

**IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY
COURT NO. 17**

**COURT ADDRESS:
23730 SHORTLY ROAD
GEORGETOWN DE 19947**

CIVIL ACTION NO: JP17-13-000694

JAMES BETTIS VS PREMIER PROPERTY AND POOL MGMT LLC

**SYSTEM ID: @2559209
PREMIER PROPERTY AND POOL MANAGEMENT LLC
33815 CLAY ROAD SUITE C AND D
LEWES DE 19958**

Case Heard: April 15, 2013
Case Decided: April 22, 2013

Appearances: Nicole M. Faries, Esq. of Prickett, Jones & Elliott, P.A. appeared for the plaintiff.
Michael R. Smith, Esq. of The Smith Firm, LLC appeared for the defendant.

Blakely for the Court.

ORDER

Plaintiff filed this action on February 6, 2013 seeking back rent and possession of commercial property located at 60 Clay Road, Lewes, DE 19958, n/k/a 33815 Clay Road. Trial was held before the Hon. John C. Martin on Feb. 26, 2013 with a monetary judgment entered for the plaintiff on February 27, 2013 and the Court ruling that this was a good faith dispute. The defendant appealed this decision to a Three Judge Panel on March 5, 2013 and thereafter posted a bond of \$15,000 pursuant to 25 Del. Code, Sec. 5717(a). A trial de novo before the Hon. Sheila G. Blakely, the Hon. Christopher A. Bradley and the Hon. William P. Wood was held on April 15, 2013. This is the decision of the Three Judge Panel.

FACTS

Sometime in late May or early June of 2010, the parties entered into a commercial lease agreement dated June 1, 2010 whereby James Bettis (hereinafter "Bettis") agreed to lease office suites C and D, located at 60 Clay Road, Lewes, DE to Premier Property & Pool Management, LLC (hereinafter "Premier"). (See Exhibit P-1). The initial term of this lease was for 6 years with a monthly rent of \$1,000. There was also an addendum attached to the lease, dated May 26, 2010 that stated that the tenant was to perform certain repairs to the rental unit as outlined in Paragraphs 7 and 8 of the lease and that "the rent for the unit was negotiated in recognition that Tenant was to perform the agreed upon work."

The plaintiff in this action currently suffers from dementia and was unavailable to testify. Kimberly Rice (hereinafter "Rice"), a principal of Premier, testified that Bettis agreed to provide them with additional space in exchange for certain services outlined in a memo from Rice dated June 11, 2010. (See Exhibit P-2) This memo contradicts in some ways what is outlined in the signed addendum to the lease. It is clear from a letter written by Rice on December 21, 2010 (See Exhibit P-3) that there was an agreement between the parties that the defendant would pay \$160 a month extra for utilities, although no specific amount is given in the lease. In fact this amount of \$1,160 was paid by the

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defendant from June through October 2010. Rice also acknowledges in this December 21, 2010 letter that the defendant agreed "to maintain the grounds, garbage collection, pest control, and the water waste treatment lease" to make the property tenable and "in exchange for additional space."

It was during October 2010 that due to his failing health, Bettis' daughter and his attorney at the time, Bonnie Benson, Esq., took over his affairs including the rental management of this property. However as of November 15, 2010, the defendant was told that Bonnie Benson's office was no longer handling his affairs and the defendant was given the email and mailing address of the plaintiff's daughter. Around this same time period, the defendant/tenant was faced with several bills that were clearly the landlord's responsibility including a plumbing problem in the common area bathroom (\$736.90), a potential shut off of electricity due to non-payment (\$666.56) and two propane bills from Sherman Heating Oil (\$432.298 & \$625.43). The letter indicates that the defendant tried to contact the defendant's daughter to get these bills paid but received no response. It was only then that the defendant elected to use these paid bills as a credit towards the defendant's rent. Defendant also chose to deduct the ongoing maintenance costs incurred since the inception of the lease, which the December 2010 letter indicates the defendant was paying in exchange for the additional space.

Defendant then continued to pay expenses for the rental property and deduct these amounts from the rent. Copies of rent checks paid by the defendant between April 2, 2012 and December 24, 2012 were submitted as evidence. (See Exhibits P-10 & P-11). No invoices for expenses were presented. On January 28, 2013, the plaintiff's current counsel sent a 5 day demand notice to the defendant pursuant to 25 Del. Code, Sec. 5502(a). (Exhibit D-1)

DISCUSSION

It is clear from the evidence presented, that the defendant was obligated to pay the plaintiff \$1,160 per month to cover rent and utilities for office suites C & D. It would also be reasonable to conclude that the defendant agreed to pay additional maintenance expenses each month either because of a reduced rental amount or because they were using additional office space beyond suites C & D. Although the evidence would lean towards the latter.

Those expenses incurred in late 2010, that appear to be the responsibility of the landlord were: (1) the emergency plumbing repair (\$736.90) which occurred in the common area bathroom; (2) the electric bill to avoid power shut off (\$666.56); and (3) the two propane bills (\$1,057.72). Although no invoices for these were submitted at trial, the evidence indicates that these invoices were originally submitted to the plaintiff. These bills total \$2,461.18. It is also alleged that there were two snow removal bills which were the responsibility of the landlord under the lease, however there was no proof presented of this expense at trial.

As for the alleged expenses for the water treatment system, grounds maintenance, trash collection, pest treatment and other repairs, these were either part of an original reduction in the rent charged or part of an oral agreement for more space or were not proven at trial to be the responsibility of the landlord. Consequently these charges will be rejected as not being the responsibility of the landlord. As for the late fees of \$58.00 per month demanded by the plaintiff, there was no rent ledger presented by the plaintiff to show exactly when rent payments were made. The only proof presented were copies of the rental checks dated from April 2, 2012 through December 24, 2012 to cover rent for the months of May 2011 through December 2012, every month of which was paid more than 5 days late. Since there is no ledger for rent payments made prior to that time and there was some confusion in November 2010 as to where rent payments were to be made, the Court will only award late fees from May 2011 through April 2013. Torrey Watson ("hereinafter Watson"), the plaintiff's daughter, testified that the late fee charged was \$50.00 per month, which will therefore be the amount awarded.

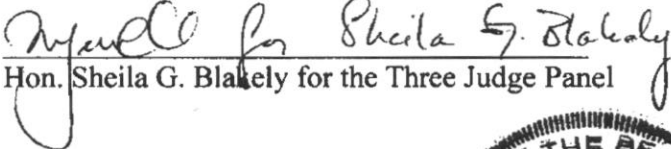
Watson also testified that two checks she received from the plaintiff (Exhibit P-10) totaling \$3,421.56 was never cashed because they had expired. The Court finds that because these rent checks were conditional with amounts deducted for expenses the plaintiff did not agree with, the plaintiff had no obligation to cash these checks upon receipt. The plaintiff would therefore be entitled to payment for these checks.

Using the payment history prepared by the defendant and marked Plaintiff's Exhibit 6, the total amount for rent and utilities due through April 2013 is \$40,600. Late fees of \$50.00 for 24 months equal \$1,200. The total amount paid during this time period minus the amount for the two uncashed checks was \$18,278.44. Expenses paid by the tenant for the landlord in late 2010 total \$2,461.18. Therefore the total amount owed the plaintiff through April 30, 2013 is \$41,800.00 minus \$20,739.62 paid by the defendant for rent and allowed expenses. Monies owed the plaintiff therefore total \$21,060.38, which is above the \$15,000 jurisdictional limit of this court.

There was undisputed testimony that the defendant is currently occupying other areas of the building beyond the leased premises of office suites C & D (C & D of which are the first two units on the right hand side when entering the building, as marked "C" [20'x13'] & "D" [16'x13'] on Exh. P-7 and labeled "Darlene" [12x15] and "Kim" [12x19] on Exh. P-5.) Any other oral agreements as to additional space in the building are unenforceable, as the lease states under paragraph 5 that any other additional use must be consented to by the landlord in writing. There is no consent in writing by the landlord for the use of this additional space.

Judgment is therefore entered in favor of the plaintiff in the amount of \$15,000.00, plus possession, court costs of \$43.00 and post judgment interest at the legal rate of 5.75%. The Court finds that this is a good faith dispute under 25 Del. Code, Sec. 5716. Therefore if the full amount of rent due (\$21,060.38) is paid to the plaintiff within 10 days, then possession may remain with the defendant. If the full amount is not paid within 10 days then possession would be awarded to the plaintiff. A \$15,000 bond was posted by the defendant and is being held by the Court. This amount will be processed by the Justice of the Peace Court Administrative Office and a check issued to the plaintiff by the State as soon as practicable. The defendant should pay the balance of rent due (\$6,060.38) plus costs of \$43.00 directly to the plaintiff within 10 days of this judgment, if the defendant wishes to maintain possession of office suites C & D.

It is so ordered this 22nd day of April, 2013.


Hon. Sheila G. Blakely for the Three Judge Panel

