

DECISION

Dispute Codes CNL, FF, MNDC

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties and the witness the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witness.

All testimony was taken under affirmation.

Issues(s) to be Decided

This was a request to have a Notice to End Tenancy cancelled; however by the date of the hearing the applicant had already vacated the rental unit and therefore no longer required in order cancelling the Notice to End Tenancy. However this was also a request for a monetary order for \$5,000.00 and a request that the applicant bear the \$50.00 cost of the filing fee that was paid for this application for dispute resolution.

Background and Evidence

The applicant testified that:

- When they moved into the rental unit they were informed that the garage was not part of the rental agreement; however they were not informed that someone would be living in the garage.
- They were informed that the garage was rented to a person who would be storing tools in the garage and possibly on occasion using those tools in the garage.
- It soon became evident that someone was living in the garage on a full-time basis.

- They have calculated that the person in the garage has used approximately \$5,000.00 in electricity over the term of their tenancy.

The applicants are therefore requesting an order that the landlord pay \$5,000.00 to the applicants to compensate them for the electricity used by the tenant in the garage.

The respondent and the respondent's witness testified that:

- The tenants were fully informed of the beginning of the tenancy that there would be someone living in the garage.
- The tenants requested a rent reduction to cover the extra costs of having a person living in the garage and both sides agreed to a reduction of \$25.00 per month, and signed a tenancy agreement with an addendum, which they also signed, which states under clauses 8 and 9;
 - 8 - Garage is not part of the rental agreement. Tenant has use of carport only.
 - 9 - Rent has been decreased to \$1275.00 being that garage is presently being occupied. Rent to be returned to original rental agreement amount of \$1300.00 when garage is no longer occupied by other party.
- The agreement and the addendum were all signed prior to the tenants moving into the rental unit.
- It has been obvious for the full term of the tenancy that someone has been living in the garage and yet the applicants made no complaint until now eight years later, when the landlords gave the tenants a Notice to End Tenancy for landlord use.

In response to the landlord's testimony the applicant testified that:

- The decrease in rent to \$1275.00 from \$1300.00 was not for compensation for utilities used by the tenant, it was for the inconvenience of not having the use of the garage.

Analysis

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

In this case it is my decision that the applicant has not met the burden of proving his claim that they were informed that the garage was to be occupied primarily for storage purposes. It is basically just his word against the word of the landlord and the landlords witness and therefore he has not met that burden of proof.

Further when the testimony of one party contradicts the testimony of another I must look to any documentary evidence and in this case it is my finding the clause 9 of the addendum clearly states that the garage will be occupied by another party and that rent has been reduced as a result. The clause does not state that rent as been reduced for loss of use of the garage, its states that rent has been reduced because the garage is being occupied. Therefore it is my finding that the tenants were fully aware that the garage was being occupied, and it is also my finding that the agreed rent reduction was to cover any extra costs that would be incurred by the tenants due to the occupancy of the garage.

Therefore it is my decision that the applicants do not have a claim against the landlord for electricity used in the garage.

Conclusion

This application is dismissed in full without leave to reapply.

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: April 13, 2010.

Dispute Resolution Officer