



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This was the hearing of applications by the landlord and by the tenant. The applications were scheduled to be heard together. The landlord and her husband, acting as her agent attended and the tenant called in and participated in the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for loss of revenue and if so, in what amount?

Is the landlord entitled to retain the security and pet deposits?

Is the tenant entitled to a monetary award for her moving costs?

Is the tenant entitled to a monetary award in the amount of her security and pet deposits?

Background and Evidence

The rental unit is a strata title townhouse in Surrey. The tenancy began July 15, 2011 for a fixed term ending July 31, 2012. Monthly rent was \$1,675.00 and the tenant paid a security deposit and pet deposit of \$837.50 each on June 24, 2011. At the beginning of the hearing the tenant raised an issue with respect to the delivery of evidence. She said that she received late evidence from the landlord the day before the hearing. The tenant said that the rebuttal evidence she received on May 9th was the only evidence received from the landlord. She said that she did not receive any evidence with the landlord's application and Notice of Hearing, although the landlord's agent testified that an evidence binder formed part of the package sent to the tenant by registered mail. Because both parties have copies of the essential documents relating to the claims as part of their evidence submitted on these applications, including the tenancy agreement and letters and communications between the landlord, the tenant and the strata council I was able to proceed with the hearing. I have heard evidence from the landlord in response to the tenant's claim in her application and find that I need not consider the late rebuttal evidence submitted on behalf of the landlord.

The landlord testified that the tenant contacted her in response to an advertisement for the rental of her townhouse unit. The landlord was in Calgary when she spoke to the tenant by telephone. The tenant told her that she was seeking accommodation for herself and her two greyhounds. The landlord said that the tenant sent her a picture of the tenant with her two dogs. She testified that she was willing to rent to the tenant because the strata bylaws permitted pets, including two dogs so long the dogs were not breeds that are excluded by the bylaws.

The tenant received a form of tenancy agreement by e-mail attachment. She printed the document, signed it and delivered it to the landlord's father at his business. The tenant also signed a "Form K" wherein she acknowledged that she was obliged to comply with the bylaws of the strata corporation.

After the tenancy commenced on July 15, 2011 the tenant changed the door to the rental unit's attached garage. The door she installed had a "doggie door" to allow her dogs to pass through the door when it was closed.

In October, 2011 the landlord received a letter from the strata corporation complaining that there were dog feces in the back yard of the rental unit. She received a second complaint that the tenant's dogs barked frequently. The landlord wrote to the strata corporation to intercede on her tenant's behalf.

On February 15, 2012 the strata corporation again wrote to the landlord and advised her that she must remove the pet door on the rental unit and restore the door.

After a conversation with the landlord, the tenant gave the landlord a letter dated February 2, 2012. She said that she was writing the letter regarding the landlord's request that she leave the rental unit before the end of the lease so as to allow the landlord to find a new tenant before the lease expires in July. The tenant advised that she would be moving out of the rental unit on March 31, 2012.

The tenant said that she moved because it was not viable to live in the rental unit without access to the yard for her dogs when she was away from the rental unit. The tenant said that she told the landlord about her need for a fenced yard and she said that before the tenancy began she told the landlord of her plan to install a pet door to allow her dogs to have access to the yard when she was not home. The tenant said that her work required her to be away from home at times for up to 30 hours. The tenant said that her dogs were put at risk because gardeners performing work to the yards, which

were common property often left the gates open allowing an opportunity for her dogs to escape from the yard when she was not home.

The tenant said that she was misinformed about the services that were supposed to be provided with the rental unit; she said that the landlord must not have been familiar with her own strata bylaws. She said she never would have signed the tenancy agreement and rented the unit had she been properly advised by the landlord. The tenant submitted a written statement from her father; he claimed to have been present during a telephone conversation between his daughter and the landlord on June 22, 2011 wherein she mentioned to the landlord he plan to install a pet door. The landlord denied that the tenant told her about the pet door; she said that she learned about the door only after notification from the strata corporation.

The landlord testified that she told the tenant she would attempt to find a suitable new tenant, if the tenant wanted to move, but she did not agree to release the tenant from her obligations under the fixed term tenancy agreement. She re-rented the unit effective May 15th. In her Application for Dispute Resolution she claimed payment of one month's rent as lost revenue as well as advertising costs of \$136.20. In the late submission received on May 8, 2012, the landlord said she was claiming loss of rental income from April 1st 2012 to May 15th 2012, but she did not amend her Application for Dispute Resolution to claim an additional amount beyond the one month originally claimed.

Analysis and conclusion

The tenant's position is that she rented the unit upon the basis that her dogs would be able to have unattended access to the yard when she was not home. The tenant's position is that she was entitled to end the fixed term tenancy early because the assurance she claimed to have received before agreeing to rent the unit was in conflict with the rules of the strata corporation and the landlord did not tell her that the fenced yard was part of the common property of the strata corporation.

The tenant submitted a statement from her father, who said in his statement that he overheard the tenant's conversation with the landlord when she said she intended to install a dog door to allow the dogs to have access to the back yard when she was not home.

The following is a statement of the "parole evidence rule", a principle of evidence with specific application to the interpretation of written contracts.

It has long been a substantive rule of law in the English speaking world that in the absence of fraud or mutual mistake, oral statements are not admissible to modify, vary, explain or contradict the plain terms of a valid written contract between two parties.

It should be noted that there is a very sound basis for the rule for to consider any or every oral statement made by one party or the other during contract negotiations so as to vary, modify, or contradict the plain language finally adopted could throw the best written contract into doubt, and constant turmoil. Where a contract is clear and unambiguous, oral statements or reservations made by either party do not change it.

If terms of the contract are ambiguous or clearly susceptible to more than one meaning then parole evidence is admissible to show what the parties meant at the time of making the contract and how they intended it to apply.

The tenant signed an acknowledgement that she must comply with the strata bylaws and the addendum to the tenancy agreement signed by the tenant stated that: "Tenant shall assume responsibility and comply with all the strata rules and regulations."

I consider the tenant's submission that the tenancy agreement was predicated upon the landlord's promise her that her dogs would have unattended access to the back yard when the tenant was not at home and not present to supervise the dogs, to be an attempt to introduce an oral statement to modify the terms of the existing written contract in violation of the parole evidence rule. The tenant's evidence has not been presented to clarify an ambiguity, but rather to introduce a new term, not present in the original contract that is in direct conflict with the provisions of the strata corporation bylaws acknowledged by the tenant when she signed the Form K "Notice of Tenant's Responsibilities".

Effectively, the tenant's position is that her requirement that her dogs have access to the yard at all times should be accepted as a material and essential term of the tenancy agreement, the breach of which will entitle her to end the tenancy before the end of the fixed term. If the tenant considered this to be an essential term of the tenancy agreement and of the utmost importance to her, then she should have insisted that it be inserted into the agreement as a specific written term. I find that the tenant was not entitled to end the fixed term tenancy prematurely without attracting any liability and I find that she is not entitled to an award of compensation for her moving expenses. The tenant's application is dismissed without leave to reapply.

Turning to the landlord's application, she claimed payment of rent for the month of April, plus advertising costs in the amount of \$136.20. In her late submission the landlord sought to increase her claim to include an additional half months' rent to May 15th, but she did not amend her application to claim the increased amount; it was only referred to in an evidence submission intended as a rebuttal to the tenant's claim. I find that the landlord is bound the claim made in her original application which served as notice to the tenant of the claim advanced by the landlord.

I have found that the tenant ended the fixed term tenancy without proper grounds. Upon the evidence the landlord acted properly to mitigate her damages by seeking out a new tenant. Her claim is limited to the sum of one month's rent plus her advertising costs incurred as part of her efforts to mitigate. I find that the landlord is entitled to recover the amount claimed in her application, namely: the sum of \$1,811.20. The landlord is entitled to recover the \$50.00 filing fee for her application for a total award of \$1,861.20. I order that the landlord retain the tenant's security and pet deposits that she holds in partial satisfaction of this award and I grant the landlord a monetary order under section 67 for the balance of \$186.20. This order may be registered in the Small Claims Court and enforced as an order of that court.

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: May 25, 2012.

Residential Tenancy Branch