

DECISION

Dispute Codes MND, MNR, FF

Introduction

This hearing was convened in response to an application for dispute resolution filed by the landlord seeking:

1. A monetary award; and
2. Recovery of the filing fee paid for this application.

Both parties attended the hearing of this matter and gave evidence under oath.

The landlord has filed a "Proof of Service" indicating that he (the landlord's agent AD who is son of the landlord AB) served the tenant by posting the 10 day Notice to End Tenancy to the door of the rental unit on December 22, 2010 at 6:30 p.m. and that this was witnessed his son.

The tenant testified that he has never been a tenant of this landlord at this rental unit and therefore owes no rent. The tenant testified that he did not dispute the 10 day Notice to End Tenancy because he never received it and he has no knowledge of it being posted to the rental unit door because he does not live at the rental unit.

The Notice to End Tenancy served was not tendered in evidence however there is no dispute that the person named as tenant in the Application for Dispute Resolution received the Application for Dispute Resolution and knows the claims being made against him. As the landlord is not seeking an order of Possession based on the 10 day Notice to End tenancy I will hear the landlord's claim for a monetary award.

Issue(s) to be Decided

Has the landlord met the burden of proving his/her claim?

Background and Evidence

The landlord testified that the parties entered into a tenancy agreement whereby the tenants agreed to rent the rental property for \$3,500.00 per month. No security deposit was paid. The tenancy was to commence on April 20, 2010 and no rent was charged for the last few days of April but full rent was to be paid as of May 1, 2010. The landlord calculated that for the period May 1, 2010 to March 2011 the tenants should have paid \$38,500.00 in rent but they only paid \$8,600.00.

By way of written agreement of the terms of this tenancy the landlord has submitted a Contract of Purchase and Sale Addendum dated January 21, 2010 at Clause 3 whereby the buyer (the landlord) of the property agreed to:

...rent the main house (excluding the basement suites) to the vendor (*the tenant*)
@ the monthly rent of \$3500/00 (Three Thousand Five Hundred)

In addition the landlord says he has proof that the tenants lived in the home and that they took the rent from the tenants in the basement suite and did not give it to the landlord. To prove that the tenants live at the rental unit the landlord says he has copies of electricity and gas invoices addressed to the tenants at this address. However those documents were not submitted in evidence.

The party named as tenant says he and his wife sold the property to the landlords. The tenant says his wife gave the landlords/purchasers a \$30,000.00 loan in order for them to be able to purchase the property. The tenant says his wife holds a mortgage on the property which has not been paid. The tenant submitted into evidence mortgage documents and a Form A Transfer showing the property being transferred from SKG to the landlords AB and PD. The tenant says that this is the real reason for this claim; that it is being made because the landlords have not made any payments on the \$30,000.00 mortgage and the tenant is in the process of pursuing foreclosure proceedings. The tenant says Clause 3 as set out above which is contained in the Contract of Purchase and Sale Addendum was put into place simply so that the landlord could get financing from the bank. The tenant/vendor stated that they never intended to rent the property back from the landlords.

The tenant says they did make some payments to the landlord because they stored some of their goods in the garage but they never lived at the rental unit nor did they pay rent to the landlord.

The tenant submitted bank statements and his driver's licence showing his residential address which is not the rental property address. The tenant testified that he owns 10

homes in the Aldergrove area and would not even consider renting a home and he certainly would not agree to rent the upstairs portion of a house for \$3,500.00.

The landlord responded that the upstairs portion of this house is large containing 7 bedrooms and that is why the rent is \$3,500.00 per month.

Analysis

Based on the evidence before me I find that the landlord has failed to prove that there was a tenancy. While the landlord states that the tenancy agreement is contained in Clause 3 in the Contract of Purchase and Sale, this clause does not set out any terms of the tenancy save for the rental amount. Further, the tenant says this clause was only included to enable the landlords to obtain financing to purchase the rental property from the tenants. There has also been no condition inspection report prepared and no security deposit charged as is customary with a tenancy.

The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Conclusion

The landlord's application is dismissed.

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: September 16, 2011.

Residential Tenancy Branch