

FILED: November 9, 2011

IN THE COURT OF APPEALS OF THE STATE OF OREGON

HOUSING AUTHORITY OF JACKSON COUNTY,
Plaintiff-Appellant,

v.

GREGORY GATES,
Defendant-Respondent.

Jackson County Circuit Court
100023404E

A147127

Mark S. Schiveley, Judge.

Submitted on October 05, 2011.

David B. Paradis, Mark R. Weaver and Brophy, Schmor, Brophy, Paradis, Maddox & Weaver filed the brief for appellant.

No appearance for respondent.

Before Haselton, Presiding Judge, and Armstrong, Judge, and Duncan, Judge.

DUNCAN, J.

Reversed and remanded.

1 DUNCAN, J.

2 Plaintiff filed this action for forcible entry and detainer (FED), asserting
3 that it had a right to possession of the premises at issue because it had properly
4 terminated its lease agreement with defendant based on defendant's violation of a material
5 term of the lease agreement, specifically, an occupancy rule prohibiting loud noise and
6 illegal activity. The trial court entered a judgment in defendant's favor, holding that the
7 lease agreement did not incorporate the occupancy rule. Plaintiff appeals, and we
8 reverse.

9 We begin with the relevant facts. In October 2009, plaintiff leased an
10 apartment to defendant. On August 22, 2010, police were dispatched to the apartment in
11 response to a noise complaint from a neighbor. Defendant was arrested for possession of
12 methamphetamine. On August 27, 2010, plaintiff issued a termination notice to
13 defendant, giving him until September 30, 2010, to vacate his apartment. The notice
14 informed defendant that his lease was being terminated for violation of an occupancy
15 rule:

16 "This notice is being given for the following breach of and noncompliance
17 with your rental agreement:

18 **"Lease/Occupancy Rule Violated:**

19 "Occupancy Rules-Section 4: Conduct: Tenants and their guests are
20 not permitted to make loud disturbing noise, or to disturb your neighbors'
21 peaceful enjoyment of their unit or premises. Loud talking or music,
22 unnecessary noise, boisterous conduct, or loud television sets are not
23 allowed. Noise should not carry outside your own unit or be heard in a
24 neighboring unit. * * * Tenants and their guests will not engage in any
25 illegal activity, or other activity that impairs the physical or social

1 environment of the apartments." (Boldface in original; internal quotation
2 marks omitted.)

3 Defendant did not vacate the apartment, and, on October 6, 2010, plaintiff
4 filed this FED action to evict him. Plaintiff's complaint sought possession based on the
5 August 27, 2010, notice to terminate. Defendant filed an answer asserting, *inter alia*, that
6 nothing in the parties' lease agreement authorized termination based upon his conduct.

7 On November 5, 2010, the case was tried. Plaintiff's employee, who
8 managed the apartment complex where defendant lived, testified that defendant had
9 signed a copy of the occupancy rules at the same time that he had signed the lease
10 agreement. He further testified that defendant had violated an occupancy rule, as alleged
11 in the notice of termination, and that the occupancy rules "are part of the Lease
12 Agreement."

13 The trial court found that defendant had violated the occupancy rule as
14 plaintiff had alleged, but questioned whether the occupancy rules had been incorporated
15 into the parties' lease agreement. Ultimately, the court held that the occupancy rules had
16 not been incorporated into the lease agreement and, therefore, plaintiff had failed to prove
17 that defendant had violated the lease agreement. The court explained:

18 "The Lease Agreement simply says, attached hereto is a bunch of stuff
19 including the occupancy rules. I am not finding anywhere in the Lease
20 Agreement where it incorporates that and makes it a part of the Lease
21 Agreement, and so I strongly encourage the Plaintiff to take a look at their
22 Lease Agreements to make sure if that is what you intended to have
23 happen. * * * [If the attachments are] supposed to be part of the lease it
24 needs to somehow be incorporated and not simply attached."

25 Plaintiff appeals, asserting that the trial court "erred in its determination that

1 [the occupancy] rules were not incorporated" into the lease agreement. We review a trial
2 court's interpretation of a lease agreement, like any contract, for errors of law. *See*
3 *Yogman v. Parrott*, 325 Or 358, 937 P2d 1019 (1997) (prescribing method of contract
4 interpretation). We first examine the text and context of the contract as a whole to
5 determine if the provision at issue is ambiguous. *Id.* at 361. If it is not, our analysis ends.
6 *Id.* Accordingly, we turn to the terms of the lease agreement.

7 Paragraph 14 of the lease agreement provides, in pertinent part, that
8 "Owner/Agent may terminate this Lease and evict Tenant for any of the following
9 reasons: (1) material noncompliance with the Lease." Paragraph 20F, the penultimate
10 paragraph of the lease agreement, provides, "ENTIRE AGREEMENT: * * * The terms
11 set out above, together with the attachments noted below[,] represents the entire
12 agreement between the parties." At the end of the lease agreement are the parties'
13 signatures and a list of "Attachments to [the] Rental Agreement," the first of which is
14 "Occupancy Rules."

15 "Where a written instrument refers in specific terms to another writing, the
16 other writing is a part of the contract." *NW Pac. Indem. v. Junction City Water Dist.*, 295
17 Or 553, 558, 668 P2d 1206 (1983), *modified*, 296 Or 365, 677 P2d 671 (1984). Here, the
18 lease agreement specifically refers to the attachments, including the occupancy rules, as
19 part of the entire agreement between the parties. Thus, the trial court erred in holding
20 that the lease agreement did not incorporate the occupancy rules.

21 Reversed and remanded.