Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPB, FF

Introduction

This was the hearing of an application by the landlord for an order for possession and for the recovery of the filing fee for this application. The hearing was conducted by conference call. The landlord's agent participated. The tenant called in and participated in the hearing, however he called in approximately five minutes after the commencement of the hearing and he left the hearing abruptly before I had concluded the hearing.

Issue(s) to be Decided

Is the landlord entitled to an order for possession?

Background and Evidence

The rental unit is an apartment in a high-rise building in West Vancouver. The tenancy began on August 1, 2008 for a one year fixed term and thereafter month to month with rent, inclusive of parking in the amount of $1,750.00 payable on the first of each month. The tenant paid a security deposit of $845.00 on July 14, 2008.

The tenancy agreement provides that: "Nothing may be thrown from or placed on, hung on, or affixed to the inside or outside of a window, door, balcony, or an exterior part of the residential property. An awning, antenna, satellite dish, cable or wire must not be installed on the residential property. There are two satellite dishes affixed to the balcony of the tenant's rental unit.

The landlord purchased the rental property from the former owners subject to existing tenancies in or about July, 2010. The landlord has requested in writing that the tenant remove the satellite dishes from his balcony. The landlord wrote to the tenant on July 5, 2010 requiring the removal of the satellite dishes. On August 26, 2010 the landlord again requested removal of the dishes and offered the tenant a financial inducement of

$350.00 if the dishes were removed by the end of August. On September 9, 2010 the landlord wrote to the tenant. The landlord said the tenant was in violation of the tenancy agreement and must move out by the end of October.

The tenant replied to the landlord by letter dated September 10, 2010. The tenant said that the former landlord verbally agreed to have dishes on our balcony. The tenant said that he made a 3 year contract for television programs. He said that the landlord could wait until the tenants agreement finishes with his satellite company or pay him a $1,200.00 early cancellation fee and end the agreement.

In a letter to the tenant dated September 14, 2010, the landlord reaffirmed its position that the satellite dishes must be removed. On November 5, 2010 the landlord personally served the tenant with a one month Notice to End Tenancy for cause dated November 5, 2010. The Notice claimed that the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so. The Notice to End Tenancy required the tenant to move out of the rental unit on December 31, 2010. The tenant did file an application for dispute resolution to dispute the Notice to End Tenancy.

On January 7, 2010 the landlord's agent personally served the tenant with the landlord's application for dispute resolution and Notice of Hearing. On January 10, 2010 the tenant wrote to the landlord. He offered to remove the satellite dishes if the landlord permitted him to move into a different and larger apartment at the same rent he currently pays to the landlord. The landlord replied to the tenant and said that the larger apartment was not available, but if the tenant permanently removed the satellite dishes before the arbitration proceedings the landlord would be prepared to allow the tenant to move to a larger two bedroom apartment at the prevailing market rent if one becomes available.

At the hearing the tenant testified that the previous landlord gave the tenant verbal permission to install the satellite dishes. He testified that he could not be ordered to remove the dishes and only the Supreme Court of Canada or the Court of Appeal for British Columbia could make such an order. When I informed the tenant that the issue was not whether he should be ordered to remove the satellite dishes, but rather whether the Notice to End Tenancy would be upheld and whether the landlord would granted an order for possession of the rental unit, the tenant hung up and left the hearing.

Analysis and conclusion

The tenant contended that he received verbal permission from the former landlord to install and keep satellite dishes on his balcony, but he did not apply to dispute the Notice to End Tenancy that was handed to him on November 5, 2010. Section 47 (5) of the *Residential Tenancy Act* provides:

> (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
>
> > (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
> >
> > (b) must vacate the rental unit by that date.

The tenant, not having applied to dispute the Notice to End Tenancy, is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, which was December 31, 2010.

With respect to the merits of the tenant's position, I note that It is a principle of contractual interpretation that if the language of a written contract is clear and unambiguous, then no extrinsic parol (oral) evidence may be admitted to alter, vary or interpret in any way the words used in the writing. The tenancy agreement prohibited satellite dishes and provided by paragraph 33 that: "Any change or addition to this tenancy agreement must be agreed to in writing and initialed by both the landlord and the tenant." I therefore do not accept the tenant's submission that he is entitled to keep the satellite dishes as a term of his tenancy pursuant to an alleged verbal agreement with his former landlord. The landlord gave the tenant several notices to remove the satellite dishes and he has neglected or refused to remove them after more than six months. The landlord requested an order for possession effective January 31, 2011. Based on the above facts I find that the landlord is entitled to an order for possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an Order of that Court. The landlord is entitled to recover the $50.00 filing fee paid for this application.

Dated: January 26, 2011.