

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

DAVID ALSTON and
TERESA ALSTON,

Plaintiffs,

v.

ROBBIE PACE and
DARLENE PACE,

Defendants.

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C.A. No. JP16-12-006032

Submitted: January 17, 2013
Decided: January 17, 2013

Before **WALL, COX, and HUTCHISON**, Magistrates.

ORDER

This is an action for summary possession and accrued rent owed in a landlord/tenant case, which was appealed to a three Justice of the Peace Panel. Trial *de novo* before a Special Court comprised of a Three Judge Panel, Judges Wall, Cox and Hutchison as provided by 25 *Del. C.* § 5717(a) was scheduled this date. David Alston and Teresa Alston (“plaintiffs”) were represented by Gregory A. Morris, Esquire. Robbie Pace and Darlene Pace (“defendants”) appeared *pro se*.

HISTORY OF CASE

Plaintiffs’ filed a landlord tenant summary possession for failure to pay rent. Trial was held on December 12, 2012. After testimony, the petition was dismissed without prejudice for lack of jurisdiction. Plaintiffs appealed this Court’s decision to a three Justice of the Peace Panel.

FACTS OF THE CASE

Plaintiff Teresa Alston ("Ms. Alston") testified that she and her husband own the property at 604 River Road. Plaintiffs acquired the property after Mr. Alston's mother had passed away. Plaintiffs used the property as a rental unit.

Plaintiffs rented the property to defendants for the monthly amount of \$650.00. Defendants stopped making payments after April 2012. A 5-Day letter was sent to the defendants dated September 11, 2012 requesting payment of delinquent rent in the amount of \$3,900.00 for the months of April to September 2012. The letter was sent certified mail, return receipt requested. The 5-Day letter for each defendant was returned as "unclaimed."

Plaintiffs introduced the following documents without objection: Plaintiffs' Exhibit 1 - Recorded document from the Recorder of Deeds that depicts title to David M. Austin and Teresa Ann Austin; Plaintiffs' Exhibit 2 - Tax Statement from the Kent County Tax Office dated 1/11/13 sent to David M. Austin for property located at 604 River Road; Plaintiffs' Exhibit 3 - Residential Lease between Darlene & Robbie Pace [Tenant] and David & Theresa Austin [Landlord] ... for premises located at 604 River Road, Dover, DE 19904, for monthly rent in the amount of \$650.00 for the term to begin 4/21/11 and end on 4/30/12; Plaintiffs' Exhibit 4 - 5-Day Notice dated September 11, 2012 sent certified mail and returned as unclaimed; Plaintiffs' Exhibit 5 - Agreement by Robbie Pace dated April 1, 2012 to pay David and Theresa Austin for property located at 604 River Road in the amount of \$50,000 with installments to begin in June of 2012.

Defendants contend that plaintiffs gave up the property after a notice of inspection was sent to defendants for non-payment of electric. Defendants introduced as evidence a letter dated April 1, 2012 which states in part, "We gave the property to Robbie & Darlene Pace as of November 11, 2011 (Defendants' Exhibit 3). Defendants also contend that they made a tax payment of \$261.87 (Defendants' Exhibit 2). Defendants also presented a Rental License for David Austin, issued April 4, 2012 (Defendants' Exhibit 1) contending that the license was paid for by Defendants. Defendant also introduced the City of Dover Inspection Notice dated March 30, 2012 with a notice attached that states in part, "This letter is to serve as a notice that the structure at the above address has been **CONDEMNED** as **UNFIT FOR HUMAN OCCUPANCY** and **MUST BE VACATED** by April 3, 2012, 10:00 AM, or have the **ELECTRICAL SERVICE RESTORED**." (Defendants' Exhibit 4).

Defendants argue that plaintiffs signed the house over to them because they did not want any trouble with the City concerning the inspection. Defendants admitted that they have made no payments since 2012. Defendants admitted that the electric was turned off for non-payment. Defendants argue that the property was given to them. Defendants admit that there was no settlement or transfer of ownership of the property.

FINDINGS AND CONCLUSION

The Court does not accept the defense position that the ownership had been transferred from the plaintiffs to the defendants. The plaintiffs are the owners of the rental unit. There was a lease that became a month to month lease.

The defendants stopped paying rent. A 5-Day notice was sent as required by 25 *Del. C.* § 5502(a). No payment was made after the 5-Day notice was sent.

Based on the foregoing, the panel finds Plaintiffs have proven the failure to pay rent by a preponderance of the evidence and issues a unanimous verdict in favor of the Plaintiffs and against the Defendants as follows:

Judgment \$6,218.39

Per Diem Rent @ \$21.67

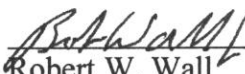
Court Costs \$40.00

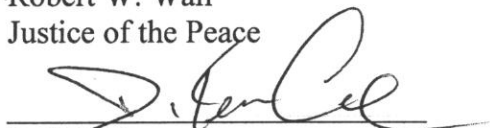
Possession

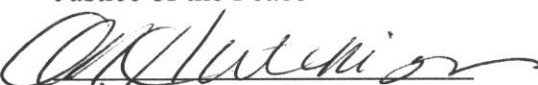
Post Judgment Interest @ 5.75%

IT IS SO ORDERED this 17th day of January, 2013.

Trial De Novo Panel


Robert W. Wall
Justice of the Peace


D. Ken Cox
Justice of the Peace


Cathleen M. Hutchison
Justice of the Peace