Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC FFT

Introduction

The tenant seeks an order pursuant to section 62 of the *Residential Tenancy Act* (the "Act"). They also seek to recover the cost of the filing fee under section 72 of the Act.

Attending the hearing were the tenant and four individuals for the corporate landlord.

Issues

1. Is the tenant entitled to an order?
2. Is the tenant entitled to recover the cost of their filing fee?

Background and Evidence

The tenancy began on August 15, 2020. Monthly rent is $1,521.00 and the tenant paid a $725.00 security deposit. A copy of the written tenancy agreement is in evidence.

The tenant seeks an order whereby she is permitted to have a pet. Namely, a cat. She testified under oath that she would like to keep the cat and that if she wasn't allowed to have a cat that she would never have moved into the apartment in the first place.

In this tenancy, the crux of the issue is that the tenancy agreement—term #18 to be exact—prohibits a tenant from having a pet unless they obtain the written permission, in advance, from the landlord to have pet. The tenant has received no such permission.

The tenant has had a cat since January 2021 and was granted "permission" by a previous building manager to have the cat. The permission appears to have been verbal. That building manager is no longer with the company, though he authored a letter dated October 2022 which was submitted into evidence by the tenant. The former building manager writes, *inter alia,* that

> [The tenant] also asked about getting a small cat, and we told her that we would check with the owner, [R.S.]. Upon talking with him and letting him know that [the tenant] was wanting to rent two suites, one for her sister and one for herself, he told us that an exception could be made, and she could have a small cat, if she notified management, at the time of getting one to pay the pet deposit equivalent to one half month's rent. After talking with [the tenant] of this, we did not make any notes or arrangements for a pet deposit on file, as she did not yet have a pet.

The tenant testified that the landlord has never asked for a pet damage deposit, though she was, and remains, willing to pay one. That said, the tenant also testified that the landlord has been aware of the presence of the cat for some time. More recently, the tenant explained that the landlord has threatened to issue an eviction notice if the cat is not removed. The tenant is not willing to give up the cat and if asked to do so will be looking for a new place for her and her sister (who rents a separate rental unit) that would allow a cat.

The landlord's agent (A.G.) testified under oath that the tenancy agreement is "very clear" that unless written permission is obtained from the landlord that a tenant cannot have a pet. There are, the landlord (R.S.) noted, exceptions to the rule, such as having a quiet budgie or a small fish tank.

At one time, the property was pet friendly. However, about eight years ago the building was made into a no-pet building due to the damage caused by pet urine to the floors. Only those tenants who had pets at the time of the pet-friendly-to-no-pets status were grandfathered. They could keep their pets. But the tenant did not fall into this grandfathering clause.

The landlord (R.S.) testified that the previous building managers (one of whom who wrote the letter) were there for several months but things were not going well. They ended up quitting, though on amicable terms. It then came as a surprise to R.S. that the former building manger would author this letter, in which the purported conversation about the cat occurred. R.S. phoned the former building manager and he sounded bitter. The letter came as a "complete and utter shock to me," he added. The landlord found the clarity of the letter surrounding the circumstances to be rather surprising, both because it was written long after the purported conversation and because the building manager managed over 120 rental units in two buildings. In any event, the landlord testified that that he had no recollection of any such conversation about making an exception to allow the tenant to have a cat.

Analysis

A “tenancy agreement” means an agreement, whether written or oral, express, or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit (section 1 of the Act). In other words, it is the contract between a landlord and a tenant. It is the law, it is legally binding, and it is enforceable.

Term 18 of the tenancy agreement reads as follows (relevant portions):

> PETS. Unless specifically permitted in writing in advance by the landlord, the tenant must not keep or allow on the residential property any animal, including a dog, cat, reptile, or exotic animal, domestic or wild, furbearing or otherwise. [...] This is a material term of this agreement. [...]

The tenant’s requested relief under the Act is that she be permitted to keep the cat. The tenant’s argument is two-pronged: (1) that the landlord was or is aware that she has a cat (possibly from having visited her rental unit and seeing various cat toys), and (2) that the landlord’s former building manager granted her permission.

Regrding the first point, whether the landlord (or any of his representatives) were aware or not of the cat is irrelevant. Indeed, that the landlord has threatened to issue a notice to end tenancy for breach of a material term signifies not only the landlord’s awareness that there is a cat but that the landlord is serious about enforcing term 18. The landlord’s knowledge of the cat does not, I find, mean that the landlord has permitted the continued occupancy of the cat or that they are okay with this.

As to the second point, despite the former building manager’s assertions in his letter, there is nothing in evidence for me to find that the landlord ever gave written permission for the tenant to keep a cat. The tenant’s recollection of her conversation with the former building manager is such that she interpreted what he said to mean that permission was given. (Even if it was verbal and not written.)

However, her recollection is inconsistent with the building manager’s recollection as set out in his letter. His recollection—one made almost two years after leaving the landlord’s employ—is that arrangements were never finalized and nothing further was done other than some conversation with the landlord about an exception to the rule. A conversation which the landlord, not surprisingly, doesn’t recall.

After carefully considering all of the oral and documentary evidence before me, I find that the tenant has not established, on a balance of probabilities, that the landlord has breached the Act or the tenancy agreement. Thus, I decline to make any order requiring the landlord to comply with the Act, the regulations, or the tenancy agreement. In my opinion, the landlord has complied with the terms of the tenancy agreement, and similarly expects the tenant to comply with the terms of the tenancy agreement.

The tenant's application for an order under section 62 of the Act is therefore dismissed, as is her claim to recover the cost of the application filing fee.

On a final note, it is not lost on me that this decision will have a significant impact on the tenant. As a "cat person," I understand and very much empathize with the tenant's unwillingness to give up her cat. That having been said, it cannot be forgotten that a tenancy agreement is a legally binding and enforceable contract between two parties, and the terms of that contract must be respected.

Conclusion

The 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 Act.

Dated: December 20, 2022

Residential Tenancy Branch