Question MPT-1 – July 2024 – Selected Answer 1

MEMORANDUM: In Re Girard

1. Introduction

This memo will objectively analyze whether the alleged violations described in the Notice - failure to pay rent and violation of the no-pet clause - are valid bases for termination of Girard's tenancy, and then recommend advice to be given to the client. This memo will not argue the client's side of the dispute, but rather consider both sides of the action and present the most likely outcomes, in light of the relevant law and facts.

In summary, Girard's failure to pay rent most likely justifies termination of her tenancy, but her alleged violation of the no-pet clause likely does not. Her safest course of action is to vacate the apartment, but she may be able to remain if she pays the rent owed. Under the circumstances, failure to pay rent is a material breach justifying eviction. The no-pet clause is possibly void, or, in the alternative, Girard has a viable argument that she is not in breach.

2. Alleged Violations

First, note that the dispositive issue regarding each alleged violation is likely whether the violations were a "material breach" of the agreement under FTPA 501 as interpreted in the relevant caselaw. This basic tenant protection cannot be waived, regardless of the terms of the lease, and a landlord owner may not evict solely on the basis of the lease terms. FTPA 501(g). If the breach was material, it constitutes "just cause", and the landlord may terminate the lease. FTPA 501(a)(1). The court will consider public policy when making a materiality determination. Westfield Apartments LLC v. Delgado.

Here, Girard's failure to pay rent is most likely a material breach under Vista Homes v. Darwish. Paying rent is the most fundamental and important obligation of a tenant, and so long as the rent increase does not exceed 10%, she is obligated to pay under FTPA 505; in Girard's case the increase was exactly 10%, so she must pay it. However, the no-pet clause is possibly void under the Franklin Fair Housing Act (FFAA) with regard to service/support/assistance animals specifically, but caselaw

has not unequivocally settled the issue. Furthermore,the clause as written does not explicitly exclude emotional support animals (it only excludes "pets", and a support animal is not a "pet" per se), so Girard can most likely keep Zoey in the apartment. If, however, Girard is found in violation of the clause, it would be a material breach under Sunset Apartments v. Byron.

Also note that there are timing considerations in an eviction action. Under the FTPA, a landlord does not need just cause to evict a tenant if the tenant has occupied the property for for less than 12 months, and a landlord may not increase rent within the same period. Absent other facts, neither provision is helpful to our case because Girard has lived at Hamilton Place since January of last year.

A. Girard's failure to pay rent is most likely a material breach justifying termination of her tenancy.

Under FTPA 500, the landlord may not terminate Girard's tenancy without "just cause", defined as a "material breach" or a nuisance. FTPA 501. Only the "material breach" portion is relevant here. Note that this right may not be waived under FTPA 501(g), and thus paragraph 20 of the Lease Agreement is partially void. The lease may not be terminated for any breach, but only for just cause. See Kilburn v. Mackenzie. To be material, the breach must "go to the root of the agreement", i.e., "defeat its essential purpose". Id. In Vista Homes v. Darwish, the Court of Appeals held that failure to pay 1% of back rent was de minimus and thus not a material breach. Note that the rent increase itself was legal under FTPA 505, which permits up to a 10% increase.

In the present case, Girard has failed to pay 10% of rent (and 15x the total amount in Darwish). Under the circumstances, $150 is likely not a de minimus amount by any reasonable definition. If she continues to refuse payment, the court will almost certainly hold that her breach is material. Failure to pay rent is one of the most essential obligations of a tenant, and adequate cause for dissolving the lease. Darwish. Thus, the court will most likely find that her failure to pay rent was a material breach of the lease, and her landlord therefore has just cause to terminate her tenancy.

Whom the relevant lease provision benefits will also be considered by the court. If the provision benefits the landlord, it weighs in favor of eviction. If it benefits the tenant, it is less likely to weigh against termination of the lease. In Delgado, among other reasons, the court held that because renter's insurance primarily benefits the tenant,

failure to obtain it was not a material breach. Here, however, rent benefits the landlord exclusively, so failure to pay weighs heavily against Girard.

Finally, note that the landlord has most likely complied with his statutory and lease obligations regarding notice under FTPA 501(b), so we cannot challenge the action on notice grounds.

B. The no-pet clause may be void with regard to Zoey, or, in the alternative, Girard may not be in breach.

Under Sunset Apartments v. Byron, violating a no-pet clause is a material breach. However, in the present case Zoey is not a "pet" per se - she is a support animal (or "assistance animal"). The Byron court did not consider assistance/support/service animals. Furthermore, FFHA 756(c)(i) prohibits pet fees, etc., for assistance animals, and this may imply that banning assistance animals outright is illegal; (c)(iv) allows only reasonable restrictions on assistance animals, which suggests that a complete prohibition is unreasonable. Franklin courts have not explicitly ruled on the issue, but there may be persuasive authority elsewhere.

In Franklin, to have a support animal an individual must have a legally recognized disability, the animal itself must fall within the relevant statutory definition, and the individual must obtain an individualized assessment from a medical professional. Girard meets these requirements. Under the Franklin Fair Housing Act (FFHA) 755(c)(i), anxiety is a mental disability, and Girard can document her anxiety and treatment. Zoey falls within the definition of "support animal" under 755(n) because she provides emotional support to Girard, an individual with a disability. Zoey is also an "assistance animal" under 755(o) because she alleviates Girard's symptoms.

Furthermore, public policy likely supports a legal distinction between animals kept for medical reasons versus pets. In this context, support animals like Zoey are a form of healthcare, and their benefit to the tenant likely outweighs the detriment to the landlord. Simply put, treatment for anxiety is more important to the state than one's desire to avoid animals, especially in the case of a harmless kitten. Thus, the court may hold that a no-pet clause excluding service animals is void on public policy grounds. The landlord will certainly argue, however, that Girard's violation of the clause is a material breach under Byron, and clear caselaw should be prioritized over a speculative policy consideration.

We may also argue that, even if the clause is enforceable, Girard is not in breach. The specific language of paragraph 15 of the Lease Agreement does not mention service/support animals. It only concerns pets, and, as mentioned above, a support animal is distinguishable from a pet. Thus, Zoey is not a breach of the lease. The landlord will argue that the intent of the lease term is clearly to exclude all animals, but again public policy concerns may outweigh.

3. Advice

We should advise Girard that her safest course of action, for legal and practical reasons, is to vacate the apartment. She can legally remain if she pays the $150, and if she chooses to remain she can probably keep Zoey, but that might require going to court. Either way, she is legally obligated to pay the additional $150 of rent.

In the simplest terms, we should explain to Girard why, with regard to rent, the law is not on her side. Because the landlord only increased her rent by 10%, it doesn't matter whether she thinks it was unfair - the law explicitly says she still has to pay. That's the bad news. The good news is that if she pays the rent, she can probably keep Zoey. Since she has a letter from her doctor, if her landlord takes legal action we'll have a decent chance in court... if the judge likes cats. We will investigate which judges are feline-friendly. If Zoey has damaged the apartment, however, we have a weaker case, and she might have to pay the landlord more money.

Practically, she may not wish to remain in an apartment with a hostile landlord, and it would be expensive to go to court. Although we're ready to represent her (and Zoey!), and we think we have a good case regarding the kitten, we don't work for free. But if she thinks it's worth it, we will proceed. And her landlord will have the same problem - he has to pay his lawyers too - and he may not think it's worth litigating over a cat, especially if Girard pays the rent first. It would probably be worthwhile to approach him or his lawyer personally and try to resolve the issue without going to court.

Question MPT-1 – July 2024 – Selected Answer 2

In re Girard
MPT 1: July 2024

To: Hannah Timaku
From: Applicant 8####

Date: July 30, 2024
RE: Laurel Girard -- Lease Violations & Potential Termination
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In connection with the landlord-tenant dispute between Laurel Girard (Girard) and her landlord, Hamilton Place LLC (Hamilton) there are two material issues which have been presented by Hamilton as grounds for lease termination for Girard. The first is her failure to pay rent as due under the terms of the lease; and the second is Girard's violation of the "No Pet Clause" of her lease. We will examine each of these violations individually, however based upon the current case law and regulations of the jurisdiction, which will be discussed below, neither breach rises to the level of eviction as sought by the Hamilton.

1. Failure to Pay the Full Amount of Rent When Due.

Under the terms of the lease entered into between Girard and Hamilton, dated January 1, 2023, paragraph 3 provides that "Landlord may raise the rent no sooner than 12 months after the commencement of this lease." Accordingly, on June 1, 2024, Girard received notice that her rent would be increasing by ten percenter (10%) at the start of the following month, on July 1, 2024. Girard has determined unilaterally that this increase was "unfair" so for the month of July rather than tendering the $1650 as required under the terms of the lease agreement, Girard tendered only $1,500. This is a breach of the landlord-tenant agreement and thus Girard is in breach of the lease agreement.

Under the Franklin Tenant Protection Act, the rules regarding lease termination are clear and are designed specifically to protect tenants. The relevant section of the law provides that "after a tenant has continuously and lawfully occupied a residential 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." (*Franklin Civil Code §500 et seq. - *emphasis added).* The code goes on to define termination for cause to include any of the following (1) material breach of the term of the lease; (2) maintaining or committing a nuisance.

The issue here is whether or not Girard's failure to pay the full amount of rent due under the lease, including the 10% increase is a material breach of the terms of the lease that constitutes dissolving or termination of the complete lease agreement. This issue will depend upon the materiality of the breach. Under the WALKER'S TREATISE ON CONTRACTS §63 (4th ed. 1998) "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. (as quoted in *Kilburn v. Mackenzie, Fr Sup Ct 2003, emphasis removed).* Basic landlord-tenant law tells us that the rental payment is the crux of the lease

agreement between the landlord and the tenant is the tenant's agreement to pay rent. Failure of the tenant to pay rent is recognized as "a legal cause for dissolving the lease." (Homes v. Darwish, Fr Ct App 2007) However that same court went on to explain that when the "rent shortfall was *de minimis* (only 1% of the rent amount owed) the court concluded that the breach was not material." (*Id*).

Here the question is whether or not shorting the lease by 10% will be determined by the court to be a material breach, or if it is in keeping with the de minimus standard as presented by Homes v. Darwish. When looking to the Franklin Tenant Protection Act, landlords are limited on their ability to increase the rental rate for a dwelling of more than 10 percent within an 12-month period. Here, Hamilton was within its legal right under the code to increase the rental rate on the apartment, and Girad's determination that the rental increase is "unfair" while subjectively true to her, is objectively false. Because Hamilton was within their legal right under the code to increase the rent the additional 10%, Girard will be obliged to make payment of the outstanding rent, as provided for in the notice of termination received. With regards to whether or not Hamilton can evict Girard for the non-payment of the ten percent, the courts seem to be united that Hamilton will not be able to start eviction proceedings for the ten percent at this time, the accumulation of rent shortage will likely become a larger issue. Under the terms of the lease that was executed by Girard and Hamilton, there was explicit mutual assent to the rental increases and the increase sought by Hamilton is within the statutory limits.

**** See also the following cases:** Westfield Apts LLC v. Delgado (Franklin Ct of Appeals, 2021): Permitting forfeiture for trivial breaches of a lease could unleash a torrent of unmeritorious evictions. *This court will not uphold forfeiture clauses that could result in such frivolous litigation.* Not every default justifies landlord termination ... *And then also, within Westfield -- "although every instance of noncompliance with a contract's term constitutes a breach, not every breach justifies treating the contract as terminated. Kilburn v. Mackenzie (Franklin Sup Ct. 2003)*

These additional cases help support the court's belief that allowing landlords to terminate leases for small violations would wreck havoc on landlord tenant law. Specifically in Holmes v. Darwish -- the tenant failed to pay $10 of $1000 ... or Pearsall v. Klien -- no material breach where debris was left outside apt found a de minimus breach of the lease to be eviction worthy. Here it is reasonable to conclude that failure to pay 10% of a lease payment would be a de minimus amount under relevant case law.

Thus, to answer Ms. Girard's question of whether or not she is required by law to pay the additional $150 of rent each month the answer is yes. Based upon the terms of the

lease and the relevant section of the FTPA, the 10% increase is reasonable and Ms. Girard is obliged to make payment of the increased rent.

2. Introduction of an Unauthorized Pet to the Premises

Under the terms of the lease agreement between Girard and Hamilton, the language is clear that "no pet of any kind ... may be kept on the premises ... absent Landlord's written consent." Based upon your meeting with Ms. Girard, it is clear that Ms. Girard appears to be in violation of this term of her lease agreement, however the question is whether or not the landlord is within its legal right to deny Ms. Girard her "emotional support animal."

Given the facts of the current circumstance, it is clear that Zoey is not a pet, per se, but rather an emotional support animal as defined by the code. Section 755(n) provides the definition of "Support Animals" as animals that provide emotional, cognitive, or other similar support to an individual with a disability." The code goes on to state that there is no specific training required for an emotional support animal. The code further defines an "Assistance Animal" using the previously defined term Emotional Support Animal as listed above. FTPA Section 755(o) With regards to Assistance Animals, the code provides in relevant part that "Tenants ... are permitted to have assistance animals as defined in Section 755(o) in all dwellings (including common and public use areas) subject to certain restrictions provided by the code -- provided that Ms. Girard can show -- which it appears she can, that she has met those restrictions, her cat "Zoey" will be defined as an Assistance Animal and therefore Hamilton will not be able to cite Girard for failing to adhere to the terms of the lease.

The restrictions provide that information confirming that the individual has a disability or confirming that there is a disability-related need for the accommodation. Here, Ms. Girard actually obtained adopted the cat upon the recommendation of her mental health provider: Dr. Sarah Cohen, M. Ed., LPS. Dr. Cohen (Franklin License #72386) has provided notice to Hamilton of her recommendation that Girard obtain a support animal in accordance with this section of the statute. It would appear that given Dr. Cohen's license as an LPC that she falls under the category of a "reliable third party" who is in a position to know of Girard's disability. Cohen's letter to Hamilton expressly meets the requirements of the code - she identifies the need for the Assistance Animal and references Girard's disability. It appears that her letter therefore meets the legal requirements of the code. Given that Zoey is a cat, and the cat is contained within Girard's apartment it seems that any restrictions upon the animal as referred to by statute have been met.

Under the terms of FTPA Section 756(c) Girard does not have to pay any pet fee, or additional rent, and accordingly Hamilton is barred from asking her to do so.

However, Hamilton wanting to have written consent for the presence of the pet is reasonable. Therefore my recommendation would be that Girard present the certification from Dr. Cohen to the landlord, and execute the Pet Addendum as requested so that in the event Hamilton ever sells the building, Girard's cat Zoey is protected.

Important to note is that should Hamilton as a landlord has rights under the statute to place restrictions on Zoey's presence. For instance, should another tenant object to Zoey's presence as an Assistance Animal, Girard will need to ensure that Zoey does not constitute a direct threat to the health or safety of others within the building and will not cause substantial phsyical damage to the property of others. Here because Zoey is a domestic cat that lives 100% within Girard's apartment except for trips to the vet where she is placed in a cat carrier, Hamilton will be hardpressed to argue that the cat is not welcome.

Note that this case is distinguishable from Sunset Apartments v. Byron (Fr Ct App 2010) where harboring a pet when a lease contains a "no pet clause" constitutes a material breach of the lease, because in this circumstance Girard's cat "Zoey is not a pet but an Assistance Animal as defined by the FPTA.

Summation of Issues and Recommendations for Ms. Girard:
The landlord tenant dispute between Girard and Hamilton turns on two issues, whether or not her failure to pay her full rent, including the 10% increase is a material breach, and whether or not her cat "Zoey" is an appropriate assistance animal as defined by the FTPA.

As demonstrated by the facts herein, Girard's nonpayment of 10% of her rent is not likely to be considered a material breach by the courts, and her cat Zoey, meets the requirement of Assistant Animal as defined by the FPTA. According, while we should be quick to respond to the Three Day Notice given to Ms. Girard so as not to risk Eviction Proceedings, it is important to note that her presentation of the certification for Zoey from Dr. Cohen and her payment of the now due, $150 rental increase will allow her to stay within in the Premises until the end of her term without further provocation by the landlord.

One final point to mention, the Landlord's agent's respond to Girard in the hallway when Girard identified her cat as an Emotional Support animal was dismissive and rude, I do not believe that there is a claim here, only perhaps *negligent infliction of emotional distress* -- since it is against public policy to ridicule someone for their mental disability which is what the landlord's agent was effectively doing here. Something to think about as you prepare your response!

Question MPT-1 – July 2024 – Selected Answer 3

To: Examiner
From: Applicant
Date: July 30, 2024
Re: Girard v. Hamilton Place Apartment Complex

MEMORANDUM

Our client Ms. Laurel Girard is facing possible eviction proceedings in the wake of a Three-Day Notice to Cure or Quit that she has received just yesterday morning from her landlord Hamilton Place apartment complex. If she does not comply with the Notice in a timely fashion, then the landlord says it will file eviction proceedings. The Notice to Cure or Quit is based upon dual grounds that appear independent: (1) Girard's refusal to pay an additional $150 recent rent increase and (2) Girard's keeping of a cat on the leased premises which allegedly violates the no pets clause of the lease. Below, I analyze whether these alleged violations in the Notice are valid bases for the termination of Girard's tenancy. Furthermore, the latter section of the memo parts includes recommended steps for Girard to take in wake of the Notice and my legal analysis.

General Notice to Quit Legal Doctrine:

The overarching purpose of the Franklin Tenant Protection Act is to ensure that Franklin "provid[es] stable affordable housing to Franklin residents and prevent[s] pretext evictions," thereby "outweigh[ing] the free-market and freedom-to-contract principles allowing a landlord to include a unilateral forfeiture clause in a residential rental contract." *Westfield Apartments LLC v. Delgado*. In essence, the Franklin Tenant Protection Act (FTPA) at Civil Code Section 500 et seq. "prohibits landlords from terminating leases with a specific enumerated 'just cause,'" as explained by the Franklin Court of Appeal in *Westfield Apartments LLC v. Delgado*. *Westfield Apartments*. The key policy is that "free-market principles do not apply to residential leases due to the unequal bargaining power between landlord and tenant resulting from the scarcity of adequate housing." *Westfield*.

Girard's Qualification for Protections under the FTPA:
Under the FTPA, "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 section 500(a).

The lease between Girard and Hamilton began on January 1, 2023, so Girard has been living on the premises for more than 12 months by the time the July 29, 2024 Notice to Quit was issued. Residential Lease Agreement. Girard therefore qualifies as a tenant under the FTPA for having lived in the property for more than 30 days. FTPA 500(b)(3). There is no indication from Girard that her occupation of the premises has been anything but continuous and lawful up to this point. Memorandum on Meeting with Girard. The Hamilton Place apartment is described in the lease as a 1-bedroom, 1-bathroom apartment on the first floor and thereby qualifies as residential real property because it is a "dwelling or unit that is intended for human habitation." FTPA 500(b)(2). Therefore, Girard meets all the requirements of the qualification clause of FTPA 500(a) and is entitled to its protections. FTPA 500(a).

Through the July 29, 2024 Notice to Cure or Quit, Hamilton (the owner of the residential complex) is attempting to terminate Girard's tenancy if she does not comply on the 2 deficiencies pointed out in the notice (rent and cat). Therefore, Hamilton is must have just cause to terminate the tenancy per FTPA 500(a) as mentioned above. Under the statute, just cause to terminate "includes any of the following: (1) Material breach of a term of the lease, (2) Maintaining or committing a nuisance." FTPA 501(a). Hamilton has complied with FTPA 501(b) requirement of issuing a notice to cure before initiating eviction actions, as previously discussed. FTPA 501(b).

Per the Franklin Court of Appeals, it is well-settled that "a lease may be terminated only for a material breach, not for a mere technical or trivial violation." *Westfield* (citing *Kilburn v. Mackenzie*). The court continued that "although every instance of noncompliance with a [lease] contract's terms constitutes a breach, not every breach justifies treating the contract as terminated." *Westfield* (citing *Kilburn*). "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 the contract." *Westfield* (citing *Walker's Treatise on Contracts*). Per the court, "this materiality limitation even extends to leases that contain clauses purporting to dispense with the materiality limitation." Hamilton's lease contract with Girard contains just one of those such clauses by stating: "If Tenant fails to comply with any provision of this Lease within the time period after delivery of written notice by Landlord specifying the noncompliance and indicating Landlord's intention to terminate this Lease by reason thereof, Landlord may terminate this Lease" because "Tenant's performance of and compliance with each of the terms of this Lease constitutes a condition of Tenant's right to occupy the premises." Residential Lease Agreement.

Girard's Refusal to Pay the $150 Rent Increase:

Here, I analyze whether Girard's refusal to pay the rent increase qualifies as a valid basis for Hamilton to terminate her tenancy. Unfortunately for Girard, it appears that Hamilton is entitled to raise the rent on the unit by $150 (10 percent) and Girard's failure to pay such rent would constitute a material breach that would entitle Hamilton to terminate the lease.

The FTPA provides that "An owner of residential real property shall not, within any 12-month period, increase the rental rate for a dwelling or a unit more than 10 percent." FTPA 505(a).

The original lease contract entered into between Girard and Hamilton in January of 2023 stipulated the rent would be $1500/month. Residential Lease Agreement. There is no indication that Landlord has ever increased the rent on the unit in question because Girard was still paying $1500/month until receiving Hamilton's notice on June 1 about the increased rent starting on July 1. Conversation with Girard. The provisions of the lease contract provide that "Tenant agrees that Landlord may raise the rent no sooner than 12 months after the commencement of this lease." Residential Lease Agreement.

Hamilton is attempting to raise the rent exactly 10% ($1500 to $1650) after approximately 17 months from lease start with 30-day notice and no prior rent increases in the entire 17 months prior lease period. The original lease term is still active because the lease is a 2-year lease expiring December 31, 2024.

Therefore, because Hamilton is entitled to raise the rent by exactly 10% under both the FTPA and the lease itself, it does not appear that Hamilton's actions violate the provisions of the FTPA and are therefore likely legally justified.

Girard feels that the $150 rent increase is unfair and was alarmed by the increased price, so she refused to pay the increased $1650 and only paid $1500. This likely constitutes a material breach of the lease. In *Westfield Apartments*, the court cited *Vista Homes v. Darwish* for the proposition that "payment of the rent in accordance with the terms of the lease is one of the essential obligations of the tenant, and failure of the tenant to properly discharge this obligation is legal cause for dissolving the lease." *Westfield* (citing *Vista Homes v. Darwish*).

Therefore, significant failures by Girard to pay rent will constitute a material breach of the lease, which according to the FTPA would be just cause for terminating her tenancy after receiving proper notice to cure or quit. FTPA 501(a). Hamilton included this ground to terminate in its notice to Girard, as required under FTPA 500.

Girard may be able to argue that a $150 arrearage in rent is insufficient to be material. In *Vista Homes*, "the landlord brought an eviction action against a tenant who failed to pay $10 of the total $1000 rent owed" and the court determined such a small amount was de minimis as only 1% of the rent amount owed and would not constitute a material breach sufficient to terminate. *Westfield* (citing *Vista Homes*). However, Girard's arrearage is 10x as large as that of *Vista Homes* because $150 is 10% of $1500. A court is likely to find that such a deficiency in paying rent is a material breach that

constitutes just cause for terminating the lease if Girard does not pay the increased rent. Furthermore, the rent increase is fairly reasonable as under a 10% increase and therefore does not violate the FTPA's public policy concerns about unduly coercive strong-armed bargaining by landlords against tenants. *Westfield.*
Therefore, Girard's refusal to pay additional rent would be a valid basis for terminating her tenancy.

Recommended Next Steps About the Rent:
I would recommend that Girard pay the rent increase because it is likely considered legal under both the FTPA and the lease contract itself. However, because Hamilton has now attempted to raise the rent by 10%, no more rent increases are permitted under the FTPA for the next 12 months. FTPA 505. However, if Hamilton is using the rent increase as a pretext to try to get Girard to move out, that would be impermissible per the Franklin Court of Appeals in *Westfield.*
In the alternative, perhaps our office could argue this constitutes an "excessive rent increase" as prohibited and sought to be protected against by the FTPA 505. *Westfield* (FTPA 505). Hamilton would then likely need to show a reasonable economic justification for the rent increase.

Girard's Desire to Keep Her Cat Zoey on the Premises:

Here, I analyze whether Girard's keeping of cat Zoey in the premises qualifies as a valid basis for Hamilton to terminate her tenancy. Girard has a strong argument that she is permitted to keep Zoey on the premises without any increased pet rent or pet deposit.
As acknowledged in *Westfield* by citing *Sunset Apartments v. Byron*, typically "harboring a pet when a lease contains a no-pet clause constitutes a material breach of the lease agreeement." *Westfield* (citing *Sunset Apartments*). Girard's lease with Hamilton does contain a no pet clause by stating "no pet of any kind (including but not limited to any dog, cat....) may be kept on the premises, even temporarily, absent Landlord's written consent. If Landlord consents to allow a pet to be kept on the premises, Tenant shall sign a separate Pet Addendum and pay the required pet deposit and additional monthly rent, as set forth in the Pet Addendum." Residential Lease Agreement.
Under the Franklin Fair Housing Act (FFHA), a disability includes mental disabilities which include but are not limited to mental or psychological disorders or conditions that limit a major life activity. FFHA 755(c). Enumerated examples in the statute include anxiety, PTSD, and clinical depression. Franklin Fair Housing Act 755(c).
Under the same Act, "tenants, ... with disabilities are permitted to have assistance animals as defined in 755(o) in all dwellings (including common and public use areas) subject to the restrictions of subsection (c) below). FFHA 756(a). To be an assistance animal, it must be either a service animal or a support animal...and provide emotional,

cognitive, physical, or similar support that alleviates one or more symptoms of an individual's disability." FFHA 755(o). Support animals have a similar definition under FFHA 755(n).

To be qualifies as a service animal, information confirming the disability may be provided by any reliable third party in a position to know of the disability, including a medical professional or healthcare provider. FFHA 756(b).

Girard's interview established that she has anxiety causing feelings of being overwhelmed as well as panic attacks that is not fully alleviated by medication. Girard Interview Memo. Six months ago, Girard's regular therapist recommended a emotional support animals to help alleviate this symptoms. Memo. By getting Zoey the kitten, that is exactly what Girard has done and it is working to alleviate her symptoms significantly. Memo. Girard stated that she has experienced a dramatic improvement in her overall mental well-being with less panic attacks and less feelings of being overwhelmed through Zoey's presence and companionship.

Hamilton's on-site property manager dismissed Girard's claims that Zoey is a support and assistance animal but Girard can emphasize this point by sending her therapist's lettter to Hamilton. Interview with Girard. The therapist's letter states that Girard is under her care and that her anxiety meets the definition of disability under FFHA 755. This is emphasized by anxiety being directly enumerated as a disability in the statute. FFHA 755(c). The letter validates that Zoey is an emotional support animal and is necessary for Girard's mental well-being because it mitigates her symptoms with her anxiety and panic attacks. Therapist's Letter.

Therefore, Zoey meets exactly the definition (as previously discussed) of an assistance animal (which includes support animals) because she alleviates Girard's feelings of her anxiety disability (which is enumerated as a disability in the statute). FFHA 755(o). Assistance animal owners cannot be required to pay additional rent or pet fees in connection with the assistance animal. FFHA 756(c), so Girard's rent cannot be raised on that ground alone. Furthermore, there are no breed or size restrictions for assistance animals that would bar Zoey the cat nor has Zoey been considered a direct threat to the health and safety of others because she is merely a cat with no violent tendencies. FFHA 756(c).

Therefore, once Zoey is established as an assistance animal, her presence in the apartment is not a valid basis for Hamilton to terminate Girard's tenancy.

Recommended Next Steps about Zoey:

Girard should send the letter from her therapist concerning Zoey to Hamilton and explain (perhaps through our office's assistance) that Zoey constitutes an emotional support animal that Girard is entitled to keep in the apartment no matter the terms of the lease without being required to pay any additional pet deposit or rent. This will legally invalidate Hamilton's complaints about a pet's presence in the apartment.