

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Brown v. Olympus Property Ltd.*, 2023 NSSM 72

ON APPEAL FROM AN ORDER OF THE
DIRECTOR OF RESIDENTIAL TENANCIES

Date: 20230816

Docket: 524110

Registry: Halifax

Between:

Cheryl Brown

Appellant (tenant)

- and -

Olympus Property Management Ltd.

Respondent (landlord)

REASONS FOR DECISION AND ORDER

Adjudicator: Eric K. Slone

Heard: via zoom in Halifax, Nova Scotia on August 8, 2023

Appearances: For the Appellant,
Nora MacIntosh, counsel

For the Respondent,
Anthi Veletas, property manager

BY THE COURT:

[1] This is an appeal by the tenant from a decision of the Director of Residential Tenancies dated May 24, 2023. That decision upheld the landlord's termination of the tenancy on the basis that the tenant was allegedly in breach of her lease by keeping pets, and also in breach of landlord rules by smoking in her unit. It ordered the tenant to vacate the unit by June 30, 2023.

[2] The landlord is satisfied that the tenant no longer smokes in the building, and has abandoned that ground of complaint, but asks me to uphold the termination on the basis that the tenant keeps two cats in her unit.

[3] The unit in question is on the ground floor of 56 Old Sambro Road in Halifax. The parties signed a standard form lease on October 19, 2016 for a fixed term beginning December 1, 2016 and ending on August 31st, 2017. The lease stated in the section "Additional Obligations" that: NO PETS OR VISITING PETS ALLOWED.

[4] A further year to year lease was signed for the term beginning September 1, 2017. It contained the same prohibition against pets.

[5] The lease has continued through 2018, 2019, 2020, 2021, 2022 and into 2023 with no additional paperwork.

[6] The tenant admits that she moved in with her cat in 2016, and has since acquired a second cat. The tenant testified that she did not have it brought to her attention in 2016 that the building did not allow pets. She testified that several other tenants have had cats in their units, and that successive superintendents in the building were aware that she had cats and raised no objections. She testified that one former, long-term superintendent, Georgina, explicitly told her that it was fine that she had a cat, as the building was cat-friendly. This same person actually came into the unit occasionally, specifically to play with her cat.

[7] There is no evidence that the tenant's cats have caused any damage to the apartment. There is also no evidence of complaints by any other tenants.

[8] There is evidence that the landlord has been inconsistent in its tolerance of other pets in the building, but it seems to be trying to take a stricter and more consistent approach. While not everyone would agree with having such a policy, I accept that it is the landlord's right to have such a policy and that it believes in good faith that this is in its business interests.

[9] The landlord submitted evidence that the building has persistent rodent problems, which does not speak to the issue of cats in the building. It is well-known that cats tend to keep rodent populations down, rather than the other way around.

[10] The tenant seems to be in all other respects (now that she no longer smokes inside) a model tenant.

The tenant and her unique circumstances

[11] The tenant testified that she was born with fetal alcohol syndrome, and the evidence of both her and her adoptive mother suggests that she has had and continues to have a challenging life. It is quite apparent that she derives both companionship and emotional support from her cats. She lives alone and appears to spend a lot of time in her apartment.

[12] I have a large concern that re-housing her pets would have an exaggerated impact on her. And finding alternative accommodation in the midst of an affordable housing crisis would be very difficult for her.

[13] Counsel for the tenant argued that the rule against pets is unreasonable. She also argued that there was verbal permission, or at least acquiescence, from the original superintendent, Georgina. While the terminology was not used, this amounts to an estoppel claim; i.e. that by leading the tenant to believe she could keep her cat(s), the landlord cannot now enforce its legal right to enforce the rule.

[14] The doctrine of promissory estoppel is explained in *Can-Euro Investments Ltd. v. Industrial Alliance Insurance*, 2009 NSSC 20 (CanLII), where Beveridge, J. (as he then was) stated:

[136] It is my view that the doctrine to be applied whether it be called waiver or promissory estoppel or variation of the contract or simply binding promises, stems from the words of Lord Cairns in *Hughes v. Metropolitan R. Co.* (1877), 2 App. Cas. 439 at p. 448:

... it is the first principle upon which all Courts of Equity proceed, that if parties who have entered into definite and distinct terms involving certain legal results, certain penalties or legal forfeiture, afterwards by their own act or with their own consent enter upon a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced, or will be kept in suspense, or held in abeyance, the person who otherwise might have enforced those rights will not be allowed to enforce them where it would be inequitable having regard to the dealings which have thus taken place between the parties.

[15] The landlord's position is that the superintendents never had authority to waive the rules in favour of any tenant, and that those in authority never had any knowledge that this tenant had a cat or cats. I doubt that the tenant would have appreciated that a superintendent did not have some authority, and I find that the superintendent had some degree of ostensible authority.

Discussion

[16] I accept that the landlord did not enforce its rule (or more accurately lease term) for more than six years, leading the tenant to believe that pets were tolerated. I find that the landlord was estopped from insisting on its rights. But it is well established that estoppels do not last forever. Where a landlord has failed to enforce a policy, it can reassert its authority to enforce that policy by giving reasonable notice. With contracts that renew automatically, the natural date for the provision to be once again enforceable would be the renewal date, which in this case would be September 1.

[17] Given the time that has elapsed and the clear notice that the landlord intends to re-assert its position, the landlord can no longer be said to be estopped from enforcing its no-pets policy.

[18] However, I find that the Residential Tenancies Officer jumped the gun by terminating the tenancy when the lease term had not yet expired, and the estoppel was still in effect. I find that the no-pets provision only becomes enforceable on September 1, 2023. On that basis alone, the order of the Director cannot stand.

[19] However, looking forward I have some additional concerns.

[20] A landlord's rule must be reasonable, and must give way to considerations that may trump the mere legalities.

[21] The evidence touched upon, but did not fully develop, an argument that the tenant's cats are more than pets, but are essential for her emotional well-being.

[22] A no-pets policy would not apply to a service dog, for example. Human rights considerations must be given priority. And it is now well recognized that service dogs are not only utilized to assist blind people. They can be useful in assisting people who suffer from acute anxiety or other conditions. I see no reason why the same might not apply to cats.

[23] Section 5 of the *Human Rights Act* prohibits discrimination on the basis of physical or mental disability. Should the landlord persist in enforcing its policy against this tenant in the future, it must be careful not to infringe on the tenant's right to be reasonably accommodated for any disability that she might live with.

[24] For her part, the tenant must ask for reasonable accommodation and be willing to support her request with appropriate evidence that she suffers from a disability that can only be accommodated by allowing her to keep her pets.

ORDER

[25] This court orders that the Order of the Director of Residential Tenancies dated May 24, 2023 be set aside in its entirety, and the Notice to Quit issued by the landlord is declared void.

Eric K. Slone, Adjudicator