IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

GARY L. NAYLOR,	
Plaintiff,	
∇ .	C.A. No. CPU4-12-003651
KEVIN T. TUMEY,	
Defendant.	

Submitted: July 8, 2013 Decided: July 30, 2013

Donald L. Gouge, Jr., Esquire Donald L. Gouge, Jr., LLC 800 King Street, Suite 303 P.O. Box 1674 Wilmington, DE 19899-1674 Attorney for Plaintiff Robert C. McDonald, Esquire Silverman McDonald & Friedman 1010 North Bancroft Parkway Suite 22 Wilmington, DE 19805 Attorney for Defendant

DECISION AFTER TRIAL

Gary L. Naylor (hereinafter "Naylor") brings this action to recover for breach of an oral lease agreement. The parties stipulated that the limited issue before the Court was whether Plaintiff/Landlord, Gary Naylor, verbally agreed to reduce the rent for Defendant/Tenant, Kevin Tumey (hereinafter "Tumey"), from \$1,800.00 to \$900.00 per month. Trial was held on June 4, 2013 and thereafter the parties submitted post-trial memoranda. Having considered the record evidence, arguments of the respective parties, and the applicable law, I find, based on the preponderance of evidence, that Naylor did not agree to the alleged rent reduction.

Factual and Procedural Posture

On or about September 1, 2008, Naylor verbally agreed to rent his single family residence in Bear, Delaware to Tumey for \$1,800.00 per month. The parties did not agree to any set rental period at the outset of the lease. The home had four bedrooms and two and a half bathrooms in a residential neighborhood on a half acre lot. Naylor testified that the rental price was set at \$1,800.00 because his mortgage payment on the home was \$1,890.00. He further testified the tenant prior to Tumey and the tenant after Tumey both paid \$1,800.00 per month for rent.

Naylor was adamant that the rental price was \$1,800.00 throughout the 37 month lease, which was for a period commencing September 2008 to October 2011. Tumey agreed that the original rental price was \$1,800.00. However, Tumey had a different position as to the continuity of the original rental amount.

Tumey testified that in April 2010, his relationship ended with his live-in girlfriend. Tumey stated that Naylor agreed to reduce the rent to \$900.00. Naylor testified that there was no modification. Naylor stated that the live-in girlfriend was not a party to the lease and never made any rent payments. Tumey alleged that he paid \$900.00 per month beginning in April 2010 through the end of the lease in September 2011. As of April 2010, when the alleged modification occurred, Tumey was significantly behind in rent payments. In August 2010, Tumey submitted two separate rent checks in the amount of \$900.00, totaling \$1,800.00.1 Tumey again submitted two separate payments of \$900.00 in July 2011.2

¹ Pl. Ex. 1 Tab 33.

Naylor testified in regards to Tumey's habitual failure to pay rent. There were many occasions where Tumey failed to pay the monthly rent and on occasion the issued checks were returned for insufficient funds and/or the account was closed. The parties met on occasion to review the amount Tumey owed. Naylor stated that he repeatedly demanded payment before and after the lease ended.

Lana West also testified during Plaintiff's case-in-chief. She lived with Naylor during the past four years and witnessed the landlord-tenant relationship between the parties. Ms. West testified that Naylor was consistently behind on rent, and, at the end of the lease, owed a large sum of money in back-rent. Ms. West further testified that she was unaware of any modification of rent and that rent was always \$1,800.00 per month.

The parties stipulated that Tumey owes back-rent, but disagree as to the amount. At trial, the parties stipulated that they agreed to the amount of damages depending on the Court's decision. If the Court finds that there was no agreement to reduce the rent, then Tumey owes \$19,720.00. If the Court finds there was an agreement to reduce the rent, the parties agree that Tumey owes \$3,760.00.

Discussion

A. Statute of Frauds

The Court will first address Tumey's Statutes of Frauds argument. Tumey raised the Statute of Frauds defense post-trial, arguing that the Statute of Frauds prevents Naylor from enforcing the verbal lease contract. Tumey's position is that Naylor "testified that he

² Pl. Ex. 1 Tabs 45 & 46.

believed the cont[r]act to be year-to-year." The Court has determined that Naylor's testimony actually indicates a different version of events. Naylor testified that, at the outset of the agreement, there was no specific rental period. Tumey suggested to Naylor that he was unsure of how long he would need to rent the house due to a recent divorce. Naylor testified that he thought Tumey may need to rent the house for at least a year. Naylor's subjective belief at the outset as to how long Tumey would rent the house does not equate to an agreement between the parties. The testimony is clear that there was no agreement between the parties as to the duration of the lease at the start of the contract.

The relationship in these proceedings involves the lease of a residential property. The lease of residential property is controlled by the Delaware Landlord-Tenant Code. The provisions of 25 Del. C. 5101 provide:

That the [Landlord-Tenant] Code shall regulate and determine all legal rights, remedies and obligations of all parties and beneficiaries of any rental agreement of a rental unit within this State, wherever executed.

The provision of 25 Del. C. § 5106(b) provides: "where no term is expressly provided, a rental agreement for premises shall be deemed and construed to be for a month-to-month term."

Pursuant to 6 Del. C. § 2714(a), the Statute of Frauds precludes enforcement of an agreement "that is not to be performed within the space of one year from the making thereof," unless there is a writing signed by the party against whom the agreement is being

³ Defs.' Post-Trial Mem. at 4.

enforced.⁴ The Statute of Frauds applies only if the parties cannot possibly perform the agreement within one year.⁵ "That is, if a contract *may be* performed within a year, the statute does not apply."⁶ If the parties do not set specific time of performance at the time of contracting, then, "if by any possibility it may be performed with a year, the statute does not apply, and such an agreement need not be in writing."⁷

Trial testimony indicated that the parties could perform the agreement within one year. There was no agreement as to the length of the lease agreement. Accordingly, it is highly possible that the lease could have been performed within one year. Tumey argues that the lease agreement lasted 37 months and therefore was not performed within one year; however, he provides no argument as to why the oral agreement could not possibly have been performed within one year. Therefore, I find that the Statute of Frauds does not prevent Naylor from enforcing the oral lease agreement.

In the alternative, even if the lease agreement was year-to-year, Tumey's argument still fails. Pursuant to 25 *Del. C.* § 5106(a) of the Delaware Landlord-Tenant Code, no rental agreement shall be effective for more than one year unless the agreement is in writing. The lease in this case was a verbal lease, and therefore, a month-to-month lease that could have

⁴ 6 Del. C. § 2714(a).

⁵ Haveag Corp. v. Guyer, 211 A.2d 910, 912 (Del. 1965).

⁶ Brandner v. Del. State Hous. Auth., 605 A.3d 1, 1 (Del. Ch. 1991).

⁷ Haveg Corp., 211 A.2d at 538 (quoting Devalinger v. Maxwell, 54 A. 684, 686 (Del. 1903)).

⁸ 25 Del. C. § 5106(a).

been terminated by either party providing 60 days written notice. Under the Delaware Landlord-Tenant Code, the lease in this case was for less than one year, rendering the Statute of Frauds inapplicable.

B. No Modification of the Oral Lease Agreement

The sole issue presented at trial was whether there was a modification of the oral lease agreement. The parties stipulated that an oral lease agreement existed between the parties. Tumey never alleged that a contract did not exist between the parties. The Court sitting as fact-finder is "the sole judge of the credibility of witnesses and responsible for resolving conflicts in testimony."¹⁰

I find that the testimonial and documentary evidence provided by Landlord, Naylor, to be highly credible. After review of the trial record, it is not reasonable that Naylor would agree to a fifty-percent rent reduction, especially in light of the fact that Naylor's mortgage payment was \$1,890.00, for a large home on a half acre lot. Additionally, the tenants before and after Tumey paid \$1,800.00 per month. Furthermore, Tumey's own rental payments indicate that rent was \$1,800.00 because, even though he submitted separate checks on two occasions for \$900.00, the sum of those checks equaled the original rental amount of \$1,800.00. Ms. West's testimony that the rent had historically been \$1,800.00 further reinforces Naylor's testimony that there was no modification.

Tumey's testimony that a modification occurred in April 2010 is unsubstantiated by the evidence in the record. Tumey was unable to provide any evidence of this modification,

⁹ 25 *Del. C.* § 5106(b).

¹⁰ Knight v. State, 690 A.2d 929, 932 (Del. 1996).

other than his own testimony. The preponderance of the evidence indicates that the agreement for \$1,800.00 monthly rent was never modified to \$900.00.

Conclusion

After consideration of all of the factors outlined above, the Court enters judgment in favor of Plaintiff, Gary Naylor and against Defendant, Kevin Tumey in the amount stipulated by the parties, \$19,720.00, plus costs and pre- and post-judgment interest.

It is so ordered this 30th day of July, 2013.

The Honorable Alex J. Smalls,

Chief Judge.

Naylor-OP July 2013