

DECISION

Dispute Codes: ○

Introduction

This application was brought by the tenant seeking a remedy to what the tenant interprets as infringements on the rights of her and her husband to quiet enjoyment of the rental unit.

Issues to be Decided

This matter requires a decision on whether there are repeated trivial complaints and threats of sanction on the part of a landlord to a degree that unreasonably infringes on the tenant's right to quiet enjoyment and if so, what would constitute an appropriate remedy within the Residential Tenancy Act.

Background, Evidence and Analysis

This tenancy began on April 1, 2006 when the tenants returned to the rental building after a five-year hiatus in home ownership. Rent is \$1,300 per month and the landlord holds a security deposit of \$595 paid on April 1, 2006.

The tenant alleges that, after approximately four and one half years in the tenancy, she and her husband became subject to a series of complaints and warnings from the landlord's agents that appear to be vexatious and retaliatory in nature.

The tenant noted that, on September 26, 2010, after she had sought treatment for ants in the rental unit, she received a letter from the landlord ordering that she remove two caged finches from the rental unit on the grounds that their presence breached the material term of the rental agreement that prohibits all pets.

The tenant stated that the building manager of the day and for the first one and one-half years of the tenancy had been aware of the birds when she and her husband moved back to the building and had specifically approved “two legged but not four legged pets.”

The tenant subsequently appealed to the property manager who agreed the birds could stay provided there were no “further” complaints and subsequently ordered the birds removed again on the grounds that there had been another complaint.

The tenant then stated that there then followed a series of complaints and breach letters including:

1. Notice of oil leaking from one or more of their three cars and an order to clean it up;
2. An order that their motorcycle that had been parked in front of one of their cars for a year be moved to motorcycle parking for \$25 per month rather than the \$10 they had been paying before moving it by the car;
3. Order that tenants could no longer plug electrical devices into the parking area sockets and having their power shut off to an outlet they had been using to power a battery charger;
4. A warning after the tenant’s husband had come home ill, put his boots in a box in the hall that she had intended for him to take to the garbage but which he forgot for 12 hours;
5. An order that they tenants’ provide proof of storage insurance for a convertible vehicle they drive only in summer.

The building manager stated that it was not his intention to single out the applicant tenancy but that with 150 units to look after, it was important that he act to curb non-compliance with rental agreements as they occurred or came to his attention.

In addition, he submitted a number of emails exchanged with the tenant which demonstrated that he was consistently prompt and respectful in his written communications with the tenants.

The tenant stated that she and her husband are middle aged and that she has been a tenant for 30 years and no previous landlord had ever felt or found the need to send her a breach letter.

The tenant gave promise that she would provide the landlord with the proof of storage insurance and she stated that she and her husband had acquiesced on all other issues except for the birds, gifts to her in commemoration of her mother's passing before the present tenancy.

Analysis

As to the issue of the order to remove the birds, I accept the evidence of the tenant that they were brought to the rental unit at the commencement of the tenancy with the knowledge and verbal consent of the building manager of the day. I further accept the evidence of the tenant that the present building manager was previously aware of them and did not take issue with their presence.

The materiality of a term of a rental agreement diminishes over time if not upheld, and I find that by acquiescence, the landlord has established that the presence of the birds is not a breach of the rental agreement.

In other words, I find that the tenants' right to keep the birds in question is grandfathered. They may not acquire new or additional birds in future and the landlord is quite at liberty to prohibit birds as pets in new rental agreements. However, I find that the landlord's order to remove the birds in question is unenforceable as a breach of a material term.

As to the tenant's claim for loss of quiet enjoyment, on reviewing each of the items individually, I find that the landlord acted within the rights and duties set out in the legislation and rental agreement.

However, taken collectively, I can also see how the number and nature of the landlord's initiatives may have been more distressful than was necessary or perhaps intended. In addition, I found that the conduct of the landlords during the hearing was something less than conciliatory.

However, I do not find sufficient evidence to warrant a finding of a breach of the covenant of quiet enjoyment.

As the tenant has partially succeeded in the application, I find that she may recover one-half of the filing fee for this proceeding from the landlord and may do so by withholding \$25 from the next rent due.

Conclusion

The landlord has accepted the presence of the tenant's two caged finches for four and one-half years and may not now order their removal as a breach of a material term of the rental agreement.

The filing fee is split between parties and the tenants may recover their half by withholding \$25 from the next month's rent.

The tenant is ordered to keep her promise to provide the landlord with proof of the storage insurance of the stored vehicle.

March 8, 2011