



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

On April 29, 2019, the Tenants applied for a Dispute Resolution proceeding seeking an Order for the Landlord to comply pursuant to Section 62 of the *Residential Tenancy Act* (the “Act”).

The Tenants and the Landlords attended the hearing. All in attendance provided a solemn affirmation.

The Tenants advised that they served each Landlord a Notice of Hearing package by hand on May 5, 2019 and the Landlords confirmed receipt of these packages. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Landlords were each served the Notice of Hearing package.

The Tenants advised that they served their evidence package to the Landlords by hand on May 28, 2019. The Landlords confirmed that they received this package and that they are prepared to respond to it. While this evidence was served late and not in compliance with Rule 3.14 of the Rules of Procedure, as the Landlords were prepared to respond to this evidence, I have accepted this evidence and will consider it when rendering this decision.

The Landlords advised that they served their evidence package to the Tenants by hand on May 13, 2019 and the Tenants confirmed that they received this package. As this evidence was served in compliance with the time frame requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision.

As a note, the Tenants submitted a two-page document to the Residential Tenancy Branch three days after the hearing concluded. As per Rule 3.19 of the Rules of Procedure, an Arbitrator may provide direction on requesting late evidence. However, I made no such requests for any late evidence and it is not clear to me why anything further was submitted. As such, these two pages submitted by the Tenants were excluded and not considered when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to an Order that the Landlord comply?

Background and Evidence

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

All parties agreed that the tenancy started on September 1, 2017 and the rent was established at \$800.00 per month, due on the last of each month. A security deposit of \$400.00 was paid.

The Tenants are requesting that they be provided with an unaltered copy of their tenancy agreement of September 1, 2017 as the Landlords never provided them with a copy within 21 days of the tenancy starting, pursuant to the *Act*. They advised that they received fraudulent copies of the tenancy agreement, that they were never allowed to review the original agreement, and that they were provided with three different copies of their tenancy agreement. However, they did not submit these different copies as evidence and they were not able to explain specifically where the differences were during the hearing. It is their belief that the original tenancy agreement did not contain a “No pets” clause in it.

They stated that they had pets when they moved into the rental unit, that the Landlords had known about the pets from the start of the tenancy, and that the Landlords never

asked for a pet damage deposit. As such, the Landlords cannot request a pet damage deposit now.

The Landlords advised that they provided a copy of the tenancy agreement to the Tenants at the start of the tenancy as they required this document in order to secure a mailbox. In addition, they served the same tenancy agreement to the Tenants on May 13, 2019 with an accompanying affidavit confirming that this was the original tenancy agreement. A copy of this tenancy agreement was submitted as documentary evidence and they advised that this agreement contained a no pets clause; however, there was no amount noted under the pet damage deposit box.

They advised that they did not see any pets at the start of the tenancy; however, they did notice a cat approximately eight or nine months after the tenancy commenced. They stated that they did not give a written warning to the Tenants to get rid of the pet but warned them verbally about it. In addition, they stated that they did not take further action.

The Tenants reiterated the Landlords' responsibility to make repairs and maintain the property with respect to health and safety, and they mentioned that the Landlords must give the proper written notice to enter the rental unit. They submitted that the Landlords are responsible for emergency repairs and advised that they were without the use of a toilet for a period of time. They stated that when they advised the Landlords of this issue, they were told to use the yard until the toilet is fixed. They stated that the Landlords requested that the Tenants pay the \$105.00 plumbing bill as the plumber found the lid of a can blocking the toilet. They advised that they would simply pay this bill if the Landlords presented them with a receipt for the work completed.

The Landlords advised that they understood their responsibilities to repair and maintain the rental unit and their requirement to post a notice to enter a rental unit. They stated that they called a plumber when advised of the blocked toilet. While they understood that they are responsible for repair or maintenance issues, they also understood that they were not responsible for required repairs or maintenance that were due to the Tenants' negligence. In any event, the Landlords stated that they would simply present the plumbing bill to the Tenants, as per their request, to receive payment for this service.

The Tenants advised that the Landlords requested that they sign a new tenancy agreement and they told the Landlords that they were not required to do so.

The Landlords understood that they cannot force the Tenants to sign a new tenancy agreement.

The Tenants submitted that the Landlords' requests for the plumbing bill, demands to remove the cat, refusal to accept rent, unwarranted notices to end the tenancy, and demands to sign a new tenancy agreement will constitute a breach of quiet enjoyment. They requested that the Landlords communicate in a civil, cordial manner.

The Landlords stated that the Tenants usually go into the office to pay the rent and on one particular occasion, Tenant R.M. became verbally abusive. They advised him to leave and cool off before returning to pay the rent. All parties agreed that on the day that rent is owed, rent must be paid by the Tenants and must in turn be accepted by the Landlords.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I find it important to note that Policy Guideline # 28 regarding Pet Clauses states the following:

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.

As well, Policy Guideline # 31 regarding Pet Damage Deposits outlines that "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."

Section 32 of the *Act* outlines the Landlords' and Tenants' obligations to repair and maintain and states that:

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Finally, Section 28 of the *Act* pertains to the Tenant's right to quiet enjoyment of the rental unit and indicates that:

- 28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
- (a) reasonable privacy;
 - (b) freedom from unreasonable disturbance;
 - (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
 - (d) use of common areas for reasonable and lawful purposes, free from significant interference.

With respect to the Tenants' request for a copy of an unaltered tenancy agreement, there were conflicting accounts about whether the Tenants were provided with a copy of the tenancy agreement and whether there were varying iterations. While the Tenants claimed that they were provided with three different copies, they have not submitted these contradictory agreements as documentary evidence, nor were they able to specifically point to any of their evidence of where the differences might lie.

On the contrary, I have before me an affidavit of the Landlords' solemn declaration that the accompanying tenancy agreement, that was served to the Tenants, is a "true colour photocopy of the original September 2017 Rental Agreement". Based on a lack of evidence by the Tenants refuting that this is the original tenancy agreement, I find that the solemnly affirmed affidavit carries more weight and that this was the original tenancy agreement. Furthermore, I am satisfied that the Tenants have been duly provided with a copy of this agreement pursuant to the *Act*.

With respect to the no pets clause in the tenancy agreement, by the Landlords' own admission, they observed the cat in the rental unit eight or nine months after the tenancy started, they issued a verbal warning, and they did not do anything further. As such, I am satisfied that this delay indicated that this no pets clause was not considered to be a material term of the tenancy by the Landlords. Consequently, by not taking further action after verbally warning the Tenants about the cat, I find that the Landlords have waived their right to terminate the tenancy for this breach and have accepted that pets are allowed. Furthermore, with respect to requiring a pet damage deposit, due to the Landlords' inaction, I find that it is now too late to request a pet damage deposit.

Regarding the issue with the toilet, the Landlords were reminded of their responsibilities to "provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant." As well, the Tenants were reminded that they are responsible to "repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant." Should the Landlords believe that the Tenants were responsible for the plumbing issue and the Tenants have not compensated the Landlord for this cost, then the Landlords may make an Application for Dispute Resolution seeking compensation for this issue and should provide evidence to support this position. However, as the Tenants have already agreed to pay this debt provided they get an invoice for the workmanship from the Landlords, it is not clear to me why this is still in dispute.

Regarding the Tenants' request that the covenant of quiet enjoyment be respected, the Landlords have been cautioned of the Tenants' rights, and if the Tenants believe that their rights have been breached, they may potentially file for Dispute Resolution seeking compensation for these rights being breached. Alternately, should the Landlords believe that the Tenants are acting in a manner that warrants a notice to end the tenancy, the Landlords are at liberty to serve the applicable notice.

As a side note, all parties are reminded that there are no provisions in the *Act* limiting or restricting in what forms the Landlords are permitted to communicate with the Tenants. However, Section 88 of the *Act* outlines the acceptable methods of how documents can be served to each party.

As the Tenants' issues were addressed and rectified during the hearing, I find that these issues have been satisfactorily remedied. As such, I decline to make any Orders.

Conclusion

As the issues have been addressed and rectified during the hearing, I decline to make any Orders.

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: June 27, 2019

Residential Tenancy Branch