TO: Hannah Timaku
FROM: Examinee
DATE: July 30, 2024
RE: Laurel Girard Matter

MEMORANDUM

Statement of Facts: [Omitted]

Analysis

1. **Whether the alleged violations in the notice are a valid basis for termination of Girard's tenancy.**
    a. **Failure to Pay Rent Allegation**

What must the landlord show to be able to evict Ms. Girard?

After a tenant has continuously and lawfully occupied a residential real property for 12 months, the owner of the residential real property shall not terminate the tenancy without just cause, which shall be stated in the written notice to terminate tenancy. FTPA § 500. Just cause to terminate tenancy includes a material breach of a term of the lease. A lease may be terminated only for a material violation, not a mere technical or trivial violation. Westfield v. Delgado at 12.

Ms Girard's lease began on January 1, 2023 and was for a term of two years. The rental increase notice occurred on June 1, 2024 and was to be active on July 1, 2024 under the rental demand letter. Since Ms. Girard had been a lawful resident of the premises for over one year at the time the demand was made, any eviction proceeding would require the landlord to show just cause for the termination of the lease prior to its natural termination.

What constitutes material breach under the lease agreement?

Under Franklin law it is a material duty of a tenant to pay rent. *See Westfield Apartments LLC v. Delgado at 13.* While every instance of noncompliance with a contract's terms constitutes a breach, not every breach justifies treating the contract as terminated. *Id.* To be material a breach must go to the essence or the root of the agreement between the parties. *Id.* In *Vista Homes v. Darwish* the court stated that when a rent shortfall is di minimis it will not constitute a material breach. In Darwish, the tenant failed to pay $10, or 1% of the required funds.

Here the rent increase was validly in place and the client failed to pay $150 or 10% of the rental price. While the 1% rental price the tenant failed to pay in Delgado was found to be a non material breach, here it is more likely the court will find that the failure to pay 10% of the rental prince, $150 is a material breach. Since there is not additional case law and the increase was a valid exercise of the authority of the landlord the client should pay the

increase or will risk a material breach of the rental agreement and be subject to eviction proceedings.

Did Hamilton Place, LLC give proper notice for Ms. Girard to be required to cure?

Prior to termination a landlord must first give notice of the violation to the tenant with an opportunity to cure the violation. FTPA § 501(b).
Here, the landlord properly gave notice of the violation in the three-day notice to cure or quit letter. Therefore, if the rental increase itself was valid under the law, then the landlord likely has a valid basis for demanding that the client vacate the premises.

Was the rent increase valid and binding on Ms. Girard?

Under Franklin law a landlord shall not within any 12 month period, increase the rental rate for a dwelling or a unit by more than 10%. FTPA § 505. Here, Hamilton Place, LLC had not increased the rent during the entirety of the 18 months that the client had lived there. Hamilton Place, LLC then increased the rent by exactly 10%. Under the statute a landlord may validly increase rent by up to but not exceeding 10% in one year.
Here, since Hamilton Place had not increased rent prior, the rent increase was valid and was a material term of the lease, and the client's refusal to pay consituted a material breach of the lease agreement. Therefore, the client is liable for eviction proceedings unless she cures the defected payment.

Was the three days notice to vacate or cure all that was required of the landlord?

Under Delgado while the court did not uphold the eviction, it took no analysis or issue with the fact that the vacate or cure order in that case was only 3 days long. While the court stated in that case that the FTPA was born out of policy that wanted to restrict landlords from frivolously ending leases and ensuring that affordable housing was available, none of the materials take issue with the amount of time that the landlord must give a party to cure or vacate. The notice clearly stated the demand for the back rent and removal of Zoey, therefore the cure or vacate notice was likely valid. As a result, the three day requirement to cure the rent default is likely valid despite the short time frame it places on both Ms. Girard and this law firm to give her advice.

a. **Violation of Pet Policy**

Does Ms. Girard have a qualifying disability?

Under the FFHA a disability is meant to be construed broadly, and the term mental disability includes any mental or psychologocial disorder or condition that limits a major life activity. FFHA § 755. The statute states that one such example is anxiety. Id.
Here, Ms. Girard has been diagnosed with anxiety by her longtime therapist, Sarah Cohen. Dr. Cohen stated that the anxiety suffered by the client

imposes functional limitations on her life. Dr. Cohen further stated she believes that the client's disability falls within the statute. Dr. Cohen has been working Ms. Girard for the past four years and is intimately aware of the client's disability, needs, and limitations. Therefore, it is highly likely the client has a disability that falls within the scope of the FFHA's definition of disability.

Does Zoey qualify as a valid assistance animal?

Support animals are animals that provide emotional, cognitive, or other similar support to an individual with a disability. A support animal does not need to be trained or certified. Support animals are also known as comfort animals or emotional support animals. FFHA §756. Assistance animals include service animals and support animals. An assistance animal is an animal that provides emotional, cognitive, physical, or similar support that alleviates one or more identified symptoms or effects of an individual's disability. Id.

Here, Zoey is an adopted shelter kitten that has undergone no training. However, the client has attested and her therapist agrees that Zoey helps to alleviate the physical symptoms of the clients anxiety. Dr. Cohen has been working Ms. Girard for the past four years and is intimately aware of the client's disability, needs, and limitations. As such, Zoey likely qualifies as an assistance animal as defined by § 755 of the FFHA because she alleviates the symptoms of the client and assistance animals are not required to have any specific pedigree, training, or certification.

Are disabled individuals under the FFHA able to have assistance animals in rental properties?

Under § 755 of the FFHA tenants, occupants, invitees, and others with disabilities are permitted to have assistance animals in all dwellings. A landlord may request information confirming that there is a disability related need for accommodation or modification, and should be provided by a reliable 3rd party who is in a position to know about the individual's disability or the disability related need for the requested accommodation including a medical professional or healthcare provider.

Here, Sarah Cohen is a licensed therapist in Franklin and has been working with Ms. Girard for the last four years was the one who made the initial recommendation that Ms. Girard would benefit from an assistance animal. It was in Dr. Cohen's professional expertise that she recommended an asistance animal as a treatment plan for Ms. Girard and it has been successful. Both Ms. Girard and her therapist have seen a noted improvement in Ms. Girard's well being and mental health since she has adopted Zoey. Ms. Girard has experienced lessened panic attacks and phsycological distress since she has adopted Zoey, Zoey has been shown the help alleviate the limitations in Ms. Girard's life from her disability.

Since Ms. Girard can provide valid documentation from a license Franklin Therapist who has a standing relationship and knowledge of Ms. Girard's disability she has likely complied with the requirements under the FFHA. While the rental agreement states that pets are barred from the premises, the FFHA preempts the rental agreement. Further, Zoey is classified not only as a pet, but as a reasonable accommodation as an assistance animal. Therefore, even though the terms of the lease make it appear that Zoey would not be allowed, under the FFHA Ms. Girard is entitled to have Zoey in her apartment.

Does Hamilton Place, LLC have a valid defense to Zoey residing at the premises?

Lastly, the landlord may argue that an assistance animal need not be allowed if the animal constitutes a direct threat to the health and safety of others. However, here there have been no complaints about Zoey or incidents. The landlord only because aware of Zoey because Ms. Girard was carrying Zoey in a carrier to get Zoey her required shots. Since, Zoey is not a nuisance, a danger to others, or a danger to property the landlord does not have a valid argument to have Zoey removed from the premises.

The landlord will also argue that under Sunset Apartments harboring an animal in an apartment that has a no-pet clause is a material breach of the agreement and Ms. Girard should be evicted due to it. However, the FFHA preempts these clauses when an animal may be validly defined as an assistance animal. As such, the contrary case law does not affect Ms. Girard's assertion to have Zoey in the apartment.

In the alternative Zoey is not an assistance animal.

Not every default by a tenant justifies the landlord's termination of the tenancy, especially where the breach involves a non monetary covenant in the lease . . . See Delgado at 13. Therefore, even if the court does not find that Zoey is an assistance animal, the court should find that the breach is non material. However, while this would protect Ms. Girard from eviction it would not protect her from having to part with Zoey. Therefore, if the court finds that Zoey is not a service animal Ms. Girard should seek other accommodations since she indicated she is willing to do so if it means she can keep Zoey.

Advice to client

Since the client has indicated that she enjoys living in the apartment complex and she can still cure the rent payment default, she should be advised to become current on rent including the $150 from last month and the $50 late fee. Since if she is evicted for failure to pay the increased rent

she could be subject to attorney's fees, costs, and the back rent she should be advised to pay the validly increased rent.
Further, while the rental agreement states that if the tenant acquires a pet they may be subject to a pet deposit and/or pet rent under the FFHA a landlord may not require additional rent, deposit, fee, or insurance related to the assistance animal.
However, Ms. Girard may be liable for damage caused by Zoey that exceeds normal wear and tear of the apartment. Therefore, Ms. Girard should be counseled that she has a legal right to keep Zoey as an assistance animal under the FFHA and should be subject to any additional fees related to Zoey. While it is admirable that she is willing to move if that is the only way to keep Zoey, she does not need to do so at this time. However, she must become current on the back rent and pay the increased rent for the rest of the lease term.

To: Hannah Timaku
From: Examinee
Date: July 30, 2024
Re: Laurel Girard Matter

MEMORANDUM

INTRODUCTION

Here is the memo you requested analyzing our Client Laurel Girard's dispute with her landlord.

DISCUSSION

Franklin Tenant Protection Act (FTPA) §500 provides that once a tenant has continuously and lawfully occupied a residential real property for 12 months, the owner cannot terminate the tenancy without just cause. Under the TVPA, a material breach of lease constitutes just cause. § 501. The TVPA is consistent with case law in which court's consistentl conclude that a lease may be terminated only for material breaches, not for a mere technical or trivial violation. *Kilburn v. Mackenzie.*

In this case, Laurel has continuously and lawfully occupied a residential real property (apartment) from January 2023 to July 2024. That exceeds the 12 month period required under FTPA. Thus, the landlord must have just cause to terminate Laurel's tenancy- that is, the alleged breaches must constitute a material breach.

Whether the specific alleged violations constitute valid grounds for termination depends on if they constitute a material breach. The specific issues are whether failing to pay 10% increase in rent is a material breach and having an assistance animal (lease has "no pet" provision) are material breaches that give the Landlord just cause to terminate the lease.

1. Is failure to pay part of rent a valid basis for terminating tenancy?

Landlord alleges that Laurel violated paragraph 2 of the lease by failing pay rent in full by the 3rd of the month. The allegation stems from 10% rent increase; Laurels rent went from 1500 to 1650. On July 1st, when the increase went into effect, Laurel paid 1500 which did not reflect the 10% increase of 150.

To be valid grounds for terminating tenancy, Laurel's failure to pay $150 of rent must constitute a material breach.

Was the 10% rent increase a lawful increase in rent?
FTPA § 505 puts a limit on rent increases. Section 505 provides that an owner of residential property shall not, within any 12 month period increase the rental rate for a dwelling or a unit more than 10%. The Lease agreement between Laurel and Landlord contains a similar provision regarding rent increase. Paragraph 3 of the lease states that "Tenant agrees that Landlord may raise the rent no sooner than 12 months after commencement of this lease." Both the lease and TVPA contain similar time frame for raising rent. TVPA includes a limit on the amount of increase (10%) but the lease does not.

Here, Landlord sent out notice of raised rent in June 2024. At that point, Laurel had lived at Hamilton Place Apt. for over 12 months. The timing of increase in rent complies with both the TVPA and the lease agreement- it occured after 12 months. Furthermore, Landlord increased the rent by 10% - from 1500 to 1650; that is exactly 10%. The language of the TVPA provides that the rental rate cannot increase "more than 10%." Taking that language for its plain meaning, rent can increase exactly 10% or lease, but nothing more than 10.

Therefore, the 10% increase in rent was valid and lawful under TVPA and terms of the lease agreement.

Does failure to pay 10% increase constitutes material breach?
Although every instance of noncompliance with contracts terms constitutes a breach, not every breach justifies treating the contract as terminated. *Kilburn.* To justify termination the breach must be material. *Westfield Apart. LLC v. Delgado*.
To be material, the breach must go to the root or essence of the agreement between the parties, such that "it defeats the essential purpose of the contract or makes it impossible for the other party to perform under the contract." *Kilburn; Walkers Treatise on Contract section 63.* Breaches of provisions that are financial in nature or to the benefit of the landlord are more likely to constitute material breaches. *See Westfield Apt.* Alternatively, breaches of non-monetary covenants in teh lease and/or lease provisions that are for the tenant's benefit are less likely to constitute material breaches.

Here, the breach involves failure to pay rent which clearly is a breach. Not paying rent is a breach because payment of rent is one of the essential obligations of a tenant, and failure to do so is legal cause for dissolving the lease. *Vista Homes v. Darwish*. It is the type of breach that goes to the

essense of the agreement- the purpose of a lease is that you get a dwelling in exchange for your payment of rent. Thus, not paying rent goes to the essence of the agreement. However, there is a difference between failing to pay rent entirely, and failing to pay a portion of the rent.

The amount a tenant fails to pay on time is relevant to the mateiral breach determination. In *Vista Homes v. Darwish,* the landlord brought an eviction action against a tenant failed to pay $10 of the total $1,000. The court in *Vista Homes* held that when rent short fall is de minimis, like failing to pay 1% of total rent, that is not a material breach. Thus, Vista Homes makes clear that when the amount is very minimal, the court is unlikely to count it as a material breach.
Here, the amount short is much more than was missing in Vista Homes; 10% compared to 1% is a large difference. Unlike in Vista Homes, Laurels short fall is not de minimis, it is much more than a 1% shortfall. Because a court is unlikely to find that 10% shortfall constitutes a de minimis shortfall, it is likely that Laurel's breach would be considered material.

Another examples of a non material breach is failure to get renters insurance (*Westfield Apt.)* and leaving minor debris outside of apartment (*Pearsall v. Klein).* The reason the court found the breaches non material in *Westfield Apt.* and *Pearsall* hinges on the purpose for the provision in the lease and whether it was monetary. In *Westfield, t*he court explained that requiring renters insurance is really for the renters benefit, not the landlords; so terminating a lease based off a breach that does not negatively harm the landlord shouldn't be considered material. Unlike in *Westfield Apt.* and *Pearsall*, Laurel's breach does directly and negatively impact the landlord; the requirement to pay rent is a protection for the landlord to ensure htey are compensated for providing the dwelling. Laurel's failure to pay 10% of rent is not analogous to teh cases in which a non material breach was found.

Therefore, failure to pay $150 in rent on time would constitute a material breach and be valid grounds for terminating Laurel's lease.

2. Is having an assistance animal, in violation of lease "no pet provision," valid grounds for terminating lease?
Landlord alleges that Laurel violated Paragraph 15 of the lease which prohibits pets from being kept on the Premises. The pet the Notice refers to is Laurel's cat that she keeps to help with her anxiety; the cat is an assistance animal.

To be valid grounds for termination, Laurel keeping a cat in violation of the no pet policy must constitute a material breach.

Franklin Fair Housing Act - Assistance Animals for persons with disabilitites
Franklin Fair Housing Act (FFHA) protects Tenants with Disabilities right to have an assistance animal in all dwellings. . FFHA §§ 755, 756.

The FFHA defines Disability to include mental disabilities. Section 755(c) states that "'Mental Disability' includes . . . having any mental or psychological disorder or condition . . . examples include . . . anxiety." In Section 755(o) "Assistance Animals" is defined as "an animal that . . . provides emotional, cognitive, physical, or similar support that alleviates one or more identified symptoms or effects of an individuals disability." Any reliable third party who is in position to know about disability can confirm the existence of the disability and need for accommodation.

Here, Laurel's doctor has provided a letter confirming that Laurel has anxiety, which is a recognized mental disability under FFHA. Laurel's doctor, who has been her therapiset for four years, is a reliable third party who has reason to know about the disability and confirm its existence based on seeing Laurel as a patient for many years. Also, the note confirms the need for the accommodation of having an assistnace animal and it explains how the cat helps ease her symptoms of anxiety and can calm her down. Laurel also reports that having the cat makes her feeel like she can do anything. Based on that information its clear that Laurel qualifies as having a disability and the cat constitutes a valid assistance animal based on how the cat provides her with emotional support and alleviates her symptoms. Specifically, the cat helps Laurel cope with anxiety, it enhances her ability to function optimally, and alleviates the difficultites of living with anxiety; the presence of the animal assists Laurel in regulating distresss associated with her panic attacks.
Therefore, the cat is a valid assistance animal and Laurel has a disability as defined under the FFHA.

Is the alleged violation of keeping a pet on the premises valid grounds for terminating Laurel's lease?
Laurel having her cat on the premises is not a material breach that is a valid grounds for termination because Laurel is legally entitled to have the cat with her in her dwelling under the FFHA.

Under Section 756 of the FFHA, "Tenants . . . with disabilitites are permitted to have assistance animals as defined in 755(o) in all dwellings. Individual's

with assistance animal shall not be reuqired to pay any pet fee, additional rent, or other additional fees in connection with assistance animal *see* 756(c)(i).

Here, as previously explained, Laurel is a person with a disability and her cat qualifies as an assistance animal. As a person with a disability, Laurel is permitted to have her assistance animal in her dwelling. Furthermore, the landlord is not permitted to charge extra for the assistance animal or require additional fees.

Here, the lease has a full stop prohibition on animals in dwellings. Technically, Laurel is in violation of the plain language of teh lease, but she can defend her violation by relying on the FFHA. The letter from her therapist clearly lays out the necessary requirements and is from a reliable third party to establish the need for the accommodation. As such, laurel is permitted to keep the cat on the premises with her because it is an assistance animal that alleviates her anxiety.

Therefore, the alleged violation of keeping a pet on the premises is not valid grounds for termination because the FFHA protects laurels right to have an assistance animal in her dwelling.

CONCLUSION AND RECOMMENDATIONS

1. Laurel's failure to pay $150 increase in rent would likely constitute material breach because the increase was lawful and 10% is not a de minimis shortfall. Consequently, I would recommend that Laurel pay the $150 she owes if she wants to stay in her apartment at Hamilton Place; she will likely also have to pay the $50 late fee. Please let me know if you would like more research done on the legality of the late fee.

2. Laurel having a pet on the premises is not valid grounds for terminating the lease because it is not a mateiral breach; Laurel is permitted to keep her cat in her dwelling as an assistance animal under FFHA. I would recommend that Laurel bring the letter from her therapist to her Landlord as soon as possible to rebut the allegation and request an accommodation to her lease for her cat based on her disability.

Please let me know if you have any questions or need further research on any issue.