Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding The 127 Society for Housing
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction

The Tenant filed their Application for Dispute Resolution (the "Application") on February 9, 2023. They seek the Landlord's compliance with the legislation and/or the tenancy agreement, compensation for monetary loss/other money owed, and reimbursement of the Application filing fee.

The matter proceeded by hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on June 8, 2023.

Preliminary Matter – Tenant service of evidence to the Landlord

The Landlord confirmed they received the Notice of Dispute Resolution Proceeding document from the Tenant. The Landlord also confirmed they received evidence from the Tenant early on in this process, after the Tenant had applied in February.

The Tenant provided more recent evidence to the Residential Tenancy Branch on May 26, 2023. The Landlord stated they did not receive this evidence and the Tenant did not state clearly that they provided this additional evidence to the Landlord. For the reason of late service to the Residential Tenancy Branch (being 13 days in advance of the hearing, instead of the required 14), and because of the Landlord stating they did not receive this evidence from the Tenant, I exclude this extra piece from consideration.

At the start of the hearing, the Tenant confirmed they received the evidence of the Landlord; therefore, I give that evidence full consideration where necessary in this decision.

Issues to be Decided

- Is the Landlord obligated to comply with the *Act* and/or the tenancy agreement?
- Is the Tenant entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?
- Is the Tenant eligible for reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

In the hearing I confirmed the basic information about the tenancy agreement the parties had in place since January 1, 2021. The copy provided by the Tenant for this hearing shows they signed the agreement on December 29, 2020.

As set out in clause 29 of the tenancy agreement:

> Request to have a pet must be made in writing. Prior written approval must be given by landlord before obtaining a pet. If pets are brought in to the unit without written approval, tenants will be asked to remove them.
>
> The tenants shall not keep any animals or pets of any kind unless specifically allowed/approved by the landlord in writing. The landlord may withdraw permission at any time. If the landlord has given permission in writing, the tenant will make sure the pets do not disturb the other occupants in the property or the neighbouring properties.

The Tenant provided a summary of the situation on their paper Application to the Residential Tenancy Branch. As entered, the main points are:

> [The Landlord] is refusing permission for me to have a cat in a pet friendly building. They are using clause 29 of our Tenancy Agreement in an unfair way.
>
> I did make the mistake of not receiving written permission before getting my cat . . . but on being informed of my error on Sept 22, 2021, I received a reply stating “as your apartment has not been maintained as per your tenancy agreement, we are not at this time approving your cat.
>
> I found this answer to be vague and not related to pet ownership so I asked for clarification and was told verbally that I must have a clear bed bug inspection before discussing ways to resolve the issue. When I bring up the subject I am either ignored, hit with what I would describe as punitive to do lists and/or

> threats of eviction. I believe the landlord is using clause 29 (pets) in a way that is grossly unfair to me as a way to punish me and is not compliant with the Residential Tenancy Act [section] 6 (3) (b) (c) . . . And the Residential Tenancy Regulations 3

In a written submission, the Tenant set out why they believe the particular clause in the agreement is "unconscionable": it is "not expressed in a manner that clearly communicates the rights and obligations under it." That means they are "at the mercy of the landlord who has not acted in good faith." They plead for the Landlord to allow them to have a pet, which was the basis for the Tenant seeking to live in this rental unit property. They seek for written permission for the pet, as well as compensation for the amount of $5,100 for "loss of quiet enjoyment of my suite caused by the landlord's refusal to grant permission and refusal to even work with me to come up with a plan despite my many attempts." They also pointed to deterioration in their mental health, as supported by healthcare professionals.

In the hearing, the Tenant presented that it has been two years since they started asking about having a pet. They pointed out that the Landlord could revoke permission at any time, and they would have no recourse for the Landlord's judgement on that issue. They ask for the Landlord's permission to not be revoked at any time. They also reiterated their point that the Landlord was using other issues that existed in the rental unit to deny permission to the Tenant to have a pet.

On their Application, the Tenant set out their claim for compensation thus:

> I am seeking compensation for the loss of quiet enjoyment from Oct. 15, 2021 through to Feb, 2023 caused by the Landlord's refusal to grant me permission allowing by cat . . . to live with me. . . The landlord ahs been systematically deceptive and punitive in their actions despite knowing the importance of this issue. Permission for my cat . . has changed with time and has been tied to no pet related issues like balcony care, bedbug treatments, and the number of friends visiting me. . . I am arguing that the landlord is using the refusal to grant me permission as a way to cause harm or harass me since October 15, 2021 when my written request was refused.

In the hearing, the Tenant clarified that the amount of $5,100 covers all of the rent amounts they paid since the start of the tenancy. This is the amount that their social assistance pays for the tenancy, being the $340 amount as the tenant rent contribution. The Tenant cited the Landlord's "amount of lying and deception in all these written records", a lump sum is "intended so that the Landlord would have to explain [themself]."

In a written statement, the Landlord set out the following timeline:

- after a scheduled treatment for Sept. 22, 2021, the Landlord notified the Tenant of the agreement breach by letter dated Sept. 22, 2021, “for having a pet in [their] suite without permission from the landlord.”
- the Tenant made a written request on Sept. 29, 2021, and on Oct. 15, 2021 the Landlord “denied approval due to prior history of not maintaining the unit.”
- the Landlord issued a separate breach letter (Oct. 15, 2021) to the Tenant for being unprepared for pest treatment and the rental unit’s unsanitary condition
- through to August 2022 the Landlord posted notices for entry for the bed bug issue, at expense to them – contributing to the problem was the Tenant acquiring a used sofa
- on September 20, 2022 they issued a warning letter to the Tenant about the unauthorized pet that remained in the rental unit – the Landlord followed with an “acknowledgment letter” on Sept. 30, 2022 to recognize that the Tenant had removed the pet
- the Landlord entered focused-discussion stages with the Tenant from October 2022 onwards, to respond to grievances documented by the Tenant
- the Landlord set out in a comprehensive response letter dated Jan.19, 2023 that “we will be denying your request for a cat as you have rejected the contractual obligations to comply with recommendations of a certified pest control contractor”

The Landlord reiterated that both the Tenant and the Landlord have responsibilities. The Landlord presented that the Tenant had refused the treatment of bedbugs in the rental unit.

The Landlord responded to the Tenant’s submissions and referred to their evidence. They submitted that, overall, bed bugs existing in the rental unit are a big part of the decision-making process. In particular, this is the duration of the Landlord’s attempts at fixing the bedbug problem, requiring the Tenant’s cooperation and assistance that has not been forthcoming. They had focused discussions with the Tenant about bedbugs, stating they “tried to find common ground”; however, based on the information they have, and based on the ongoing situation, they simply could not allow for a pet in the rental unit.

Analysis

The Landlord’s obligation to provide and maintain a residential property in a suitable state of repair is set out in s. 32 of the *Act*. This is a state of decoration and repair that “complies with the health, safety and housing standards required by law”, and suitability for occupation by a tenant.

A tenant, as per s. 32 of the *Act*, also has an obligation to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit.

The *Act* s. 28 protects a tenant's right to quiet enjoyment. This includes reasonable privacy, freedom from unreasonable disturbance, and exclusive possession subject only to a landlord's right to enter.

The *Act* s. 65 grants an arbitrator the authority to make orders involving recompense of rent where the arbitrator finds that a landlord has not complied with the *Act* and/or the tenancy agreement. The *Act* s. 67 follows with arbitrator authority to determine the amount of compensation owing to a tenant for a landlord's breach. This may take the form of a reduction in rent, or an order for compensation.

To be successful in a claim for compensation for damage or loss an applicant has the burden to provide sufficient, compelling evidence to establish all of the following four points:

- That a damage or loss exists;
- That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
- The value of the damage or loss; **and**
- Steps taken, if any, to mitigate the damage or loss.

The Landlord stated plainly in the hearing that they were not considering ending the tenancy. I am not considering the clause in question in terms of whether it is a material term that the Tenant breached, forcing the Landlord to end the tenancy.

The question of whether or not the term is "unconscionable" involves a consideration of whether it is oppressive or grossly unfair to one party. The Tenant takes this position. I find the term in question – clause 29 – giving the Landlord authority to withhold permission for a tenant's request for a pet is not so one-sided as to oppress the Tenant. I make this in light of the information that the Landlord has a number of tenants living in the rental unit property, and the Landlord must ensure fairness and equitable living arrangements to all. I find the Landlord has this clause in place – as signed and agreed-to by the Tenant on December 29, 2020 – with the purpose of managing a large rental unit property with many others living there. I find the clause is in place for the benefit of a majority – the greatest ease of living arrangements for the greatest number of individuals living at that rental unit property.

Further, I find that there is no unfair surprise to the Tenant about this term. The Tenant signed the agreement on December 29, 2020; therefore, were made aware of this possibility from the outset.

In line with the clause being in place for the benefit of a majority of residents living at the rental unit property, I find the Landlord is basing their non-approval on the Tenant's other actions impacting others' living. This is primarily the issue of bedbugs. There were a number of guidelines in place for the Tenant to contribute to eliminating the problem, and that is in line with s. 32 setting obligations on the Tenant for reasonable health, cleanliness, and safety standards in the rental unit.

I find the Landlord concluded the Tenant cannot manage the responsibility, with numerous instances of redirection, refused treatment appointments, and other objections to the Landlord's attempts to deal with the bed bug issue. I find it logical and reasonable for the Landlord to conclude the Tenant would not manage a pet in the best manner possible, given the number of issues the Tenant presented with health, cleanliness, and safety standards. In summary, the way the Tenant handled the responsibility of cooperating with the Landlord on the bed bug issue led the Landlord to conclude the Tenant would have difficulty managing something with *more* responsibility attached to it, that is owning/keeping/maintaining a pet. I find it logical for the Landlord to conclude that the Tenant having a pet would present other issues for other residents, the Tenant themself, and the Landlord. I do add that a pet potentially presents numerous other problems with cleanliness, as well as safety.

The Tenant made a claim for compensation because of the Landlord's impact on their quiet enjoyment of the rental unit. As per the *Act* s. 28, I find there was no impact on the Tenant's right to privacy and no unreasonable disturbance. I find the Tenant is using the term "quiet enjoyment" to describe either their frustration with the Landlord's non-approval, or simply their desire to have a pet. Neither of these affects the Tenant's right to quiet enjoyment which is a concept that describes disturbance to the Tenant.

I find the Landlord has not breached the Tenant's right to quiet enjoyment in the rental unit. There was no violation by the Landlord of the *Act*, any regulation, or the tenancy agreement. The Tenant presented no other difficulty to them in terms of access to the rental unit, the Landlord not responding to their claims or queries (which were substantial, and frequent) , or other inconvenience to them. This was not an oppressive or otherwise daunting communication as the Tenant submits.

With no proven breach by the Landlord, the Tenant is not successful in their claim for compensation. I dismiss this piece of the Tenant's Application, without leave to reapply, for this reason.

In conclusion, I dismiss the Tenant's Application in its entirety. The clause in question is not unconscionable, the Landlord is not unreasonably withholding permission for a pet, and there was no breach to the Tenant's right to quiet enjoyment.

The Tenant was not successful in this Application; therefore, I grant no reimbursement of the Application filing fee.

Conclusion

I dismiss the Tenant's Application in its entirety, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: June 16, 2023

Residential Tenancy Branch