



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, OPB, MNDC, O, FF

Introduction

This was a hearing with respect to applications by the tenant and the landlord. The tenant applied to dispute a one month Notice to End Tenancy for cause and the landlord applied for an order for possession and a monetary order. The hearing was conducted by conference call. The tenant and the landlord called in and participated in the hearing. The landlord was assisted by his son who acted as an interpreter. In the landlord's application for dispute resolution he requested a monetary order in the amount of \$606.13, claimed to be for fines levied by the Strata Corporation. The landlord submitted a 47 page evidence package on May 9, 2014. He included an unfiled copy of a revised version of his application for dispute resolution as part of his evidence. The copy of the Application referred to an additional claim for \$4,250.00 said to be for damage to the landlord's property. The copy of the Application was not filed and was not properly served on the tenant. It does not constitute a valid amendment; it does not form part of the landlord's application that is before me in this proceeding and I did not hear any evidence with respect to it.

Issue(s) to be Decided

Should the Notice to End Tenancy dated March 28, 2014 be cancelled?

Is the landlord entitled to an order for possession?

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

Background and Evidence

The rental unit is a strata title apartment in Port Moody. The tenancy began on April 1, 2013 for a one year term and thereafter on a month to month basis. Rent in the amount of \$1,500.00 is payable on the first of each month. The tenant paid a \$750.00 security deposit at the start of the tenancy. The tenancy agreement provided that there would be no pets and no smoking in the rental unit.

The landlord testified that the tenant does have a dog in the rental unit. The landlord provided evidence of numerous complaints from other residents and the strata council about the tenant's dog including noise complaints and the tenant's failure to clean up after the dog. The landlord also provided evidence that the tenant has allowed smoking in the rental unit, contrary to the terms of the tenancy agreement. The landlord served the tenant with a one month Notice to End Tenancy dated March 28, 2014. The Notice required the tenant to move out of the rental unit by April 30, 2014. The grounds for the Notice to End Tenancy were that the tenant has allowed an unreasonable number of occupants in the rental unit; that he has put the landlord's property at significant risk; that he breached a material term of the tenancy agreement that was not corrected within a reasonable time after notice to do so and that the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property and adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord.

The landlord said that the tenant had another person living with him in the rental unit who was not named as a tenant and this was the basis for the claim that the tenant allowed an unreasonable number of occupants in the rental unit.

The landlord testified that the tenant damaged a security video camera in the common area of the rental property; he was recorded in the act of damaging the camera by scratching the lens and covering it with chalk. This is what the landlord referred to as illegal activity.

The landlord provided photographs taken during an inspection of the rental unit. The pictures showed the tenant's dog in the rental unit. They showed an ashtray full of cigarette butts and a cigarette lighter in the rental unit. The landlord provided copies of letters from the strata corporation concerning the damage to the security camera and a further letter charging a \$200.00 fine for the incident. Another letter from the Strata Corporation dated September 19, 2013 assessed the landlord a \$200.00 fine because the tenant placed a solid pine dresser into the trash compacter causing damage and breaching the strata bylaws with respect use of common property and refuse disposal.

By letter dated December 19, 2013 the Strata Corporation assessed a further \$200.00 fine because of reports that the tenant's dog was left on the balcony and barked continuously between 2:00 A.M. and 4:00 A.M. on November 22, 2013. The landlord submitted another letter from the strata corporation assessing a \$200.00 move-in fee with respect to the tenant's moving into the unit on April 1, 2013.

On March 15, 2014 the landlord gave the tenant a warning letter with respect to the presence of a dog in the rental unit. The landlord gave the tenant 10 days to remove the dog and advised him that he was responsible for paying strata fines totalling \$606.13. The landlord then served the Notice to End Tenancy on March 28, 2014.

At the hearing the tenant acknowledged that he had a dog living in the rental unit. He said that he acquired the dog a few months after he moved into the unit. The tenant testified that the landlord became aware of the dog in the summer of 2013 when he attended at the rental unit to deal with a leak. The tenant testified at the hearing that the landlord agreed to allow the landlord to keep the dog and accepted the cash payment of a pet deposit in the amount of \$750.00. The tenant said that he did not receive a receipt for the payment and there was no written acknowledgement or change made to the tenancy agreement to record that he was entitled to have a dog.

The tenant commented on the landlord's claim that there is an unreasonable number of occupants. He said that the rental unit has two bedrooms and he share the apartment with one other person and that is not unreasonable.

The tenant disagreed with the landlord's claims for bylaw fines. He said that he has paid certain fines that were levied, but he objected to others, in particular the fine for leaving his dog on the balcony and allowing it to bark. He said that he wrote a letter to the strata corporation to protest the fine and did not get a reply. The tenant said he has never left his dog on the balcony alone and further that his dog is incapable of barking and can only whine or whimper.

With respect to the matter of smoking in the rental unit, the tenant said that he does not smoke, but some of his guests smoke on the balcony only and never inside the rental unit. The tenant disputed photographs submitted by the landlord showing damage to the rental unit. He said the photos exaggerated the extent of damage.

The landlord denied that he ever consented to the tenant having a dog and he testified that he did not receive a pet deposit from the tenant at any time. He said that for religious reasons he would never have agreed to permit the tenant to have a dog in the rental unit.

Analysis

The tenant claimed that the written contract which prohibits pets was altered by a verbal agreement several months after it was made. He claimed that the landlord accepted a cash payment of a security deposit although no receipt was produced and there was

nothing written to record an agreement to change the terms of the tenancy agreement. The landlord denied that he agreed to allow the tenant to have a dog and said that the tenant did not pay a pet deposit in any amount.

The following is a concise 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.

In the present case there is no ambiguity in the written tenancy agreement; it is signed by both parties and it states unequivocally that there are to be “no pets”. In these circumstances I discount the tenant’s evidence that there was a verbal agreement to alter the terms of the written document. I accept the landlord’s testimony that the tenant did not pay him a pet deposit. I find it unlikely that the tenant would not have created some form of record or acknowledgement of an occurrence of such significance to him. I find that the “no pets” clause is a material term of the tenancy agreement and that the tenant has failed to rectify the breach after being allowed a reasonable time to do so. Based on the landlord’s evidence, particularly the photographs supplied, I find, on a balance of probabilities that the tenant has permitted smoking in the rental unit, also in breach of a material term of the tenancy agreement.

The ground that there are an unreasonable number of occupants in the rental unit has no merit, but I find that the landlord has sufficient grounds to support the one month Notice to End Tenancy given to the tenant on the other grounds stated, in particular with respect to the ground that the tenant has breached material terms of the tenancy agreement. I therefore dismiss the tenant’s application to cancel the Notice to End Tenancy without leave to reapply.

The tenant signed a copy of the Strata Property Act Form K – Notice of Tenant's Responsibilities when he signed the tenancy agreement. He thereby acknowledged that he must comply with the bylaws and rules of the strata corporation and would be subject to fines in the event of a breach of the bylaws. The tenant also accepted responsibility for bylaw charges such as move in fees. The landlord claimed that the tenant is responsible for strata fines and fees in the total amount of \$606.13. The amounts and the invoices from the Strata Corporation were specified in the March 15th warning letter to the tenant. The landlord referred to a ledger or statement given to the landlord by the strata corporation. The ledger statement lists a number of charges and payments, some of which are the fines in question that have been charged to the landlord's strata account. I find that the landlord is entitled to a monetary award in the amount of the fines, namely: the sum of \$600.00. The landlord did not show how the additional amount of \$6.13 was incurred and this amount is not allowed.

Conclusion

The tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply. The landlord is entitled to an order for possession as claimed in his application. The order for possession will be effective May 31, 2014 after service upon the tenant. The order may be filed in the Supreme Court and enforced as an order of that court.

The landlord has been awarded the sum of \$600.00 he is entitled to recover the \$50.00 filing fee for his application, for a total award of \$650.00 and I grant a monetary order under section 67 in the said amount. 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 23, 2014

Residential Tenancy Branch

