Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding TRANSPACIFIC REALTY ADVISORS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Introduction

On November 9, 2022, the Tenants applied for a Dispute Resolution proceeding seeking an Order to comply pursuant to Section 62 of the *Residential Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing, with C.M. attending later as a witness for the Tenants. M.B. and S.A. attended the hearing as agents for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Tenant L.A. advised that the Notice of Hearing package and some evidence was served to the Landlord by email and registered mail on or around November 23, 2022, but she was not sure of the exact date this was sent. S.A. confirmed that this package was received by registered mail on November 28, 2022. Based on this undisputed testimony and evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Tenants' Notice of Hearing and evidence package. As this evidence was served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure (the "Rules"), I have accepted this evidence and will consider it when rendering this Decision.

L.A. then advised that additional evidence was served to the Landlord by email on March 2, 3, 6, 9, and 11, 2023. M.B. confirmed that the Landlord did receive these emails, but they were never provided with the Substituted Service Decision which permitted the Tenants to serve in this manner. L.A. acknowledged that they did not serve the Substituted Service Decision to the Landlord.

In reviewing the Substituted Service Decision dated December 19, 2022, it clearly stated that, "The tenants are granted an order for substituted service and may serve the Notice of Dispute Resolution Proceeding (the Notice) with supporting documents and evidence, along with a copy of this substituted service decision, to the landlord by e-mail as set out above." Given that the Tenants never served a copy of the Substituted Service Decision to the Landlord, and given that the evidence served on March 9 and 11, 2023, was not served in accordance with the timeframe requirements of Rule 3.14 of the Rules, I have excluded the Tenants' additional evidence and will not consider it when rendering this Decision.

S.A. advised that the Landlord's evidence was served to the Tenants by registered mail on March 9, 2023, and L.A. confirmed that this package was received. As the entirety of the Landlord's evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules, I have accepted all of the Landlord's evidence and will consider it 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 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 to comply?
- Are the Tenants entitled to recover the filing fee?

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 February 1, 2008, that rent was currently established at an amount of $1,120.00 per month, and that it was due on the first day of each month. A security deposit of $412.50 was also paid. A copy of the signed tenancy agreement was entered into evidence for consideration.

L.A. acknowledged that there is a no pets clause in their tenancy agreement; however other residents in the building have pets which have been grandfathered in. She advised that they never had a pet at the start of their tenancy, but the building manager at the time verbally informed them that having a pet would not be an issue. She referenced an email from this person, dated November 5, 2022, confirming this agreement, and even suggesting that pets were beneficial in a tenancy. However, she confirmed that the tenancy agreement was never amended to alter the no pets clause. She stated that they had taken care of other people's pets overnight in the rental unit on occasion, and that the Landlord was aware of this.

She submitted that they had never seen the Landlord's memo, dated March 15, 2021, indicating that some residents have been grandfathered in to allow for pets, despite the no pets policy. As well, she advised that this form does not contain a date for the residents of the building to comply by to forward their pet information to the Landlord.

Tenant S.B. reiterated that the previous building manager verbally consented to allow them to have a pet. He stated that it is their position that they are being discriminated against as other residents of the building have pets. He acknowledged that they have never owned a pet in the rental unit. As well, he testified that they have never seen the Landlord's memo before, and stated that other residents have not seen it either.

M.B. advised that there is a no pets clause in the tenancy agreement, and that the Tenants must obtained written approval from the Landlord in order to rescind this term and allow a pet. In reference to the verbal agreement that the Tenants claimed they had with the previous building manager, she stated that this person has not been an employee since 2014. As well, she stated that this person never informed the Landlord of any alleged verbal agreement.

She testified that the Landlord took over ownership of the property in March 2018, that the Landlord had a no pets policy, and that the memo was sent out to determine who

had pets in their rental units. She stated that approximately six or seven residents had pets in their rental units, and they were grandfathered in as they had these pets living in their units prior to the Landlord enforcing a no pets policy.

She stated that the Landlord had no knowledge of the Tenants pet sitting other people's dogs in the rental unit. As well, she advised that the Tenants did not complete and return the memo, so the Landlord had not been aware of any pets in the rental unit.

S.A. advised that the memo was posted to each residents' door on March 15, 2021.

L.A. acknowledged that this previous building manager, that they claimed gave them verbal authorization to obtain a pet, was last employed in this capacity in 2014.

Witness C.M. advised that she acquired a dog last year and that she would take it over to the rental unit, where the Tenants would dog sit overnight. She testified that this would occur approximately once per week, and it was her belief that the Landlord knew that this was occurring. However, she was not aware if the Landlord knew whether this dog was the Tenants', or was simply owned by a guest of the Tenants.

M.B. asked C.M. where she lived, and C.M. confirmed that she did not live in the building. As well, M.B. questioned how the Landlord would be aware of whose pet belonged to who if pets are coming and going throughout the building.

The Tenants were permitted to have another witness attend the hearing to provide testimony; however, this person was unavailable to participate.

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 when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may turn to a determination of credibility. I have considered the parties' testimonies,

their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence before me, the consistent and undisputed evidence is that the tenancy agreement explicitly states the following:

> 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, fur bearing or otherwise. Where the landlord has given his permission in advance in writing, the tenant must ensure that the pet does not disturb any person in the residential property or neighbouring property…

Furthermore, I find it important to reference the following excerpt from Policy Guideline # 28 with respect to pet clauses:

> 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.
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> 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.
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> 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.
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> It is always acceptable and advisable for the parties to write down and sign an agreement that pets or a certain pet is acceptable despite a pets clause in the tenancy agreement

While the Tenants claimed that the original building manager gave them verbal consent to acquire a pet, the Tenants acknowledged that they never had a pet that lived with them during this time of alleged consent. Moreover, while they claimed that they have taken care of other people’s pets in the rental unit, this has been temporary and sporadic, and it is clear that this was not their own pet. Furthermore, I find it important to note that the Tenants have not provided any compelling or persuasive evidence to

substantiate that the Landlord was aware that they had pets in the rental unit.

Given that it is evident that the Tenants never owned a pet when they received what they considered to be “verbal authorization” to get a pet, and given that I am not satisfied, on a balance of probabilities, that the Landlord was ever aware that they had pets in the rental unit, I do not find that the Landlord has “turned a blind eye” to this issue and inadvertently given implied consent to permit the Tenants to have pets, contrary to the no pets clause.

Additionally, I reject the Tenants’ position that the building manager’s “verbal agreement” to allow pets contrary to the no pets clause in the tenancy agreement to be binding in considering this matter. Firstly, this person has not worked in any capacity for the Landlord in over 8 years, and I do not accept that this “verbal agreement” would last in perpetuity. Secondly, upon a plain reading of the email from this person, dated November 5, 2022, it is clearly evident that it was merely this person’s personal belief that he would allow pets in the rental unit when he was managing the rental unit. However, again, the last time that he was employed in this official capacity was in 2014. Thirdly, there is no documentary evidence to demonstrate that this person ever amended the tenancy agreement to strike out the no pets clause. Finally, and most importantly, the tenancy agreement expressly states that written authorization from the Landlord is required in order for the Tenants to have a pet in the rental unit.

When reviewing the totality of the evidence before me, I find that the Tenants’ position has no merit. In my view, if it truly was the Tenants’ belief that they were given the Landlord’s permission to acquire a pet of their own at any time by this former building manager, it is not clear to me why they would feel the need to seek approval to do so from their Landlord, or even bring this matter to the Landlord’s attention. This would run in direct opposition to their position that the former building manager provided blanket consent to acquire a pet. I find that this causes me to question how much legitimate weight this alleged “verbal agreement” would carry.

Given my assessment above, I am not satisfied that the Tenants ever had a pet in the rental unit that the Landlord knew about, and then subsequently did nothing to enforce the no pets clause. Therefore, I do not find that there was any implied consent on the part of the Landlord to waive the no pets clause. Furthermore, even if I were to accept that the Tenants had verbal permission to get a pet, this was allegedly given more than 14 years ago, this person has not worked for the Landlord in over eight years, and at no point did the Tenants take this person up on this offer during his employment and obtain

a pet. In my view, it would be unreasonable to permit the Tenants to rely on a former employee's personal belief and management style to still apply some eight years after his employment has ended, especially given that the Tenants did nothing to benefit from this when it was allegedly initially available to them. Ultimately, I dismiss the Tenants' Application as the only reliable evidence presented pertaining to this matter is the tenancy agreement, where it clearly states that written authorization from the Landlord is required to obtain a pet.

As the Tenants were not successful in their claim, I find that the Tenants are not entitled to recover the $100.00 filing fee paid for this Application.

Conclusion

The Tenants' 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 *Residential Tenancy Act*.

Dated: April 4, 2023

Residential Tenancy Branch