

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

TRACEY WILLIAMS,	:	C.A. No. JP16-14-002276
	:	
Plaintiff Below,	:	
Appellant,	:	
	:	
v.	:	
	:	
EMMA JOHNSON,	:	
EBONY CLAY,	:	
	:	
Defendants Below,	:	
Appellee.	:	

TRIAL DE NOVO

Submitted: June 19, 2014
Decided: June 25, 2014

Tracey Williams, Plaintiff/Appellant, *pro se*.

Emma Johnson, Defendant/Appellee, *pro se*.

Ebony Johnson, Defendant/Appellee, *pro se*.

ORDER

Davis, Chief Magistrate
Dillard, J
Murray, J

On June 19, 2014, this Court, comprised of the Chief Magistrate Alan G. Davis, the Honorable Dwight D. Dillard and the Honorable James A. Murray, acting as a special court pursuant to 25 *Del. C.* § 5717(a)¹ convened a trial *de novo*² in reference to a Landlord/Tenant Summary Possession petition filed by Tracy Williams (hereinafter referred to as Plaintiff), against Emma Johnson and Ebony Clay (hereinafter referred to as Defendant or Defendants). For the following reasons the Court enters *Judgment* in favor of the **Plaintiff** but also finds a *Good Faith Dispute* exists.

Factual and Procedural Background

Plaintiff filed a Landlord/Tenant Summary Possession petition with Justice of the Peace Court No. 16 seeking possession, court costs and accrued rent. This action is based on the Defendants' failure to pay rent and an alleged criminal violation. Trial was held on May 19, 2014 and judgment was entered in favor of Defendants.³ Thereafter, 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 June 19, 2014.

¹ 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....

² *De novo* trial. Trying a matter anew; the same as if it had not been heard before and as if no decision had been previously rendered. Black's Law Dictionary, 6th Edition, West Publishing Co. (1990).

³ *Williams v. Johnson et al*, Del. J.P., C.A. No. JP16-14-002276, Sweet, J. (May 19, 2014).

Plaintiff's Testimony and Evidence

Plaintiff called herself as her only witness. Plaintiff asserted Defendants have failed to pay rent and presented four exhibits in support of her claim. Plaintiff presented an undated demand letter with proof of mailing addressed to both Defendants.⁴ Plaintiff's proof of mailing for this letter was dated April 24, 2014. This letter was mailed to Defendants in one envelope. Plaintiff submitted two demand letters each dated June 1, 2014 with proofs of mailing dated June 2, 2014.⁵ These letters are identical but addressed to each Defendant individually and mailed individually to each. Plaintiff's third letter addressed to both Defendants is a letter notifying Defendants Plaintiff arranged for a repairman to enter the rental unit and make repairs on June 16, 2014.⁶ This letter was mailed only to Defendant Emma Johnson. Plaintiff's final evidentiary item⁷ is a document which she purports to be copies of papers when assemble together represent a reproduction of the lease agreement between the Parties.⁸

⁴ Plaintiff's exhibit #1.

⁵ Plaintiff's exhibit #2.

⁶ Plaintiff's exhibit #3.

⁷ Plaintiff's exhibit #4.

⁸ Defendants objected to the submission of this document as they contend this document does not represent the lease agreement between themselves and Plaintiff.

Plaintiff testified that she is a first time landlord and that many of the requirements of the Landlord/Tenant Code are new and/or unknown to her. She states Defendants owe back rent and she cannot afford to proceed forward with repairs as she is disabled and has very little money. Specifically, “corrections have been done but have not been completed because the money has run-out...it is (the house) over 100 hundred years old and needs work.” Finally, she states she is not aware of all the repairs needed because she is unable to view the unit due to a pending criminal proceeding pending between herself and Defendant Clay.

Defendants Testimony and Evidence

Defendant Clay testified first on behalf of the Defendants. Defendant avers that the rental unit is unlivable. The unit is not sanitary which is a problem for them as they have a special needs child living in the unit. She noted that Plaintiff has been cited by the City Inspector for non-compliance standards existing within the rental unit.⁹ Defendant testified that sewage backs-up in the kitchen sink. Defendants presented a number of pictures to support their claim of the disrepair and living conditions of the rental unit.¹⁰ Pictures revealed a door off its hinges, bathroom sink detached from the

⁹ Defendants did not provide the Court with any copies of citations issued by the city nor did Defendants call any representative from the Office of Inspections to testify as to the alleged violations.

¹⁰ Pictures were all marked collectively as Defendants’ exhibit #1.

wall, a window screwed closed, missing or cracking paint, ceiling tiles water damaged and crumbling to pieces, flooring with tears, trim separating from the wall and improperly caulked bathroom tub with mold forming around the caulk-line. Defendant further advised when Plaintiff would schedule contractors or repairmen to make repairs they would only receive ten or fifteen minutes notice before the contractor or repairman would arrive at the rental unit.

Defendants stated they never received a copy of the Landlord/Tenant Code, but are willing to pay, in fact, testified, "We told her if she made all repairs within 30 days we would pay all rent." She stated they are also currently withholding rent because they believe the City Inspector may terminate Plaintiff's license to rent forcing them to relocate with very short notice.

Defendant Johnson testified as Defendants' second witness and her testimony concurred with the testimony of Defendant Clay.

Discussion

Based on the testimony of the Parties, the Court is satisfied that a landlord/tenant relationship exists between the Parties pursuant to *25 Del. C.*

§ 5101(a)¹¹ and therefore, the provisions of the Landlord/Tenant Code shall prevail. Plaintiff is seeking back rent, late fees, court costs and possession. She has provided a number of demand letters for same. Plaintiff's first demand letter fails to comply the requirements of 25 Del. C. § 5502.¹² Additionally, Plaintiff failed to properly serve her demand letter upon all tenants. The requirements for service upon multiple tenants is addressed in *Lasocha v. Weir*¹³ at page 8 (citing *Eanes v. Custer*¹⁴) and states in pertinent part:

A five (5) day notice which is addressed to each tenant but mailed in *one envelope is not considered as service or "served"* on all tenants. Such practices are addressed in *Eanes v. Custer*. Judge Terry stated in part: "...If a summons is mailed to an individual at his address and someone residing there accepts it, one can fairly presume that the individual to whom it is addressed will receive it. Similarly if three summonses are mailed to three separate envelopes to three individuals residing in the same house and one person receives all three, it can still be fairly presumed that they will be delivered by that individual to the persons to whom they are addressed. However, if one

¹¹ 25 Del. C. § 5101(a). This Code shall regulate and determine all legal rights, remedies and obligation of all parties and beneficiaries of any rental agreement of a rent 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.

¹² 25 Del. C. § 5502(a). ...demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in such notice, to be not less than 5 days after the date notice was given or sent, the rental agreement shall be terminated. If the tenant remains in default, the landlord may thereafter bring an action for summary possession of the dwelling unit or any other proper proceeding, action or suit for possession.

¹³ *Lasocha v. Weir*, Del. J.P., C.A. No. JP16-08-003674, Arndt, J., Murray, J. Pennella, J. (Sept. 8, 2008).

¹⁴ *Eanes v. Custer*, Del. Super., C.A. No. 94C-05-019, Terry, J. (August 31, 1994).

summons is mailed in only one envelope addressed to three people and is received by one person, the chances that the one summons will be passed around to all three addressees is considerably more remote. For instance, the first addressee, if he gets it, might lose it or throw it away not realizing or caring that it should be shown to the others...”

Plaintiff’s second demand letter¹⁵ dated June 1, 2014 complies with 25 *Del. C.* § 5502 and was mailed¹⁶ to each of the Defendants separately. Plaintiff’s demand notice is seeking \$750.00 rent for the month of June as well as a \$50.00 late fee. Defendants admitted¹⁷ they owe rent for the month of June however they are withholding rent pending repairs to the rental unit and/or they are ordered to vacate the rental unit by the City Inspector.

A tenant(s) may withhold a portion of the rent pursuant to 25 *Del. C.* § 5308 where a landlord has failed to provide essential services to a tenant(s). Nowhere does the Landlord/Tenant Code provide for a tenant(s) to withhold 100% of the rent. However, to hold the Defendants to the standards of 25 *Del. C.* § 5308 would be unfair as Plaintiff failed to provide Defendants with

¹⁵ Plaintiff’s exhibit #2.

¹⁶ 25 *Del. C.* § 5113(b). In lieu of personal service or by copy of the notice or process required by this Code, a copy of such notice or process may be sent by registered or certified mail or 1st-class mail as evidenced by a certificate of mailing postage-prepaid, addressed to the tenant at the leased premises, or to the landlord at the landlord’s business address as set forth in the lease or as otherwise provided by landlord ...[T]he return receipt of the notice, whether signed, refused or unclaimed, sent by registered or certified mail, or the certificate of mailing if sent by 1st-class mail, shall be held and considered to be prima facie evidence of the service of the notice or process.

¹⁷ “A judicial admission is a formal statement by a party in the course of judicial proceedings, which removes an admitted fact from the field of controversy.” *Pesta v. Warren*, 2004 WL 1172996, at *1 (Del. Super.).

a Summary of the Landlord/Tenant Code as required pursuant to 25 *Del. C.*

§ 5118. Section 5118 states:

“A summary of the Landlord/Tenant Code, as prepared by the Consumer Protection Unit of the Attorney General’s Office or its successor agency, **SHALL BE GIVEN** [emphasis added] to the new tenant at the beginning of the rental term. If the landlord fails to provide the summary, the tenant may plead ignorance of the law as a defense.”

This Court finds Defendants have legitimate reasons for withholding the rent. While withholding 100% of rent is not allowable under the Landlord/Tenant Code they have established that a Good Faith Dispute exists pursuant to 25 *Del. C.* § 5716.¹⁸ Additionally, Plaintiff is seeking a \$50.00 late fee due to Defendants not paying rent on time. Without the actual signed lease agreement being submitted as evidence the Court cannot determine if the lease agreement provides for late fees as required by 25 *Del. C.* § 5101(d)¹⁹, therefore, no such late fees will be awarded.

The Court is convinced Plaintiff failed to take corrective action to make necessary repairs to the rental unit. These repairs are such as to

¹⁸ 25 *Del. C.* § 5716. **Stay of proceedings by tenant; good faith dispute.** When a final judgment is rendered in favor of the plaintiff in a proceeding brought against a tenant for failure to pay rent and the default arose out of a good faith dispute, the tenant may stay all proceedings on such judgment by paying all rent due at the date of the judgment and the costs of the proceeding or by filing with the court an undertaking to the plaintiff, with such assurances as the court shall require, to the effect that the defendant will pay such rent and cost within 10 days of the final judgment being rendered for the plaintiff. At the expiration of said period, the court shall issue a warrant of possession unless satisfactory proof of payment is produced by the tenant.

¹⁹ 25 *Del. C.* § 5501(d). Where the rental agreement provides for a late charge payable to the landlord for rent not paid at the agreed time, such late charge shall not exceed 5 percent of the monthly rent. A late charge is considered as additional rent for the purposes of this Code. The late charge shall not be imposed within 5 days of the agreed time for payment of rent....

deprive Defendants of a substantial part of the benefit of the bargain in violation of the rental agreement and therefore, Defendants are entitled to a reduction in rent.²⁰ The Court pursuant to 25 *Del. C.* §§5308(a) & 5308(a)(2) awards a two-thirds reduction in rent for the month of June. Section 5308 (a) states in pertinent part:

“If the landlord substantially fails to...or fails to remedy any condition which materially deprives a tenant of a substantial part of the benefit of the tenant’s bargain in violation of the rental agreement; or in violation of a provision of this Code; or in violation of an applicable housing code and such failure continues for 48 hours or more, after the tenant gives the landlord actual or written notice of the failure, the tenant may:”

Section 5308(a)(2) states in pertinent part:

“Upon written notice to the landlord, keep two-thirds per diem rent accruing during any period...or equivalent substitute housing is not supplied....”

June’s rent of \$750.00 shall be reduced by two-thirds (\$500.00) for a balance due of \$250.00.

Finally, the Court is convinced Plaintiff failed to give proper notice when sending repairmen to the rental unit for repairs. Reasonable access to a rental unit and remedies for unreasonable refusal are addressed pursuant to 25 *Del. C.* §§ 5509 & 5510. Section 5509 addresses the responsibilities of

²⁰ The written notice requirements of this section are waived as Plaintiff failed to provide Defendants with a copy of the Landlord/Tenant Code. As such, they did not know of the written requirements pertaining to this section.

both the landlord and tenant²¹ while § 5510 provides remedies for repeated refusal to allow entry into the rental unit by a tenant(s)²² and repeated unreasonable demands by landlord²³ for entry into a rental unit.

Conclusion

Based on the Court's fact finding inquiry, the Court's above-referenced conclusions of law and by a preponderance of evidence, the Court by unanimous vote enters *JUDGMENT for the PLAINTIFF* but finds a *GOOD FAITH DISPUTE* exists.

Judgment amount: **\$250.00** (\$750.00 rent June, less thirds = \$250.00).
Per diem rent @ **\$8.33** until possession is relinquished.²⁴
Post-Judgment Interest @ **5.75%**.
Possession of rental unit located @ **214 West Division Street, Dover, DE, 19904**.
Court costs: **\$40.00**.

Whereas the Court has determined that a Good Faith Dispute exists between the Parties, the above Judgment is hereby *STAYED*.²⁵ Defendants shall

²¹ 25 Del. C. § 5509(b). The landlord shall not abuse this right of access nor use it to harass a tenant. The landlord shall give the tenant at least 48 hours' notice of landlord's intent to enter, except for repairs requested by the tenant, and shall enter only between 8:00a.m. and 9:00p.m....In the case of an emergency the landlord may enter at any time.

²² 25 Del. C. § 5510(a). The tenant shall be liable to the landlord for any harm proximately caused by the tenant's unreasonable refusal to allow access. Any court of competent jurisdiction may issue an injunction against a tenant who has unreasonably withheld access to the unit.

²³ 25 Del. C. § 5510(c). Repeated demands for unreasonable entry or any actual entry which is unreasonable and not consented to by tenant may be treated by the tenant as grounds for termination of the rental agreement. Any court of competent jurisdiction may issue an injunction against such unreasonable demands on behalf of 1 or more tenants.

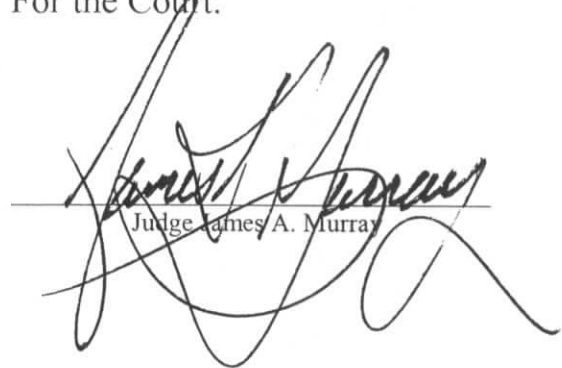
²⁴ Per diem is based upon a two-thirds reduction of the per diem rate of \$25.00. If all repairs have been made after the effective date of this order Defendants may be responsible for full per diem rate of \$25.00.

have **Ten (10) days** from the date of this order to pay Plaintiff the above captioned amount of \$250.00 plus court cost of \$40.00 in full. Defendants shall provide proof of said payment to the court. Should Defendants pay this amount within Ten (10) days then they **SHALL** retain possession of the rental unit.

Should Defendants fail to pay the above captioned amount within Ten (10) days, Plaintiff has the right to proceed immediately with execution.

IT IS SO ORDERED, this 25th day of **June, 2014**.

For the Court.



Judge James A. Murray

²⁵ 25 Del. C. § 5716. Stay of proceedings by tenant; good faith dispute.