

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY  
COURT NO. 16**

**DELAWARE STATE HOUSING  
AUTHORITY/MCLANE GARDENS,**

Plaintiff Below-Appellee,

v.

**PAULETTE SMITH,**

Defendant Below-Appellant.

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C.A. No. JP16-17-002810

**TRIAL DE NOVO**

Submitted: July 31, 2017  
Decided: August 28, 2017

Before **COX, HUTCHISON** and **SHERLOCK**, Magistrates.

**ORDER**

This is an action for summary possession based on non-drug-related criminal activity in a landlord/tenant case, which was appealed by defendant-below to a three Justice of the Peace Panel from an order dated June 23, 2017.

Trial *de novo* before a Special Court comprised of a Three Judge Panel, as provided by 25 *Del. C.* § 5717(a) convened July 31, 2017 before Judges Cox, Hutchison and Sherlock. Delaware State Housing Authority/McLane Gardens (“Plaintiff”) was represented by Gary E. Junge, Esquire. Paulette Smith was represented by Brian S. Eng, Esquire. Following the receipt of evidence and testimony the Court reserved decision. This is the Court’s final decision and order. For the reasons stated below, the Court finds in favor of the defendant and against the plaintiff.

**FACTS OF THE CASE**

Plaintiff brings this action seeking possession based on a rules violation related to alleged criminal acts by defendant, defendant’s guest and a member of defendant’s household that

threaten the health, safety or right to peaceful enjoyment of other residents. Defendant generally disputes the alleged criminal acts.

The Panel heard testimonial evidence from Carl Anderson, Housing Manager; Doris Hall, Housing Asset Manager; Defendant Paulette Smith; Tyona Rollins, Defendant's daughter; Derrick Hicks, guest of defendant; Cpl. Benton Shawn of the Smyrna Police Department and residents William Mosley, Danielle Pettit and Gloria Kramer. Plaintiff introduced the following Exhibits: Plaintiff's Exhibit 1: Residential Dwelling Lease agreement between Delaware State Housing Authority ("DSHA") and Paulette Smith for 803 McLane Gardens, Smyrna, Delaware, dated October 4, 2012; Plaintiff's Exhibit 2: Seven day termination letter dated April 12, 2017 with the Certificate of Mailing with two attachments: (1) Grievance Procedures and (2) Apartment Rules and Regulations; Plaintiff's Exhibit 3: Invoice from Towles Electric Inc. in the amount of \$557.50; Plaintiff's Exhibit 4: Video; and Plaintiff's Exhibit 5: Four pictures of a silver vehicle with Maryland registration.

Plaintiff is relying on three separate violations for termination of the lease. All of the violations involve Derrick Hicks ("Mr. Hicks"), who is a guest of the defendant. The first violation alleges an argument between defendant's daughter and a group of children at the playground. Mr. Hicks is seen on video placing his arm around one of the children and falling to the ground. No criminal charges were filed. The second violation occurred when Mr. Hicks backed his vehicle into a transformer and left the scene of the accident. Mr. Hicks was charged with leaving the scene of an accident, improper backing, failure to report an accident and no proof of insurance. As a result of Mr. Hicks' actions, DSHA incurred repair expenses of \$557.50. The third violation occurred when Mr. Hicks urinated in public on DSHA property. Mr. Hicks was issued a criminal summons for lewdness and entered a plea of guilty.

Carl Anderson, the Housing Manager of seven years testified that defendant occupies 803 McLane Gardens and signed the lease effective October 4, 2012. The lease automatically renews. Mr. Anderson contends that defendant is not compliant with the rules and regulations and lease agreement.

As to the first violation, Defendant's testimony was that her daughter was having issues with being bullied and that there was an argument between a group of children on the playground which was verbal. There was no touching. Defendant testified that Mr. Hicks was trying to stop the fight and he placed his arm around the child to keep her from hurting her daughter.

Defendant testified that she called the police after retrieving her daughter. There are bullies that come onto the property to confront her daughter. Danielle Pettit of 304 McLane Gardens testified that she saw a lot of commotion and heard Mr. Hicks say, "spit on that bitch." Ms. Pettit did not see what happened, she only saw them on the ground. Mr. Hicks testified that he saw a group of kids arguing and he grabbed one of them to stop the fight and then fell to the ground. Mr. Hicks testified that he doesn't have good balance, has problems standing and diabetes. He stated that he held on to her so he wouldn't fall. When he fell to the ground the child landed on top of him. He testified that he may have said "spit back." Tyona Rollins, Defendant's daughter testified that sometimes she gets into arguments with her friends, but then they make up. She has had some issues with bullying. On this day they were playing tag and Naja told her cousin to attack her and to hit and spit on her. She was bitten approximately five times. Mr. Hicks told her to back off. She pulled away and fell backwards. No one encouraged her to fight or spit on anyone. Mr. Hicks told everyone to stop arguing. Carl Anderson testified that he observed the video of Ms. Smith's daughter in a fight on the playground and she punched another child. The police were contacted. Cpl. Benton Shawn of the Smyrna Police Department investigated the incident and reviewed the video, but did not make any arrests. It is difficult to determine from the video what happened. The parties are far away and not easily identifiable. There is no audio. You can see Mr. Hicks' arm across the chest of the child and then they both fall to the ground. The video does not show Tyona Rollins punching another child in the face. It does show a child placing her hands to her face.

As to the second violation, Defendant testified that Mr. Hicks backed into the transformer after he left from her residence. She did not witness the accident. She did not receive any bill for payment from DSHA. William Mosley, who resides at McLane Gardens, testified that he was sitting at the window and saw Mr. Hicks' vehicle hit the transformer box and the lights went out. He didn't see who was driving the vehicle. The driver did not stop. Mr. Hicks testified that he didn't recall hitting the transformer and was waiting to hear back from the police. He stated that he never admitted to it. Doris Hall, Housing Asset Manager of 32 years testified that Mr. Hicks admitted to hitting the transformer.

As to the third violation, Defendant testified that she did not see Mr. Hicks urinating in the parking lot. When she exited her car she was chasing her dog. Had she seen him urinating she would have said something to him. Gloria Kramer of 806 McLane Gardens testified that she

was going out to dinner and a dog ran out in front of her. She had to stop and that is when she saw Mr. Hicks urinating next to the car. She stated she was in shock and was concerned for other tenants and children. She reported the incident to DSHA. The video shows “a puddle and steam” from the area where the incident took place next to defendant’s car in the parking lot. Mr. Hicks testified that he entered a plea of guilty.

### DISCUSSION

Plaintiff’s seven-day letter reads in part, “As a result of this criminal activity, you, your guest, and a member of your household violated paragraphs 8.e., 8.j., 8.k., 8.l., and 8.m.(1) of your lease and DSHA Rules and Regulations, 2, 10 and 20. Termination of your lease is proper pursuant to paragraph 15.a(2) and (5) of your lease and DSHA Rules and Regulations 40.” Plaintiff’s letter informed defendant that the grievance procedure is not applicable because the violations involve “Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or by employees of the Authority.”

The Court notes that there was no evidence presented concerning a violation of DSHA Rules and Regulation 2 (Smoking), Rule 10 (Loitering) and Rule 20 (Interfering with work of employees/Tampering) as cited in the seven-day letter.

It is well settled that federal law preempts state law with regard to the standard by which a person may be immediately evicted from federally subsidized housing without necessity of notice and an opportunity to cure.<sup>1</sup> In order to evict a tenant for non-drug-related criminal activity, the landlord must demonstrate, and the Court must make specific findings: (1) that the tenant, a member of the tenant’s household, a guest or any other person under the tenant’s control; (2) engaged in any criminal activity; (3) that threatens the health, safety, or right to peaceful enjoyment of the Management’s public housing premises by other residents or employees of the Management.<sup>2</sup> The third section requires that the criminal activity must actually cause a negative impact. It is not simply the commission of a crime, but the proof that such crime threatened the health, safety or right to peaceful enjoyment of those related to the housing facility.<sup>3</sup>

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<sup>1</sup> *Milwaukee City Hous. Auth. v. Cobb*, 860 N.W.2d 267, 272 (Wis. 2015).

<sup>2</sup> *Carvel Gardens Associates v. Greene*, Del. J.P., C.A. No. JP17-16-006834, Davis, C.M., Wood, J. and Bradley, J. (Jul. 28, 2017) at 4, citing *Howell v. Justice of the Peace Court No. 16* (2007 WL 2319147 at \*7).

<sup>3</sup> *Id.* at \*4.

The District of Columbia Superior Court has also held that the same lease provision at issue here required more than “mere documentation of criminal activity” to include an additional showing that the illegal act threatened the health and safety of other residents or disturbed their peaceful enjoyment of the property.<sup>4</sup> In *Powell v. Housing Authority of the City of Pittsburgh*, the Pennsylvania Supreme Court determined that if Congress had intended this particular statute to impose strict liability eviction standards, it would have done so. By not imposing strict liability language, Congress intended this standard require some demonstrated causal connection between the crime and the threat to others.<sup>5</sup>

The Court will now examine each violation to determine if plaintiff has met its burden of proof. As to the first violation concerning the altercation on the playground, the Court finds the conduct of Mr. Hicks does not rise to the level of criminal activity. The video does not depict defendant’s daughter punching anyone. The Smyrna Police Department investigated the incident and did not make any arrest. While an arrest or conviction is not required, the Court finds that the incident on the playground is not criminal activity.

As to the second violation, the Court finds by a preponderance of the evidence that Mr. Hicks’ vehicle did strike the transformer. However, plaintiff’s seven-day letter to the defendant states in part, “As a result of Mr. Hicks’ actions, DSHA incurred repair expenses of \$557.50 which has not been paid by you or Mr. Hicks.” Plaintiff presented no evidence at trial that defendant or Mr. Hicks were notified to pay for the damages. There was testimony that the lights went out when the transformer was struck. However, there was no evidence presented to show how the accident threatened the health and safety of other residents or disturbed their peaceful enjoyment of the property. Lights occasionally go out due to accidents, blown transformers and storms. Plaintiff must show a connection to this crime and the threat to others. There was no testimony as to the length of time the lights were out.

As to the third violation, the Court finds by a preponderance of the evidence that Mr. Hicks did commit the act of lewdness. However, it is not just the occurrence of a crime that results in eviction, but proof that the crime caused *such harm* that it threatened the health, safety or right to peaceful enjoyment of others related to the public housing facility. On cross-examination, the witness to this incident, Ms. Kramer, admitted that she did not seek any mental

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<sup>4</sup> *D.C. Housing Authority v. Whitfield*, 2004 WL 1789912 (D.C. Super.).

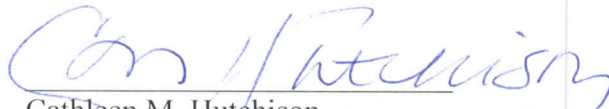
<sup>5</sup> *Powell v. Housing Authority of the City of Pittsburgh*, 812 A.2d 1201 (Pa. 2002).

health treatment, that she was able to continue on with her dinner plans and it did not ruin her week. Therefore, plaintiff has not met the burden of proof that such crime threatened the health, safety or right to peaceful enjoyment of those related to the housing facility.

**CONCLUSION**

Based on the foregoing, the panel finds by unanimous verdict in favor of defendant Paulette Smith and against Delaware State Housing Authority/McLane Gardens. Therefore, possession remains with the defendant.

**IT IS SO ORDERED** this 28th day of August 2017.



Cathleen M. Hutchison  
Justice of the Peace for the Panel