

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

Mifflin Run Apartments,

Plaintiff Below,  
Appellee,

v.

Amanda Hurley,  
Jeffrey Hurley,

Defendants Below,  
Appellant.

CIVIL ACTION NO. JP16-15-001154

Submitted: April 10, 2015

Decided: May 5, 2015

***Trial De Novo***

Mifflin Run Apartments appeared represented by Form 50 Agent Daniel McBride.

Amanda Hurley appeared *pro se*.

Jeffrey Hurley appeared *pro se*.

***ORDER***

Murray, Magistrate  
Dillard, Magistrate  
Sweet, Magistrate

On April 10, 2015, the Court held a trial *de novo* on a Landlord/Tenant Summary Possession action filed by Mifflin Run Apartments (“Plaintiff”) against Amanda Hurley and Jeffrey Hurley (“Defendants”). This Special Court, comprised of the Honorable James A. Murray, the Honorable Dwight D. Dillard and the Honorable W. J. Sweet convened pursuant to 25 *Del. C.* § 5717(a).<sup>1</sup>

### History of Petition

At issue, Plaintiff asserts a violation by Defendants of the crime free provision contained within the lease agreement, specifically that Defendants have an unapproved occupant residing in the rental unit. Trial was held on March 25, 2015, and the Court found in favor of Plaintiff.<sup>2</sup> Post-trial, Defendants filed a timely appeal on April 1, 2015.

### Trial

Plaintiff introduced as evidence the following documents: a rental screening report,<sup>3</sup> pages 2 and 5 of the lease agreement,<sup>4</sup> Delaware Sex Offender Central Registry listing,<sup>5</sup> two seven day demand notices with certificate of mailing<sup>6</sup> and the rental application.<sup>7</sup>

Plaintiff testified, Parties entered into the lease agreement on January 9, 2015, and Defendants took possession of the unit on the same day. Plaintiff discovered that Mr. Gutierrez, Defendant Amanda Hurley’s boyfriend was occupying the unit with Defendant. Plaintiff testified Defendants were never granted permission in writing to have Mr. Gutierrez as an occupant in the rental unit. Plaintiff explained that the company as a course of business completes criminal background checks on all persons listed on the rental application. Plaintiff admitted there was a ‘mess up’ in the application process as they failed to complete a background check of Mr.

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<sup>1</sup> 25 *Del. C.* § 5717(a). Stay of proceedings on appeal. 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....

<sup>2</sup> *Mifflin Run Apartments v. Amanda Hurley, et al.*, Del. J.P., C.A. No. JP16-15-001154, Sherlock, J. (Mar. 26, 2015).

<sup>3</sup> Plaintiff’s exhibit #1.

<sup>4</sup> Plaintiff’s exhibit #2.

<sup>5</sup> Plaintiff’s exhibit #3.

<sup>6</sup> Plaintiff’s exhibits #4 & #5.

<sup>7</sup> Plaintiff’s exhibit #6.

Gutierrez prior to allowing Defendants to take possession. A screening report (criminal background check) for Mr. Gutierrez was completed on January 15, 2015.

Plaintiff testified due to Mr. Gutierrez's criminal history, he presented potential harm to the community. Plaintiff specifically stating, "he is a danger to the community" therefore Mr. Gutierrez does not meet the standards to reside within our rental community. Plaintiff asserts Mr. Gutierrez was never an approved occupant, however, he did admit that Mr. Gutierrez's name was listed on Defendants' application.<sup>8</sup>

Defendant, Amanda Hurley testified that she disclosed from the beginning that it was her intention to have Mr. Gutierrez reside with her and listed him as an occupant on her application. Defendants took possession and moved into the rental unit on January 9, 2015. Upon move-in, Mr. Gutierrez was an approved occupant. Defendants made timely rental payments and stated she didn't receive a copy of the lease agreement until January 22, 2015. Finally, Defendant testified that the lease provided to her was not the same as the lease she signed prior. The lease provided to her did not have Mr. Gutierrez listed as an occupant.

Defendant, Jeffrey Hurley is Defendant Amanda Hurley's father. His role in the rental unit is that of cosigner. Defendant testified that on December 20, 2014, after viewing apartments and choosing a one bedroom, he and Mr. Gutierrez completed the rental application. He testified Defendant Amanda and Mr. Gutierrez received keys and took possession of the rental unit on January 9, 2015. Further, rent has been paid on time and accepted by the Plaintiff/Landlord. Defendant Jeffrey Hurley testified they rented the unit in good faith and have complied with all rules and regulations.

### Discussion

A Landlord/Tenant relationship was established through testimony of the Parties. Defendants rent has been paid and accepted by Plaintiff and is current. Although a fully completed lease agreement was never presented as evidence, the Court is convinced that all Parties executed a lease agreement.

Plaintiff requests possession of rental unit asserting Defendants violated a condition of their use of premises by having an unapproved occupant.<sup>9</sup> This alleged violation was discovered when Plaintiff ran a background check on Mr. Gutierrez on January 15, 2015; *six days* after Defendants took possession of rental unit. Plaintiff contends that report excludes Mr. Gutierrez from occupying one of their units as he has a criminal record and "is a danger to the community." Plaintiff asserts Defendants are in violation of the crime free provision of their

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<sup>8</sup> Plaintiff's exhibit #6.

<sup>9</sup> 25 Del. C. § 5702(4). Grounds for summary proceeding. Unless otherwise agreed in a written rental agreement, an action for summary possession may be maintained under this chapter because: (4) The tenant has breached a lawful obligation relating to the tenant's use of the premises;

lease agreement, and as such, Plaintiff issued Defendants two seven day demand notices.<sup>10</sup> As result of Defendants failing to cure the violation by having Mr. Gutierrez move out, Plaintiff seeks possession of the rental unit.

Defendants contend Mr. Gutierrez is a legal occupant of the rental unit as his name appeared on the original lease application<sup>11</sup>/ agreement and the lease agreement was changed after the fact to cover up Plaintiff's error in not conducting a timely screening of Mr. Gutierrez. Defendants contend they rented the unit in good faith and Plaintiff's failure to properly screen all applicants/occupants prior to possession should not supersede the good faith rental agreement.

The only evidence of a lease agreement<sup>12</sup> between the Parties was introduced by Plaintiff. The partial lease contained only pages 2 and 5. Page 2 highlighted the 'use of premises' clause permitting only tenants to occupy the premises. Page 5 is an original signature page signed by Plaintiff and Defendants. No other pages of the lease, especially the page listing the tenant(s) and or occupant(s), were introduced.

Plaintiff asserts Defendants have violated the crime free provision portion of the lease agreement and that Defendants do not have any proof which indicates that Mr. Gutierrez is an authorized occupant of the rental unit. We disagree. Plaintiff failed to provide any evidence whatsoever which supports their assertion.

First, pursuant to 25 Del. C § 5702(9)<sup>13</sup> Defendants or their occupant would have had to commit a Class A Misdemeanor or Felony **during the term of their tenancy** [emphasis added] to be in violation of the crime free provision of the lease agreement. Plaintiff has not alleged that Defendants or their occupant committed any criminal violations during their tenancy. The basis of the violation alleged by Plaintiff is that Mr. Gutierrez did not pass a back ground check. Said check was completed *after* Defendants had been placed in possession of the unit by Plaintiff. This is not a violation which falls under § 5702(9). Therefore, the Court does not find that Defendants have violated the use of premises clause of their lease.

Secondly, Defendants' provided evidence that Mr. Gutierrez was listed as an occupant on their application<sup>14</sup> while Plaintiff admitted, there was a 'mess up' in this case as we failed to complete a background check of Mr. Gutierrez prior to renting the unit to Defendants. In fact, what has taken place in this case by Plaintiff's own admission is; Plaintiff's failure to thoroughly vet persons listed on Defendants' application. After giving possession to Defendants, Plaintiff

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<sup>10</sup> Plaintiff's exhibits #4 & #5.

<sup>11</sup> Plaintiff's exhibit #6.

<sup>12</sup> Plaintiff's exhibit #2.

<sup>13</sup> 25 Del. C. § 5702(9). Grounds for summary proceedings. Unless otherwise agreed in a written rental agreement, an action for summary possession may be maintained under this chapter because: (9) The tenant is convicted of a class A misdemeanor or any felony during the term of tenancy which caused or threatened to cause irreparable harm to any person or property;

<sup>14</sup> Plaintiff's exhibit #6.

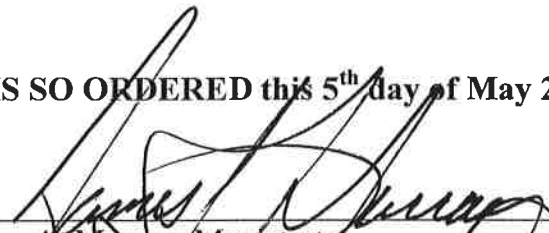
completed their vetting process and discovered that the occupant listed on Defendants' application failed to meet their standards to reside within the rental community. Now, Plaintiff wants to declare Mr. Gutierrez is not an authorized occupant. Plaintiff's failure to do their due diligence prior to placing Defendants in possession is just that, their failure. Defendants disclosed their intention to have Mr. Gutierrez as an occupant by listing him on their application. After disclosing their intention they were placed in possession of the rental unit by Plaintiff. The Court finds Mr. Gutierrez is an authorized occupant of the premises.

**Conclusion**


Based on the foregoing, the panel finds by unanimous verdict that the Plaintiffs have not proven their claim by a preponderance of evidence. Therefore, judgment is entered in favor of Defendants as follows:

Possession to Defendants.


**IT IS SO ORDERED this 5<sup>th</sup> day of May 2015.**



James A. Murray, Magistrate



Dwight D. Dillard, Magistrate



W.J. Sweet, Magistrate