



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JABS CONSTRUCTION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MND, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for the cost of cleaning and deodorizing the carpet and for the recovery of the filing fee. The landlord also applied for an order directing the tenant to remove her pet birds and fish from the rental unit.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord was represented by its agents.

As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issues to be decided

Is the landlord entitled to a monetary order? Is the landlord entitled to an order directing the tenant to remove her pets from the rental unit?

Background and Evidence

The tenancy started on June 01, 2012. The monthly rent is \$955.00 due on the first of the month. A copy of the tenancy agreement and addendum were filed into evidence. Both documents contain a term that states that tenants are not permitted to keep pets.

The landlord testified that it was brought to his attention by other residents of the rental building that the tenant had pets. The landlord stated that some of the tenants had complained about the pets. The landlord did not file any letters of complaint into evidence.

On February 19, 2018, the landlord served the tenant with a warning letter requesting her to remove the pets. The tenant argued that she was not aware of any resident who had problems with her pets. The tenant stated that her neighbours on either side have not objected or complained about her pets.

The landlord testified that in May 16, 2018, he conducted an inspection of the rental unit and found that the tenant had not removed the pet birds and fish. On May 17, 2018, the landlord served the tenant with a second warning letter to remove the pets and abide by the no pet policy of the tenancy agreement.

The tenant testified that since the start of tenancy in 2012, she had had these pets and the landlord at that time did not object. In the last year, a new landlord took over the rental property and insisted that she remove her pets. The tenant stated that there were no problems or complaints about her pets during the tenancy of six years until the new landlord took over.

The landlord stated that during the inspection he noticed that the carpet was in need of cleaning and has filed an estimate of \$200.00 for the cost of doing so. The landlord agreed that he has not yet incurred this expense.

The tenant filed a copy of a doctor's note that states that for therapeutic and medical reasons, the doctor approves of the presence of birds and fish in the tenant's residence. In her written submission the tenant describes the calming effect that these pets have on her and that since she lives on her own, these pets provide her with company.

Analysis

The landlord testified that the "no pet" policy is clearly outlined in the tenancy agreement and in the addendum to the tenancy agreement. The landlord also testified that the tenant has signed and initialed both documents and is aware of the policy.

Based on the testimony of the tenant, I find that since the start of tenancy the tenant has had pet birds and fish and the landlord did not object or request her to have them removed. The tenant stated that the landlord at that time was informed about her pets and allowed her to keep them in the rental unit.

Black's Law Dictionary defines the "doctrine of laches" in part, as follows:

[The doctrine] is based upon maxim that equity aids the vigilant and not those who slumber on their rights.

...neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.

Following from the landlord's failure to enforce the "no pet" policy for approximately six years, pursuant to the doctrine of laches, I find that the landlord's application for an order directing the tenant to remove her pets from the rental unit, must hereby be dismissed. In addition, the landlord has not proven that the tenant's pets have caused noise disturbances or damage to the rental property.

The tenant is put on notice that no additional birds or fish may be acquired as pets and that the tenant must not replace any pets that pass away. The tenant may keep the pets that she has at this time for the length of their lives.

The landlord testified that he has not yet incurred the cost of cleaning the carpet and therefore the landlord's claim of \$200.00 is dismissed. Since the landlord has not proven his claim he is not entitled to the recovery of the filing fee.

Conclusion

The landlord's application is dismissed.

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 18, 2018

Residential Tenancy Branch