

**IN THE JUSTICE OF THE PEACE COURT  
OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY  
COURT 16**

CAPITOL GREEN  
APARTMENTS, LLC,  
Plaintiff Below,  
Appellant,

v.

SADE JUSTICE,  
  
Defendant Below,  
Appellee.

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C.A. No. JP16-16-001655

***TRIAL DE NOVO***

Submitted: May 10, 2016

Decided: May 26, 2016

CGA, Plaintiff/Appellant, Nicole Faries, Esq.

Sade Justice, Defendant/Appellee, *pro se*.

***ORDER***

Murray, J  
Dillard, J  
Sweet, J

On May 10, 2016, this Court comprised of The Honorable James A. Murray, The Honorable Dwight D. Dillard, and The Honorable William J. Sweet acting as a special court pursuant to 25 Del. C. § 5717(a)<sup>1</sup> convened a *trial de novo*<sup>2</sup> in reference to a Landlord/Tenant Summary Possession complaint filed by Capitol Green Apartments, LLC, (“CGA”) against Sade Justice (Defendant). For the following reasons, the Court enters judgment in favor of the **Plaintiff**.

### **Factual and Procedural Background**

Plaintiff (“CGA”) filed a Landlord/Tenant Summary Possession Complaint in Justice of the Peace Court 16 on March 18, 2016 seeking possession and court costs. Trial was held on April 13, 2016 and judgment was entered April 20, 2016 in favor of Defendant. Plaintiff filed a timely appeal of the Court’s Order pursuant to 25 Del. C. § 5717(a). *Trial de novo* was scheduled and held on May 10, 2016.

### **Evidence and Testimony**

Plaintiff submitted the following exhibits:

1. Lease
2. Excerpt from “HUD Multifamily Occupancy Handbook Chapter 7 Figure 7-3”
3. Schedule of appointment for recertification dtd. December 14, 2015
4. Notice of missed recertification appointment dtd. December 17, 2015
5. Notice of rescheduled recertification appointment dtd. December 21, 2015
6. Notice of documents required for recertification dtd December 24, 2015
7. Notice of documents required for recertification dtd. January 7, 2016
8. Notice of documents required for recertification dtd. January 15, 2016
9. Notice of material non-compliance with lease requiring signature of HUD Form 50059 dtd. January 22, 2016 with certificate of mailing
10. HUD Form 50059 dtd. January 22, 2016
11. CGA Notice of lease termination dtd. February 3, 2016
12. CGA notice of holdover status dtd. March 7, 2015
13. Notice of immediate termination from CGA counsel dtd March 15, 2016 with certificate of mailing
14. Interim recertification request dtd. December 7, 2015
15. Employment verification dtd. December 23, 2015

Defendant submitted the following exhibits:

1. Interim recertification request dtd November 25, 2015
2. Interim recertification request dtd December 7, 2015

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<sup>1</sup> 25 Del. C. § 5717(a) “*Nonjury trials*. — With regard to nonjury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing, within 5 days after judgment, a trial de novo before a special court comprised of 3 justices of the peace other than the justice of the peace who presided at the trial, as appointed by the chief magistrate or a designee, which shall render final judgment, by majority vote, on the original complaint...”

<sup>2</sup> A new trial on the entire case — that is, on both questions of fact and issues of law — conducted as if there had been no trial in the first instance. Black’s Law Dictionary, 6<sup>th</sup> Edition, West Publishing Co. (1990)

Plaintiff's only witness was Christina Williams ("Williams") property manager for CGA. She is responsible for management of CGA, a subsidized housing complex, under the Federal Housing and Urban Development ("HUD") Section 8 program. Defendant is a resident of the complex under a lease signed December 23, 2014 (Pltf Ex 1). Williams testified residents must recertify their financial status to maintain their subsidy annually or complete interim recertification when their income increases by \$200.00 per month or greater as changes in income directly affect a tenant's subsidy.

December 7, 2015 Defendant submitted an interim recertification request (Pltf Ex 15) as a result of having obtained employment. Williams, in compliance with HUD Guidelines (Pltf Ex 2) began the recertification process by scheduling an appointment and specifying the necessary documentation (Pltf Ex 3). Defendant missed the appointment (Pltf Ex 4). Williams rescheduled the appointment and restated the documentation requirements again (Pltf Ex 5). Defendant failed to provide the proper documents and on three subsequent occasions between December 31, 2015 and January 22, 2016 (Pltf Ex 6-8) Williams reminded Defendant of her obligations.

When Defendant again failed to recertify, Williams sent Defendant, by USPS certificate of mailing, a notice of material non-compliance of the lease agreement (Pltf Ex 9) on January 22, 2016 specifying the failure to complete the mandatory recertification process by not signing the HUD Form 50059 (Pltf Ex 10) and the new lease with the adjusted amount of rent of \$112.00 per month. The new rent became effective January 1, 2016. Defendant had seven days (by January 29, 2016) to correct the deficiency. Failure to comply would result in Defendant paying full market rent for the unit and may result in termination of the lease for material non-compliance with the conditions of the lease. The notice reads in part:

*"You are further notified that this notice is effective for a period of one year. Pursuant to 24[sic] Del. C.5513(a)(1), [sic] which states: Such notice shall substantially specify the rule allegedly breached and advise the tenant that, if the violation continues for seven (7) days, the landlord may terminate the rental agreement and bring an action for summary possession if he [sic] tenant commits a substantially similar reach [sic] within one year, the landlord may rely on such notice as grounds for initiating an action for summary possession. The issuance of a notice pursuant to this section does not establish that the initial breach of the rental agreement actually occurred for the purpose of this section."*

February 3, 2016, CGA sent a notice of lease termination and removal of subsidy for failure to recertify (Pltf Ex 11). The notice specifies the failure to correct the notice of material non-compliance by signing the HUD 50059 form within the seven (7) day period and her combative attitude with management which interfered with management's ability to properly manage the project in accordance with HUD guidelines. The notice also gave Defendant 30 days to vacate the rental unit

March 7, 2016, CGA notified Defendant she, having failed to vacate the unit, was considered to be in a holdover status and CGA would proceed with court action to obtain possession of the rental unit (Pltf Ex 12).

March 15, 2016, CGA's legal counsel notified Defendant of their intention to immediately file for summary possession (Pltf Ex 13), specifying the reasons cited in CGA's correspondence with Defendant. The summary possession complaint was filed March 18, 2016.

The Court queried as to the fair market value of the rental unit which was \$955.00 per month. Defendant's share was \$112.00 per month with a \$843.00 per month subsidy from HUD. The HUD subsidy was terminated effective January 1, 2016 when Defendant failed to complete the recertification process which by the Court's calculation has, as of the date of trial, cost CGA \$3624.00 in subsidies and accruing at \$28.00 per day

Defendant objected to several of CGA's evidentiary submissions on form or content but raised no legal objections to any of CGA's evidence. In Defendant's cross-examination of Williams, she introduced two interim certification requests (Def Ex 1 & 2). Williams noted neither was time stamped indicating they were submitted to the office and that blank forms were available in the front office for tenants to pick up and fill in. Defendant purported those forms were an indication she had attempted to complete the recertification process but was thwarted by management.

Defendant testified she did everything she was asked albeit not in a timely manner. She never called the office but always appeared in person. She has a clean rental history and her new rent is paid in full and current. She has two children and no place to go and is being terminated because of an unsigned document. The Court notes, as of the date of trial, the HUD Form 50059 remains unsigned (Pltf Ex10).

### **Discussion**

Based on the evidence and testimony of the Parties, the Court is satisfied a Landlord/Tenant relationship exists between the Parties pursuant to 25 *Del. C.* § 5101(a)<sup>3</sup>. Plaintiff seeks possession of the rental unit for material breach of the lease, court costs, and post judgment interest. Plaintiff constructed and served a notice of material breach which gave Defendant seven (7) days to report to the office to sign HUD Form 50059 to complete the recertification process. The seven (7) day period expired January 29, 2016 and as of the date of trial the form remained unsigned and therefore the material breach remains uncured.

The Court has reviewed the evidence and finds the notice of material non-compliance with the lease (Pltf Ex 9) to be lacking in clarity but not to the extent necessary to cause it to be terminally defective. Granted, there are typographical errors and the possibility of

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<sup>3</sup>25 *Del. C.* § 5101 (a) "This 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. Any rental agreement, whether written or oral, shall be unenforceable insofar as the agreement or any provision thereof conflicts with any provision of this Code, and is not expressly authorized herein. The unenforceability shall not affect other provisions of the agreement which can be given effect without the void provision."

action for summary possession is not exactly where it should be; however, the basis for the non-compliance, the consequences for failure to correct, the action needed to correct, and the timeframe to do so are abundantly clear. CGA is advised to have legal counsel review and make the demand letter more easily understandable for the tenant. The remainder of evidence and testimony has shown by a preponderance of the evidence CGA has proven their case.<sup>4</sup>

#### FINDINGS

Plaintiff has proven its case by a preponderance of the evidence.

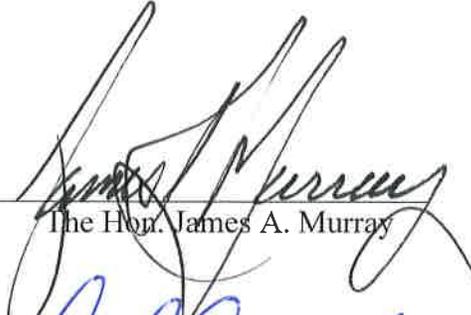
Find for Plaintiff:

Possession of 450 Sussex Ave. #835, Dover, DE 19901

\$97.50 court costs

Post judgment interest @ 6.0% per year.

SO ORDERED this 26<sup>th</sup> day of May, 2016



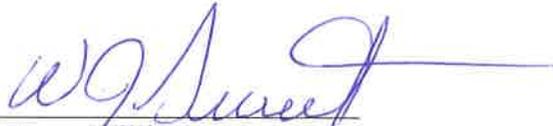
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The Hon. James A. Murray



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The Hon. Dwight D. Dillard



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The Hon. William J. Sweet

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<sup>4</sup> The Court notes this to be a sad turn of events. The want of a single signature, on a document with which Defendant obviously agrees as she is current on her new rent, will result in the loss of a home for Defendant and her children for failure to comply with HUD Regulations. Defendant had myriad excuses and rationalizations but no reasons why she did so. For Defendant, this is a purely self-inflicted eviction.