IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

DANIELLE BURRAGE	)	
	)	
Plaintiff-Below/Appellant,	)	
	)	
	)	
v.	)	C.A. No.: CPU4-11-006310
	)	
JOYCELYN BENNETT	)	
	)	
Defendant-Below/Appellee.	)	

Submitted: December 7, 2012
Decided: January 8, 2013

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Self-represented Defendant-Below

MEMORANDUM OPINION & ORDER GRANTING APPELLANT'S MOTION FOR RE-ARGUMENT

PROCEDURAL HISTORY

This matter is an appeal from the Justice of the Peace Court. Trial *de novo* was held before the Court on October 24, 2012. The Plaintiff-Below, Danielle Burrage, was the tenant of Defendant-Below, Joycelyn Bennett. The Court entered judgment for Ms. Bennett in the amount of $1,583.73 for Ms. Burrage's unpaid water bills and housing violation tickets. Additionally, the Court awarded Ms. Burrage $2,000.00 for double her security deposit under 25 *Del. C.* §5114(f) because the Court found that Ms. Bennett failed to provide Ms. Burrage with an itemized list of damages and estimated costs of repair within twenty days of the

termination of the lease. The amounts offset, and the net sum of $416.27 was awarded to Ms. Burrage.

On November 2, 2012, Ms. Bennett filed this motion for re-argument requesting the Court to reconsider the ruling solely on the Court's award of double the security deposit under 25 *Del. C.* §5114(f) and (g)(1). Ms. Bennett contends that the Court did not properly consider 25 *Del. C.* 5114(h), the notice provision of the security deposit statute under the Delaware Landlord-Tenant Code. Ms. Bennett argues that Ms. Burrage is not entitled to double the security deposit under 25 *Del. C.* §5514(h) because Ms. Burrage did not provide a forwarding address at, or prior to, the termination of the lease on April 30, 2011. Ms. Bennett requests that the Court amend the judgment to reflect that Ms. Burrage is entitled only to the amount of the security deposit, $1,000.00. On December 7, 2012, the Court held a hearing on the motion and reserved decision.

FACTUAL FINDINGS

At trial, the Court determined that the lease terminated on April 30, 2011. Ten days later on May 10, 2011, Ms. Burrage sent Ms. Bennett a letter requesting the return of her $1,000.00 security deposit and provided a forwarding address. The Court found that Ms. Bennett never sent an itemized list of damages within twenty days of the termination of the lease and failed to return the security deposit. The Court also determined that Ms. Burrage owed Ms. Bennett $1,583.73 for unpaid bills that accrued during her tenancy.

At the hearing on the motion for re-argument, Ms. Burrage conceded to the Court that she did not send Ms. Bennett notice of her forwarding address until ten days after the expiration of the lease. Furthermore, Ms. Burrage provided the Court with a copy of the

written letter dated May 10, 2011 that she sent to Ms. Bennett that requested the security deposit and provided a forwarding address.[1]

DISCUSSION

A motion for re-argument is limited to "reconsideration by the Trial Court of its findings of fact, conclusions of law, or judgment."[2] "A motion for re-argument is granted only if 'the Court has overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision.'"[3] "A party seeking to have the trial court reconsider [an] earlier ruling must demonstrate newly discovered evidence, a change in the law or manifest injustice."[4] "[T]he Court will not entertain new arguments by the parties raised for the first time in a motion for re-argument."[5] A motion for re-argument will generally be denied absent abuse of discretion by the trial court.[6] Under CCP Civil Rule 60(b)(1) the Court may "relieve a party . . . from a final judgment" for mistake.

The penalty for the failure of the landlord to respond to a written request from a tenant for a security deposit is set forth in Title 25 *Del. C.* §5114(g)(1):

> Failure to remit the security deposit or the difference between the security deposit and the amount set forth in the list of damages within 20 days from the expiration or termination of the rental agreement shall entitle the tenant to double the amount wrongfully withheld.

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[1] Plaintiff-Below Exb. 1.
[2] *Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (Del. 1969).
[3] *State Farm Fire & Cas. Co. v. Middleby Corp.*, 2011 WL 2462661, at *2 (Del. Super. June 15, 2011). (quoting *Kennedy v. Invacare Corp.*, 2006 WL 488590, at *1 (Del. Super. Jan. 31, 2006)).
[4] *Parisan v. Cohan*, 2012 WL 1066506, at *1 (Del. Com. Pl. Mar. 29, 2012).
[5] *Wilmington Trust Co. v. Nix*, 2002 WL 356371, at *1 (Del. Super. Feb. 21, 2002).
[6] *Parisan*, 2012 WL 1066506, at *1.

The notice provision of the security deposit statute, 25 *Del. C.* §5114(h), states:

> All communications and notices, including the return of any security deposit under this section, shall be directed to the landlord at the address specified in the rental agreement and to the tenant at an address specified in the rental agreement or to a forwarding address, if provided in writing by the tenant at or prior to the termination of the rental agreement. Failure by the tenant to provide such an address shall relieve the landlord of landlord's responsibility to give notice herein and landlord's liability for double the amount of the security deposit as provided herein, but the landlord shall continue to be liable to the tenant for any unused portion of the security deposit; provided, that the tenant shall make a claim in writing to the landlord within 1 year from the termination or expiration of the rental agreement.

The relevant portion of this provision for this motion is the provision that releases the landlord from liability of double damages if the tenant failed to provide a forwarding address "at or prior to the termination of the rental agreement."[7] The Delaware Superior Court has emphasized that the notice requirements of the security deposit statute "apply to the tenant, as well as the landlord."[8]

In *Courts of Llangollen, Inc. v. Nero*, the Superior Court held that the Court of Common Pleas erred when the Court found that the two-way notice requirement was satisfied when the tenant sent a letter after the termination of the lease.[9] The Superior Court reversed the Court of Common Pleas because the Superior Court found that the tenant did not comply with the requirement that an address be supplied "at or prior to the termination of the rental

[7] 25 *Del. C.* §5514(h).
[8] *Courts of Llangollen, Inc. v. Nero*, 1999 WL 1240847, at *6 (Del. Super. Oct. 26, 1999).
[9] *Courts of Llangollen, Inc.*, 1999 WL 1240847, at *6.

agreement."[10] The Court noted that, "it must be incumbent on the tenant to notify the landlord prior to the lease's termination. The tenant is the one moving and in order for the landlord to be able to comply with its duties, it must know where the tenant can be found after leaving the rental unit." Additionally, in *Onoda v. Termonia*, the Court of Common Pleas found that a landlord was "relieved of liability to send notice of damages" and from having to pay double the security deposit because "[i]f the tenant does not give a forwarding address, the landlord is relieved of liability for notice and for double damages."[11]

Under current Delaware case law, even though Ms. Bennett provided a forwarding address, the notice was too late. In order to recover double her security deposit, Ms. Burrage should have provided Ms. Bennett her forwarding address "at or prior to the termination of the rental agreement."[12] Ms. Burrage admitted that she did not provide the address until May 10, 2011, after the lease ended on April 30, 2011.

At trial, the Court did not consider the provision of 25 *Del. C.* §5114(h) and awarded double damages. Accordingly, Ms. Bennett's motion for reargument has merit and is granted. Even though Ms. Bennett is relieved of liability for double damages, because Ms. Bennett never provided any itemized list of damages, she is still liable for the amount of the security deposit, $1,000.00.

The requirement of the tenant to provide an address "at or prior to termination" of 25 *Del. C.* 5514(h) relieves a landlord of double damages for the return of the security

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[10] *Id.* (citing, 25 *Del. C.* §5111(g)). The Landlord-Tenant Code has been revised since the Superior Court's decision in *Courts of Llangollen.* The current notice provision is now 25 *Del. C.* §5114(h) and contains almost identical wording.
[11] *Onoda v. Termonia*, 2004 WL 2378833, at *2 (Del. Com. Pl. Aug. 10, 2004).
[12] 25 *Del. C.* §5514(h).

deposit. However, the landlord is still required to provide an itemized list of damages which did not occur in this case. For example, Ms. Burrage did not know where her new address would be, but she sent notice of the forwarding address ten days later, within a reasonable time. Even though Ms. Bennett was fully aware of where to send an itemized list of damages, she failed to send any notice of damages and wrongfully withheld the security deposit.

Therefore, **IT IS HEREBY ORDERED this 8th day of January, 2013** that:

1. Ms. Bennett's Motion for Re-argument is **GRANTED**; and
2. The Judgment to Ms. Burrage is amended and reduced from $1,000.00, in compliance with the statute;
3. The sum of $1,583.73 awarded to Ms. Bennett remains unchanged;
4. The net sum of $583.73 is awarded to Ms. Bennett.

The Honorable Alex J. Smalls
Chief Judge

Burrage-ORD Jan 2013