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

WHATCOAT VILLAGE APARTMENTS,	§	
	§	
Plaintiff Below-Appellant,	§	**Case No. JP16-13-001612**
	§	
v.	§	
	§	
CHANNEL DAVIS,	§	
	§	
Defendant Below-Appellee.[1]	§	

Submitted: June 6, 2013
Decided: July 15, 2013

Before **MURRAY, FOOR** and **COX,** Justices of the Peace.

ORDER

On May 8, 2013, judgment was entered after non-jury trial in this summary possession action against the plaintiff-landlord for failing to prove its case by a preponderance of the evidence. The plaintiff appealed to a three-judge panel of this Court pursuant to 25 *Del. C.* § 5715(a). Such appeals are *de novo.*[2] The appeal request was approved as to timeliness and form, and the case went to trial on June 6, 2013. This is the decision of the three-judge panel after non-jury trial.

Facts

Late on the evening of October 6, 2012, Patrolmen James Wood and Matthew Krough of the Dover Police Department, along with other Dover Police Department officers, responded to a complaint of disorderly individuals at Building 930 of Whatcoat Village Apartments, a federally-subsidized housing community located in Dover, Delaware. Patrolmen Wood and Krough testified that a black male, later positively identified as Lekaro Rembert, fled from the scene up a stairwell, down a hall, opened the door to Apartment No. 24, went inside, and locked the door behind him.

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[1] William W. Pepper, Sr., Esq. appeared on behalf of the Appellant; Ms. Davis appeared *pro se.*

[2] A trial *de novo* is 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 (9th ed. 2009, accessed 06272013).

The officers testified they kicked in the door in a matter of a few seconds and entered the apartment. Once inside the apartment, the officers observed "three or four" people, one of them a female standing in the apartment hallway, "act(ing) like she didn't know why we were there." Both officers testified the female and other persons did not appear to be alarmed at Mr. Rembert's abrupt entry and presence—they did not advise the officers an intruder was inside the apartment; they did not attempt to exit the apartment; and they did not appear to be protective of their own safety. The officers testified they did not see anyone asleep. They testified they asked the people where the chased person (Mr. Rembert) went, and that the people simply "looked at them (the police)." Patrolman Krough testified that the female stated, "It's my sister's.....the person that ran inside is 'her' boyfriend." The officers understood her to be explaining that the person was her sister's boyfriend.[3]

The officers testified that Lekaro Rembert then ran into the livingroom area, exiting from a bedroom. Police detained him. Mr. Rembert initially identified himself as "Shawn Price" and stated he was visiting his girlfriend. The police found a rolled marijuana cigarette on the side of the bed in the bedroom Mr. Rembert had exited.[4] Officer Wood testified that Mr. Rembert admitted the marijuana cigarette belonged to him. The officers brought criminal charges against Mr. Rembert stemming from the incidents of the evening, including Possession of Marijuana, Loitering, and Disorderly Conduct.

Jamey Davis testified she was at Apartment 24 on the evening of the incident, babysitting her four-year-old nephew with her boyfriend Zack, and that they were all sleeping when she heard a knock on the door. She testified that police entered the apartment and arrested Lekaro Rembert. She stated she does not know Mr. Rembert and that he was not a guest in the apartment.

Kara Velez, site manager for Whatcoat Village Apartments, testified she learned of the police response and alleged criminal activity at Building 930 in November 2012 through monthly reports provided by Dover Police Department. As a result, she issued a notice to Channel Davis, the named tenant of Apartment 24 of Whatcoat Village Apartments under a lease with Whatcoat Community Development, Inc.[5] The notice, dated November 13, 2012, was delivered to Ms. Davis by certified mail, return receipt (signed by Channel Davis on November 14, 2012) and by personal service at Apartment 24.[6] Ms. Davis did not deny she received the notice and did not raise any objections to the notice or its contents and did not raise service issues.

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[3] This female later identified herself as Jamey Davis, Channel Davis' sister, when she testified at this trial for the defendant.

[4] The material within the cigarette later tested positive for marijuana, according to Officer Krough's testimony.

[5] The lease was executed February 17, 2009 for a period of one year, continuing for successive one-month terms upon expiration of the initial term, until and unless terminated. The lease was admitted as evidence without objection as Plaintiff's Exhibit No. 1.

[6] The notice was admitted without objection as Plaintiff's Exhibit No. 2. The certified mail proof and receipt were admitted together without objection as Plaintiff's Exhibit No. 3.

Ms. Velez also testified on cross-examination that Channel Davis contacted her to advise her that Lekaro Rembert had been on the property although he was on Whatcoat's "banned" list. Ms. Velez did not explain when Ms. Davis provided this notice. Ms. Velez testified that Ms. Davis has never denied knowing Mr. Rembert prior to the October 6, 2012 incident. Channel Davis did not testify.

Burden of Proof

The plaintiff has the burden of proof in this case. The standard by which the Court decides whether the plaintiff has carried its burden of proof is by a preponderance of the evidence. In other words, the plaintiff must show proof that its allegations against the defendant are more likely true than not true. If the evidence is found by the Court to be evenly balanced, the plaintiff's burden has not been met.

Discussion

The landlord alleges Ms. Davis has, at a minimum, violated four sections of the Lease: Sections 23(c)(3), Section 23(c)(5), Section 23(c)(6), and Section 23(c)(10) and Section 4 of the lease's Crime Free Addendum.[7] With the exception of Section 23(c)(5), the remaining sections, taken together, mirror the language required for all public housing leases by 42 U.S.C. § 1437d(1)(6), which prohibit certain *criminal* activity and all *drug-related* activity, so long as the activity is engaged in by the tenant, her household member, her guest, or certain other persons. Section 1437d(1)(6) states:

> Each public housing agency shall utilize leases which--
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> * * *
>
> (6) provide that **any** criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants **or any** drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, **or any guest or other person under the tenant's control**, shall be cause for termination of tenancy....

(Emphasis added.) The U.S. Supreme Court characterizes this section as "specifically authorized...no-fault eviction," vesting public housing landlords "with the discretion to evict tenants for the drug-related activity of household members and guests whether or not the tenant knew, or should have known, about the activity." *Department of Housing and Urban Development v. Rucker,* 535 U.S. 125 (2002). By the same logic, section 1437d(6) gives such landlords discretion to evict tenants for any *criminal* activity if the

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[7] The complaint included allegations of littering, property destruction and/or defacement, loitering, and unnecessary noise, but the plaintiff did not present evidence to support these allegations.

criminal activity "threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants."

Thus, the landlord in this case must prove, by a preponderance of the evidence, that the alleged *drug-related activity* occurred on the premises and that it was engaged in by either the tenant, a member of the tenant's household, any guest, or by another person under the tenant's control. The landlord is not required to prove that the tenant (or her household member or guest or other person under her control) was arrested or convicted for drug-related activity. The landlord is not required to prove that the tenant (or her household member or guest or other person under her control) knew or should have known about the drug-related activity. The landlord must provide proper notice of termination to the tenant, and at trial must prove the drug activity occurred and that either the tenant, her household member, her guest, or some other person under her control engaged in the drug-related activity.

Likewise, the landlord in this case must prove, by a preponderance of the evidence, that the alleged *criminal activity* occurred, that it was engaged in by either the tenant, or a member of her household, or her guest, or by another person under her control, and that the criminal activity "threaten(ed) the health, safety, or right to peaceful enjoyment of the premises by other tenants." The landlord does not have to prove both drug-related and non drug-related criminal activity for eviction; proof of either is sufficient.

The Dover police officers' testimony clearly proves that drug-related activity occurred within Ms. Davis' apartment in the form of possession of marijuana. "Possession" of marijuana occurs when marijuana is found "in or about (someone's) person, premises, belongings, vehicle or otherwise within (someone's) reasonable control."[8] In the context of this proceeding, it is arguable that the marijuana discovered by the Dover police officers and claimed by Mr. Rembert as his was in fact also within the premises and belongings of Channel Davis and therefore within her control, as well as within control of her guests (her sister Jamey Davis and Jamey Davis' boyfriend Zack). In addition, since Mr. Rembert claimed the marijuana as his own, the plaintiff has established that *he* committed drug-related activity within Channel Davis' apartment.

The question is whether the plaintiff/landlord has proved that Mr. Rembert is either Channel Davis' guest and/or "an other person under her control." We find that he was at a minimum "an other person within her control." Mr. Rembert's familiarity with the apartment's location within Building 930 (up a stairwell and down a hall to a specific doorway while being chased by several police officers), the ease with which he entered and remained within the apartment, the lack of alarm at his presence evidenced by Jamey

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[8] 16 *Del. C.* § 4701(34).

Davis, her boyfriend, and any others within the apartment, and their failure to alert police to his presence, if only to protect their own safety or the safety of the four-year-old child they allege was with them, clearly point to a conclusion that Mr. Rembert's presence in Apartment 24 was not considered unwelcome, surprising, or dangerous either Channel Davis or her guests. Jamey Davis identified Lekaro Rembert, the person who entered the apartment, as her sister's boyfriend, and Mr. Rembert told the police he was "visiting his girlfriend" when asked why he was at the apartment building. The U.S. Supreme Court in *Rucker* adopted the following meaning for "other person under the tenant's control":

> By "control," the statute means control in the sense that the tenant has permitted access to the premises."

Turning to the issue of whether this drug-related activity or other activity engaged in by Mr. Rembert was also *criminal* activity that threatened the health, safety, or right to peaceful enjoyment of the premises by other tenants, it is clear that Mr. Rembert was either attempting to resist arrest or actually resisting arrest when he ran from officers responding to the complaints of loitering and disorderly conduct. His actions began the chain of events that resulted in several armed police officers chasing him on foot up and through Building 930 late at night, when other tenants and their children could be presumed to be resting or sleeping. Resisting Arrest or any attempt to do so are criminal offenses under Delaware law.[9] Such criminal activity not only disturbs the peaceful enjoyment of other tenants; it clearly threatens the health and safety of those tenants by exposing them to the inherent danger posed to innocent bystanders by armed police officers attempting to apprehend a suspect who may or may not be armed himself. Loitering and Disorderly Conduct are also criminal offenses and by definition threaten the health, safety, and peaceful enjoyment of other tenants. It is worth noting that the *Rucker* court observed that the purpose of the "no-fault eviction" permitted by Section 1437d(1)(6) is that a tenant "who cannot control drug crime, or other criminal activities by a household member (or guest or other person under the tenant's control)…is a threat to other residents and the (housing) project."

Whatcoat Village Apartments has proved by a preponderance of the evidence that Channel Davis violated material terms of the lease, including Lease Sections 23(c)(3), Sections 23(c)(6), Sections 23(c)(10), and Section 4 of the Lease's Crime Free Addendum. Whatcoat Village Apartments provided notice and 30 days to vacate the rental unit, and Ms. Davis failed to vacate.

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[9] 11 *Del. C.* § 1257.

NOW, THEREFORE, IT IS ORDERED this 15th day of July, 2013, that judgment is entered in favor of the plaintiff and against the defendant. Possession of the rental unit is awarded to the plaintiff.

James A. Murray
Justice of the Peace

Debora Foor
Justice of the Peace

D. Ken Cox
Justice of the Peace

NOTICE OF APPEAL RIGHTS

Any party has 15 days starting the day after the judgment is signed by the judge to appeal the judgment of the Justice of the Peace Court to the Court of Common Pleas of the above county. If the judgment involves an action for summary possession in a landlord/tenant case, then either party has 5 business days, starting the day after the judgment is signed by the judge, to appeal the judgment to a three-judge panel at the Justice of the Peace Court where the judgment was ordered.

You must complete all appeal requirements within these time periods. To prevent dismissal, the appeal must name all the parties as they were originally named in the Justice of the Peace Court action. (This applies even if the action was dismissed in the Justice of the Peace Court against one or more of the parties.) **Additional information on appeal procedures is found in the attached sheet entitled "Justice of the Peace Courts Civil Post-Judgment Procedures" (JP Civil Form No. 14A).** If no appeal is filed, parties may remove all exhibits from the Court no sooner than 16 days and no later than 30 days from the date of this judgment. If not removed, the Court may dispose of the exhibits without further notice to the parties.

Final Date of Appeal to Court of Common Pleas: 15 days starting the day after judgment is entered in Justice of the Peace Court.

Final Date of Appeal to a Three-Judge Panel of the Justice of the Peace Court: 5 business days starting the day after judgment is entered in Justice of the Peace Court.