Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, OLC, FFT

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

a. An order to cancel the one month Notice to End Tenancy dated November 18, 2018
b. An order that the landlord comply with the Act, Regulations and or tenancy agreement.
c. An order to recover the cost of the filing fee.

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 Notice to End Tenancy was personally served on the Tenant by mailing, by registered mail to where the Tenants reside on November 18, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on December 8, 2018. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

a. Whether the tenants are entitled to an order cancelling the Notice to End Tenancy dated November 18, 2018
b. Whether the tenants are entitled to an order that that the landlord comply with the Act, Regulations and or tenancy agreement.
c. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence:

In 2007 the father of the female tenant entered into a tenancy agreement with the landlord. In 2008 the father vacated the rental unit and the male tenant moved into the rental unit.

In 2014 the landlord and both tenants signed a written tenancy agreement that provided that the rent was $910 per month payable in advance and would continue on a month to month basis. The tenancy agreement provided that the security deposit was $455. The section dealing with pets and the pet deposit had a line through it with the letters N/A (Not Applicable). The present rent is $972 per month payable in advance on the first day of each month.

The landlord testified that he became aware of the tenant's pets in June 2018. The tenants dispute this evidence. They testified the landlord was aware of the pets since 2010. They also testify they offered to pay the landlord a pet damage deposit at that time but the landlord declined their offer stating they were good tenants.

In June 2018 the landlord issued a one month notice for breach of a material term of the contract because the tenants' refused to remove their pets. The tenants disputed the landlord's testimony and they filed an application to cancel the One Month Notice to End Tenancy. The hearing was held on August 27, 2018 and a decision was issued on August 29, 2018. The arbitrator ordered that the Notice to End Tenancy be cancelled. In coming to this decision she found as follows:

> "I also accept the Tenants' evidence that the Landlord, and the Landlord's agent, were aware they had a dog. The Landlord stated that he was seldom at the residence as the Tenants paid their rent annually. The Landlord's agent was not at the hearing. I find that the Tenant's first hand testimony should be given more weight than the hearsay evidence provided by the Landlord as to what he claims to have heard from his agent. While hearsay is admissible in hearings before the Branch, it is, in essence a statement made outside of the hearing, and not subject to questioning or clarification at a hearing.
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> I also accept the Tenant's evidence that he spoke to the Landlord about their dog in 2010. The Tenant was clear in his recollection of this conversation, in terms of when it occurred, and the specifics of the conversation; conversely, the Landlord stated he "could not recall" if such a conversation occurred. Where their evidence conflicts, I prefer the Tenant's evidence.

As such, even if I had found “no pets” to be a material term of this tenancy, which I do not, I find that by allowing the Tenants to have a dog during the tenancy the Landlord is *estopped* from ending the tenancy by relying on such a material term. *Estoppel* is a legal principle which loosely translates into preventing parties from “going back on their word”. In the 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).
> >
> > (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. Page

Applying the foregoing, I find as follows:

(1) The Landlord, having implicitly permitted the Tenants to have a dog from at least 2010, created a mutual assumption upon which the Tenants relied.

(2) The Tenants relied on this shared assumption and did not seek written permission to have a pet.

(3) It would be unjust and unfair to allow the Landlord to resile or depart from the common assumption that pets were allowed, and rely on the alleged material terms of the tenancy agreement.”

On September 5, 2018 the landlord sent a registered letter to the tenants requesting a pet damage deposit and subsequently agreeing to the admission of the pet. A second letter was sent on September 17, 2018. Another letter was sent on October 1, 2018 requesting a inspection prior to receiving a pet damage deposit.

On October 10, 2018 the tenant left a voice message stating the landlord "is neither entitled to nor lawfully able to do a condition inspection today so showing up will be a waster of your time."

The landlord sent a subsequent letter requesting a Notice of Final Opportunity to schedule a Condition Inspection. The tenants have refused to give the landlord access to conduct a Condition Inspection.

Grounds for Termination:
The Notice to End Tenancy identifies the following grounds:

- Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement

The Law:
Section 18(2) of the Residential Tenancy Act provides as follows:

> Terms respecting pets and pet damage deposits
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> 18 (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].

Section 20(c) of the Residential Tenancy Act provides as follows:

> Landlord prohibitions respecting deposits
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> 20 A landlord must not do any of the following:
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> (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;

Policy Guideline 31 includes the following:

"**When is the deposit given?**

A landlord may require a pet damage deposit either when the tenant has a pet at the start of a tenancy or later, at the time a tenant acquires a pet and the landlord's required agreement is obtained[2.]

Sometimes a tenancy agreement might already provide that a tenant will pay a pet damage deposit on acquiring a pet, in which case, the deposit would be paid then.

If a tenancy agreement is silent about pets, then the landlord cannot require a pet damage deposit. (my emphasis)

A landlord cannot require a pet damage deposit for a guide animal under the Guide Animal Act.

Analysis:

After carefully considering all of the evidence I determined the landlord failed to establish sufficient cause to end the tenancy for the following reasons:

- One of the requirements for ending the tenancy on the basis of the failure to pay a pet damage deposit is that the tenancy agreement requires the tenants to make such a payment. The tenancy agreement in this case does not include such a requirement.

- I do not accept the submission of the landlord that the struck out portion of the tenancy agreement along with the notation N/A that deals with pets and a pet deposit amounts to an agreement between the parties that no pets were permitted or that if the tenant acquires a pet then a pet damage deposit is required. The better interpretation is that the tenancy agreement was silent about pets. Some tenancy agreements include a provision that pets are not

permitted unless consented to in writing by the landlord. The tenancy agreement in this case does not include such a provision.

- The Policy Guidelines provides that a landlord cannot require a pet deposit if the tenancy agreement is silent about pets.

- The decision of the previous arbitrator is binding on the parties and binds subsequent decisions of another arbitrator. The previous arbitrator held that the landlord failed to prove that the Tenants breached a material term of the tenancy agreement when they acquired pets.

- The previous arbitrator held that the landlord or the landlord's agent was aware of pets since 2010. The arbitrator determined that the landlord failed to prove there was a breach of a material term to the tenancy agreement. Further the decision states that even if there was the landlord was estopped from relying on it. She stated

> "(1) The Landlord, having implicitly permitted the Tenants to have a dog from at least 2010, created a mutual assumption upon which the Tenants relied."

- I determined the above decision is binding on the parties. I further determined that the finding of fact that the parties had agreed that the tenant could have a pet dating back to 2010 is binding.

- I further determined the parties agreed that a pet damage deposit was not required.

- The grounds for ending the tenancy require that the landlord establish that the tenant has failed to pay a pet damage deposit within 30 days as required by the tenancy agreement. The tenancy does not require the payment of a pet damage deposit. Further, section 20 of the Act provides that a landlord must not

> 20(c) require a pet damage deposit at any time other than a pet damage deposit
>
> …

(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

The landlord agreed that the tenant could keep a pet on the residential property in 2010.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord failed to establish sufficient cause to end the tenancy. As a result I ordered that the Notice to End Tenancy dated November 18, 2018 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged until ended in accordance with the Act.

Application that the landlord comply with the Act, Regulations and/or tenancy agreement:

The tenants live in the upper portion of the rental property. There is another tenant living in the basement. However, there is only one meter for the hydro and gas. The hydro and gas accounts are in the names of the tenants. The tenants are required to pay 60% for these utilities. The basement tenant is required under a separate tenancy agreement with the landlord to pay the landlord 40% and the landlord agreed to reimburse the tenants with this payment. The tenant testified the landlord has been late reimbursing them the basement tenant's portion of the utilities. The tenant testified the landlord finally paid the amounts owing in early January 2019. The tenants seek an order that the landlord put the hydro and gas account into the landlord's name.

Policy Guideline 1 includes the following:

SHARED UTILITY SERVICE

1. A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable5 as defined in the Regulations.

The landlord consented to an order that the hydro and gas accounts be put into his name. As a result I ordered that the landlord put the hydro and gas accounts be put into the name of the landlord within 7 days of the date of this order. The tenants are obliged to pay to the landlord the agreed amounts for these services.

As the tenants have been successful with this application I ordered that the landlord pay to the Tenants the sum of $100 for the cost of the filing fee.

Conclusion:

I ordered that the Notice to End Tenancy dated November 18, 2018 be cancelled. I further ordered that the landlord put the hydro and gas accounts into his name within 7 days of receipt of this decision. Finally I ordered that the landlord pay to the Tenants the sum of $100 for the cost of the filing fee.

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 final and binding on the parties.

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: January 15, 2019

Residential Tenancy Branch