

IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY  
COURT NO. 13

COURT ADDRESS:  
1010 CONCORD AVE  
WILMINGTON DE 19802

CIVIL ACTION NO: JP13-13-010746

VILLAGE OF WINDHOVER VS THERESA SMITH ET AL

VILLAGE OF WINDHOVER APTS

VS

THERESA SMITH, TERRY SMITH

**DECISION AND ORDER ON A DENOVO**

January 23, 2014. Trial de novo held. Plaintiff Village of Windover Apartments, LLC represented by Michael P. Morton, Esq. Defendants Theresa Smith and Terry Smith represented by Susan F. Flood, Esq. Trial de novo panel consisted of the Honorable Bonita N. Lee, the Honorable Kathleen C. Lucas and the Honorable James A. Tull.

**Procedural History**

The decision was announced in open Court; here the panel memorializes that decision.

On August 21, 2013, Plaintiff Village of Windover filed the instant summary possession case seeking possession of the rental unit located at 3607 Stone Place in Newark, DE 19702, pursuant to 25 Del.C. § 5702(2) "... The tenant has wrongfully failed to pay the agreed rent."

The parties entered into a lease agreement for the aforementioned unit on or about April 3, 2013. The lease listed prorated rent for April in the amount of \$658.67; the full monthly rent was listed as \$760.00. The lease also included a Concession Agreement Addendum, which discounted the monthly rent by \$150.00 per month. Per the addendum, signed by all parties, in the event of a default in payment of rent, the concession agreement would be null and void. The lease further states that if the tenant defaults, the landlord could declare the full amount of all rent discounts to be immediately due and owing.

Plaintiff's witness, Andrea Esterling, who is and was the property manager, testified she met with both Defendants to go over the entire lease in detail; this included the concession agreement. She explained to the Smiths that rent had to be paid on time every month; if it was not, all the discounted rent would become due. A five-day letter, pursuant to 25 Del.C. § 5502, was sent August 6, 2013. It included "concession" rent.

On July 12, 2013, the Smiths were sent a copy of their tenant ledger showing Rent Concession Reversals for the months of April through July at \$150.00 per month. Ms. Esterling testified she was never contacted in writing or otherwise that the Defendants were contesting the rent.

On cross examination, Esterling testified she sent five-day letters to both tenants every month they remained in default. Tenants tendered a check for \$500.00 in July that was returned for non-sufficient funds. The only payments received after a July payment of \$100.00 was an October payment in the amount of \$610.00. As of the date of the trial de novo, tenants owed \$5,687.17 in unpaid rent and late fees.

At the conclusion of Plaintiff's case-in-chief, Defendants moved to dismiss due to a defective five-day letter that included concession reversal amounts. Counsel argued that the landlord failed to follow the language of the contract by providing a separate notice of the concession reversal. The Court denied counsel's motion and held that the Plaintiff had followed the terms of the lease and, particularly, the "Concession Agreement Addendum":

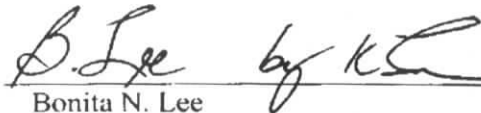
"Tenant hereby, agrees that, in the event of Tenant's default in payment of rent under the terms of the Rental Agreement, the Concession provided herein shall be null and void. The Tenant understands accepts and agrees that, upon default in the payment of the rental payment under the terms of the Rental Agreement, the monthly rental amount, without further notice, shall revert beginning on the first of the next month to the full amount of the "Equal Monthly Installment" amount for rent provided for in the terms of the Rental Agreement, with no abatement, discount, set off or concession relating to the Concession herein provided or otherwise, for the remainder of the term of the Rental Agreement"

While defense counsel argued that the concession reversal was unconscionable and overly burdensome, the Court finds that Defendants violated the terms of their lease, and that Plaintiff properly followed the law in so notifying Defendants of that.

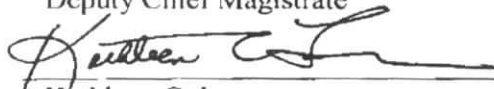
#### Conclusion

Judgment is entered for Plaintiff as follows: \$5,689.76 judgment, \$93.00 court costs, possession to the landlord, per diem at \$25.33 until vacated, post judgment interest at 5.75% per annum.

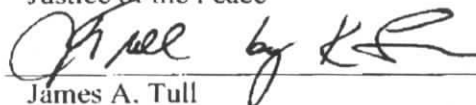
IT IS SO ORDERED this 10 day of February



Bonita N. Lee  
Deputy Chief Magistrate



Kathleen C. Lucas  
Justice of the Peace



James A. Tull  
Justice of the Peace

