contact D.H. He stated that N.B. did not follow up with this conversation and the next communication he received was the Memo of July 26, 2016.

The Tenant also stated that D.H.'s testimony that he was not aware that he had a dog previously was not correct as he wrote in the letter dated July 4, 2016 "while you may have had a dog before.

Analysis

The Tenant brings forth his application pursuant to section 62 of the *Residential Tenancy Act,* which reads as follows:

> **Director's authority respecting dispute resolution proceedings**
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> **62** (1) The director has authority to determine
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> (a) disputes in relation to which the director has accepted an application for dispute resolution, and
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> (b) any matters related to that dispute that arise under this Act or a tenancy agreement.
>
> (2) The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.
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> (3) The director may 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 this Act, the regulations or a tenancy agreement and an order that this Act applies.
>
> (4) The director may dismiss all or part of an application for dispute resolution if
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> (a) there are no reasonable grounds for the application or part,

> (b) the application or part does not disclose a dispute that may be determined under this Part, or
>
> (c) the application or part is frivolous or an abuse of the dispute resolution process.
>
> (5) [Repealed 2006-35-86.]

The Tenant acknowledges that his written tenancy agreement includes a clause which requires him to seek the written permission of the Landlord to have a dog. He testified that he misplaced his agreement many years earlier, as it was signed some 21 years ago. He further submits that the Landlord did not strictly enforce this clause as numerous other renters also have dogs. More importantly, he argues that the resident property manager, N.P., was aware he had a dog for eight years, and did not, at any time, tell him that he was not permitted to have his dog.

N.P. did not appear at the hearing to dispute the Tenant's claims.

D.H. appeared on behalf of the Landlord and submitted that the Tenant is not permitted to have a dog as he failed to seek the Landlord's written permission. In this regard, he submits the Landlord is relying on a strict interpretation of the tenancy agreement.

After careful consideration of the evidence before me, the testimony of the parties and on a balance of probabilities, I find as follows.

I find the Landlord is estopped from enforcing the strict terms of the tenancy agreement to prevent the Tenant from having a dog. Estoppel is a legal term which prevents a party from reneging, or "going back on a deal".

In a recent Supreme Court of Canada decision, *Ryan v. Moore,* 2005 2 S.C.R. 53, the court explained the issue of estoppel by convention as follows:

> 59 …. After having reviewed the jurisprudence in the United Kingdom and Canada as well as academic comments on the subject, I am of the view that the following criteria form the basis of the doctrine of estoppel by convention:
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> (1) The parties' dealings must have been based on a shared assumption of fact or law: estoppel requires manifest representation by statement or conduct creating a mutual assumption. Nevertheless, estoppel can arise out of *silence* (impliedly).
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> (2) A party must have conducted itself, i.e. acted, in reliance on such shared assumption, its actions resulting in a change of its legal position.

(3) It must also be unjust or unfair to allow one of the parties to resile or depart from the common assumption. The party seeking to establish estoppel therefore has to prove that detriment will be suffered if the other party is allowed to resile from the assumption since there has been a change from the presumed position.

Applying the foregoing, I find as follows:

(1) The Resident Manager, N.P., having agreed to the Tenant having a dog (L) for eight years, and failing to raise any concerns with the Tenant's dog during this time, created a mutual assumption that the "No Pet Clause (18)" would not be strictly enforced.

(2) The Tenant relied on this mutual assumption and N.P.'s implicit agreement that he could have a dog, and when L passed away, made arrangements to get another dog, H.

(3) It would be unjust and unfair to allow the Landlord to resile or depart from the common assumption that the Tenant was permitted to have a dog, as the Tenant, having relied on the Resident Manager's implicit agreement, obtained H.

Applying the principle of estoppel by convention, I find that the Landlord is estopped from enforcing the strict terms of the residential tenancy agreement as it relates to the Tenant having a dog.

I accept that the resident manager was aware the Tenant had a dog for eight years. I further find that D.H. was aware the Tenant had a dog in the past, as communicated in his letter of July 4, 2016. Finally, the July 26, 2016 Memo to the Tenants indicates that the Landlord was aware that some tenants have "allowance" to have pets, and in this case, I find the Tenant to be such a tenant with a "pet allowance".

The Tenants application for an Order pursuant to section 62 is granted.

I Order that the Landlord be precluded from issuing a 1 Month Notice to End Tenancy for breach of the tenancy agreement as it relates to Clause 18, which prohibits pets without written authority.

The Tenant, having been successful, is entitled to recovery of the $100.00 filing fee and may reduce his next month's rent by this sum.

The Tenant is cautioned that should his dog create a disturbance to others, the Landlord may issue a Notice to End Tenancy for Cause based on an allegation that the Tenant's dog is unreasonably disturbing others.

Conclusion

The Tenant's application is granted. The Landlord is precluded from enforcing the strict terms of clause 18 of the residential tenancy agreement as it relates to the Tenant having a dog.

The Tenant is entitled to recovery of the $100.00 filing fee and may reduce his next month's rent by this sum.

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: November 1, 2016

Residential Tenancy Branch