

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

DELAWARE STATE HOUSING
AUTHORITY/LIBERTY COURT,

Plaintiff Below,
Appellant,

v.

DOWANNA HUTCHERSON,

Defendant Below,
Appellee.

C.A. No. JP16-15-003912

TRIAL DE NOVO

Submitted: October 28, 2015
Decided: November 5, 2015

Delaware State Housing Authority/Liberty Court, Plaintiff/Appellant, appeared represented by Shea L. Chasanov, Esquire.

Dowanna Hutcherson, Defendant/Appellee, *pro se*.

ORDER

Arndt, J
Murray, J
Cox, J

On October 28, 2015, this Court, comprised of the Honorable Ernst M. Arndt, the Honorable James A. Murray and the Honorable D. Ken Cox, acting as a special court pursuant to 25 *Del. C.* § 5717(a)¹ held a trial *de novo*² in reference to a Landlord/Tenant Summary Possession petition filed by Delaware State Housing Authority/Liberty Court (hereinafter referred to as Plaintiff), against Dowanna Hutcherson (hereinafter referred to as Defendant). For the following reasons the Court enters judgment in favor of the *DEFENDANT*.

Factual and Procedural Background

Plaintiff filed a Landlord/Tenant Summary Possession petition with Justice of the Peace Court No. 16 seeking possession, court costs, pre-judgment interest and post-judgment interest at the current legal rate. This action is based on an alleged rules violation criminal activity involving illegal drug use. Trial was held on August 15, 2015 and judgment was entered in favor of Defendant.³ Plaintiff filed a timely appeal of the Court's Order pursuant to 25 *Del. C.* § 5717(a). Consequently, trial *de novo* was scheduled and held.

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 435 (6th ed. 1990).

³ *Delaware State Housing/Liberty Court v. Hutcherson*, Del. J.P., C.A. No. JP16-15-003912, Sweet, J. (Aug. 20, 2015).

Plaintiff's Testimony

At trial, Plaintiff presented two witnesses and four exhibits. Plaintiff's first witness, Ms. Fritsch, is the current manager of Liberty Court and has been employed by Delaware State Housing Authority for 15 years. Ms. Fritsch testified Plaintiff and Defendant entered into a landlord/tenant relationship on November 13, 2013 and provided a lease agreement for same.⁴ Contained in the lease agreement is a provision which prohibits criminal activity including illegal drug use by the tenant(s), relatives, and/or guests.

Ms. Fritsch was part of a management group conducting inspections on June 9, 2015 when a "blunt" with burnt ashes was viewed on top of a Styrofoam take-out box in the dining room area of Defendant's apartment.⁵ Pictures were taken and presented to the Court.⁶ Plaintiff asserted Defendant had received prior notice of Plaintiff's intention to inspect the apartment. A copy of Defendant's notice advising her of the impending inspection was presented as evidence.⁷

Lastly, Ms. Fritsch presented a City of Dover, Delaware, Safe Communities Lease Addendum which was signed by both the Plaintiff and Defendant.⁸

⁴ Plaintiff's exhibit #1.

⁵ Provision allowing for semi-annual inspections is contained within the lease agreement.

⁶ Plaintiff's exhibit #3.

⁷ No proof of mailing or personal service was provided to the Court, nor any testimony as to how notice was served upon Defendant. The only indication as to how the notice was served is the handwritten word "Sent" placed in front of the date on the notice.

On cross examination, Ms. Fritsch stated Plaintiff never performed any type of test which detects/confirms marijuana in or on the blunt or ashes.

Plaintiff's second witness, Ms. Garnett, a 3½ year employee of Delaware State Housing is currently a Housing Manager Assistant. She was part of the management team which performed Defendant's inspection on June 9, 2015. She observed the blunt and ashes in the dining room area and, in fact, took the photographs which were presented as evidence.⁹ She further asserted that based on her training and experience she believed the blunt contained marijuana and was used to smoke same. Supporting her assertion she claimed the ash pattern of the blunt was that of marijuana and not that of a cigar or cigarette.

Under cross examination, Ms. Garnett stated entering into the apartment she "could smell many things, however, I did not smell marijuana."

Defendant's Testimony

Defendant called herself as her only witness. Defendant asserted the "blunt" was a capone. She further advised to her knowledge Plaintiff never performed any sort of test on the blunt which would confirm the contents of same.

⁸ Plaintiff's exhibit #4.

⁹ Plaintiff's exhibit #3.

Discussion

The sole basis for Plaintiff's termination of Defendant's lease agreement lay on an alleged breach involving criminal activity, illegal drug use. The illegal drug use is that of a burnt "blunt" found in the apartment during a pre-scheduled semi-annual inspection. Upon entering and thereafter viewing the blunt none of the Plaintiff's agents detected any odor of marijuana. Neither the blunt nor the ashes were tested by Plaintiff or turned over to any law enforcement agency for further testing in order to gain confirmation that said blunt contained marijuana.

Plaintiff's witness, Ms. Garnett, asserted she had training and experience in detecting and indentifying marijuana. However, Plaintiff never provided any training certificates, diplomas from any program/schools or any written documentation which would substantiate her assertion of proficiency in the area of detecting and indentifying marijuana and/or any other illegal drugs. Additionally, Plaintiff never attempted to have witness declared as an expert witness.¹⁰ Therefore, the Court shall give her testimony no more or no less weight than all who testified in this matter as layman.¹¹

Whereas no tests to confirm the "blunt" contained marijuana, and the fact that the apartment did not smell of marijuana leads to only one conclusion;

¹⁰ Expert witness. One who by reason of education or specialized experience possesses superior knowledge will respecting a subject about which persons having no particular training are incapable of forming an accurate opinion or deducting correct conclusions. Black's Law Dictionary 578 (6th ed. 1990).


¹¹ Layman. One of the people, and not one of the clergy; one who is not of a particular profession. Black's Law Dictionary 888 (6th ed. 1990).

Plaintiff has not proven by a preponderance of evidence Defendant violated the criminal activity, illegal drug use provision of her lease agreement.

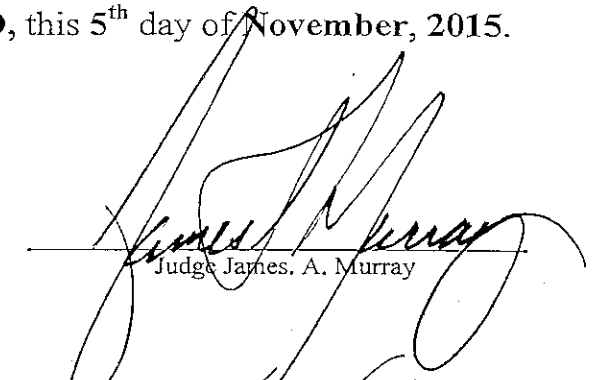
Conclusion

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 verdict enters *JUDGMENT for the DEFENDANT*.


IT IS SO ORDERED, this 5th day of November, 2015.



Judge Ernst M. Arndt



Judge James A. Murray



Judge D. Ken Cox