



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bristol Estates
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This was a hearing with respect to the landlord's application for an order for possession and a monetary order. The hearing was conducted by conference call. The landlord's representative and the tenant called in and participated in the hearing. The tenant acknowledged that he received the landlord's application for dispute resolution and the landlord's documentary evidence. After the landlord's application was filed the tenant moved out of the rental unit; therefore an order for possession is no longer required and the landlord's application for an order for possession is dismissed.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Is the landlord entitled to retain all or part of the tenant's security and pet deposits?

Background and Evidence

The rental unit is an apartment in Surrey. The tenancy began on March 1, 2013. The tenant occupied other units in the complex before he moved into this unit. The monthly rent was \$950.00. The tenant paid a \$475.00 security deposit and a \$475.00 pet deposit.

The landlord's representative testified that the tenant did not pay rent for November when it was due and the landlord served the tenant with a 10 day Notice to End Tenancy for unpaid rent on November 2, 2013, by posting it to the door of the rental unit. The tenant moved out of the rental unit at the end of November. The landlord now claims payment of rent for November in the amount of \$950.00.

The tenant testified that he met with the landlord's representative, Mr. F at the rental unit towards the end of October. He complained to the landlord about his continuing

problems with cockroaches infesting the rental unit. He said that the landlord agreed to return his security and pet deposits, less an amount for cleaning and flea treatments if the tenant moved out at the end of November. He said that it was agreed that he would not have to pay rent for November as compensation for loss of quiet enjoyment.

The landlord's representative appearing at this hearing, who was present at the time of the above-mentioned conversation testified that the tenant was not told that he would not have to pay rent for November and when he failed to pay the rent, he was given a Notice to End Tenancy.

Analysis and conclusion

The tenant contended that the landlord agreed that he did not have to pay rent for November, but he did not obtain any written confirmation of the agreement to forego rent. The landlord's representative denied that any such agreement was made. The tenancy agreement signed by the parties obliged the tenant to pay rent on the first day of each month

Because I am faced with contradictory evidence concerning an oral agreement to alter the tenant's ordinary obligations under the tenancy agreement to pay rent, I find that I must be guided in making my decision by the "parole evidence rule" which is 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.

In the present case there is no ambiguity in the written tenancy agreement; it is signed by both parties and it states unequivocally that rent is payable; the tenant's oral

testimony is disputed by the landlord and in the absence of a written agreement to release the tenant from his obligation to pay November rent I therefore find that the landlord is entitled to a monetary award in the amount of \$950.00. The landlord may recover the \$50.00 filing fee for this application, for a total award of \$1,000.00. I order that the landlord retain the tenant's security and pet deposits in the amount of \$950.00 in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance due of \$50.00. This order may be filed 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: January 09, 2014

Residential Tenancy Branch

