

**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: JP17-12-006598

DELAWARE STATE HOUSING V CHERIE SOLOMON

**SYSTEM ID: 003485
JEFFREY J CLARK
SCHMITTINGER & RODRIGUEZ
414 SOUTH STATE STREET
P.O. BOX 497
DOVER DE 19901**

Case Heard: February 18, 2013
Case Decided: February 20, 2013

Appearances: Jeffrey J. Clark, Esq. of Schmittinger & Rodriguez, P.A. appeared for the plaintiff. The defendant appeared pro se.

ORDER OF THE THREE JUDGE PANEL

This landlord tenant action for possession was filed by the plaintiff on December 3, 2012. Trial was held before the Hon. John J. Adams and judgment was entered in favor of the defendant on January 18, 2013. An appeal to a three judge panel pursuant to 25 Del. Code, Sec. 5717 was filed on January 22, 2013. This is the order of the three judge panel following the trial de novo before the Hon. Sheila G. Blakely, the Hon. Michelle Jewell and the Hon. William P. Wood on February 18, 2013.

At the trial de novo, the plaintiff, Delaware State Housing Authority (hereinafter "DSHA") seeks possession of rental unit 505, occupied by defendant, Cherie Solomon (hereinafter "Solomon"), located in Burton Village at 37458 Burton Village Avenue, Rehoboth, DE 19971 on two grounds. The first is for having unauthorized guests or borders staying at her apartment, beyond the 14 days within a 6 months period as permitted by her lease. The second is for criminal conduct committed by one of her guests/ borders, Tomeika Mills (hereinafter "Mills") on October 19, 2012 at the complex, which threatened the health, safety or right to peaceful enjoyment of the premises by other residents. Defendant Solomon contested these allegations and denied that any unauthorized persons were living with her or that Mills was her guest at the time of the incident on October 19, 2013.

FACTS

Solomon has been a resident at Burton Village since November 2010. She currently lives at Unit 505 with her two nieces, who are authorized occupants. On or about August 21, 2012, DSHA sent Solomon a letter (Plaintiff's Exhibit 4) notifying her that she was in violation of Sec. 4, 8(b) and 8(c) of her lease "for permitting an unauthorized individual, possibly a relative(brother)", to reside in her unit for longer than 14 days without prior written approval of management. Defendant was given 7 days to cure, pursuant to 25 Del. Code, Sec. 5513(a)(1), by providing management with documentation to show that the person in question had a place of residence elsewhere. There was no evidence presented to show that Solomon ever complied with this request.

Testimony at trial from two credible witnesses, Shernell Perry, (Mills's sister) and Monica R. Harmon (the next door neighbor at Unit 503) established that both Solomon's brother, Rob, and Mills were living with Solomon at her unit during this time period, each for longer than the 14 days allowed.

There was testimony that Rob lived there from August 2012 until 1-2 months later. Solomon testified that as a former counselor to Mills at the House of Pride, she was trying to help Mills with her drug addiction by allowing her to visit and having Mill's children visit their mother at her residence.

On or about October 19, 2012 at approximately 1am a fight broke out in front of the defendant's rental unit between her best friend, Shanika Brown and Mills who were both interested in her brother, Rob. Arresting officer, DSP Corp. Michael Venero testified that Mills was intoxicated and that per witness Solomon, Mills struck Shanika Brown in the head with a glass bottle. Solomon told Cpl. Venero that Mills was at her apartment that night and when she became unruly, she ordered her to leave and then the fight broke out in the parking lot in front of her apartment. Mills was charged with Terroristic Threatening and Assault III and pled guilty to Assault III on Jan. 15, 2013. Solomon testified that she was the one who called the police that night and the ambulance. She also testified that Mills followed Shanika Brown to her unit, because she was stalking her and that Mills was not staying at her unit. This testimony conflicts with the statement she gave to the officer that night. The Court finds the testimony of the officer to be more credible.

DISCUSSION

Under the clear terms of the lease, criminal activity by a guest of the tenant, which "threatens the health, safety or right to peaceful enjoyment of Management's public housing premises by other residents", shall be cause for termination of the tenancy. (See Para. 15 of the Lease- Plaintiff's Exhibit 3). The United States Supreme Court also made clear in *Department of Housing and Urban Development v Rucker*, 535 U.S. 125 (2002) that the Court must apply a strict liability standard for public housing and hold a tenant responsible for the actions of his/her guests regardless of whether the tenant knew or should have known of their criminal activity. The Supreme Court stated that "Strict liability maximizes deterrence and eases enforcement difficulties." *Rucker*, 535 U.S. 125, at 5.

In the present case, there was evidence that the defendant's brother Rob lived at her premises for longer than 14 days and beyond the 7 days Solomon was given to cure, starting with the notice letter that was sent to her on August 21, 2013. No proof was given at trial of any alternative address for the defendant's brother.

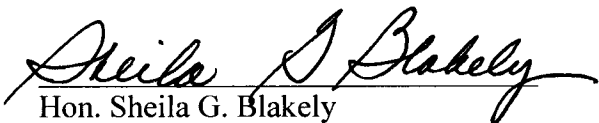
With regard to the criminal activity which took place at the public housing complex on October 19, 2012, the Court determined by a preponderance of the evidence, that Mills was clearly a guest, and perhaps a border, who had access to the defendant's rental unit and was at her unit that evening. Under the law and the terms of her lease, Solomon was responsible for the actions of Mills, her guest, that evening. Clearly Mills's intoxicated, threatening behavior and her hitting someone over the head with a glass bottle in the public housing complex parking lot was criminal activity that threatened the health, safety and right to peaceful enjoyment of the other residents.

DECISION

For all the reasons stated above, the Court finds by a preponderance of the evidence, for the plaintiff. Possession is awarded in favor of the plaintiff, DSHA.

It is so ordered this 20th day of February, 2013.




Hon. Sheila G. Blakely
For the three judge panel

NOTICE OF APPEAL RIGHTS

Any party has 15 days starting the day after the judgment is signed by the judge to appeal the judgment of the Justice of the Peace Court to the Court of Common Pleas of the above county. If the judgment involves an action for summary possession in a landlord/tenant case, then either party has 5 business days, starting the day after the judgment is signed by the judge, to appeal the judgment to a three judge panel at the Justice of the Peace Court where the judgment was ordered. You must complete all of the appeal requirements within those periods. To prevent dismissal, the appeal must name all of the parties as they were originally named in the Justice of the Peace Court action. (This applies even if the action was dismissed in the Justice of the Peace Court against one or more of the parties.) Additional information on appeal procedures is found in the attached sheet entitled "Justice of the Peace Courts Civil Post-Judgment Procedures". (J.P. Civ. Form No. 14A) If no appeal is filed, parties may remove all exhibits from the Court no sooner than 16 days and no later than 30 days, from the date of this judgment. If not removed, the Court may dispose of the exhibits without further notice to the parties.

Final Date of Appeal of a Civil Case to the Court of Common Pleas is 15 days from the judgment.

Final Date for Appeal of a Landlord/Tenant case to a 3 Judge Panel is 5 days from the judgment.