



STATE OF DELAWARE
JUSTICE OF THE PEACE COURT NO. 13
1010 CONCORD AVENUE
CONCORD PROFESSIONAL CENTER
WILMINGTON, DELAWARE 19802

TELEPHONE: (302) 577-2550

SYSTEM ID: @2497619
CHELTENHAM VILLAGE
701 GEORGETOWN BUILDING
NEWARK, DE 19702

VS.

Civil Action No: JP13-13-013873

SYSTEM ID: @2625562
ISHA WRIGHT
1210 LASALLE BUILDING
NEWARK, DE 19702

NOTICE OF JUDGMENT
ON TRIAL DE NOVO

This matter is an appeal of a summary possession case to a three-judge panel. Plaintiff Cheltenham Village filed on October 18, 2013 against Defendant Isha Wright seeking possession and court costs. After trial on January 27, 2014, the judge ordered possession remains with the defendant. Plaintiff appeals that judgment.

Plaintiff Cheltenham Village is represented by Michael Morton, Esq. Defendant Isha Wright is represented by Augusto Cordova, Esq. The three-judge panel is comprised of the Honorable Bonita N. Lee, the Honorable Deborah A. McNesby and the Honorable Nancy C. Roberts.

Facts

Plaintiff Cheltenham Village and Defendant Isha Wright entered into a rental agreement for a project based subsidized housing unit located at 1210 LaSalle Building Newark, Delaware. Wright has been a tenant at this housing development for approximately 12 years. On July 4, 2013 an incident occurred in the parking lot of Cheltenham Village that resulted in the arrest of Ms. Wright on charges of Disorderly Conduct and Resisting Arrest. Approximately 102 days after the incident, Plaintiff sent a notice of immediate termination pursuant to 25 Del. C. § 5513 (b). The instant summary possession case was filed October 18, 2013.

In the October 16th Notice of Immediate Termination, the landlord stated, "It has come to your landlord's attention that on or about July, 2013, you were arrested for disorderly conduct for your behavior on the property and then for resisting arrest. Your conduct and behavior was criminal in nature. The police were called and when they responded, you proceeded to shout racial slurs and

resisted their attempts to restrain you.” Additionally, the notice listed the specific paragraphs of the Rental Agreement, the Rules and Regulations and the Residential Landlord Tenant Code that was breached by the Defendant’s conduct. The immediate termination notice also informed the tenant of her right to a hearing to discuss the proposed termination of tenancy with the manager.

Witness Corporal Edwin Mousley testified that on the night of Wright’s arrest he was performing an extra duty job to address quality of life issues at the apartment complex. At approximately 10:30 p.m. the officer was on foot patrol with his canine partner and another officer. The officer testified that he heard loud-blaring music coming from a parked car. He observed a large group of people near the vehicle. The officer yelled to the group to turn down the music. However, the music volume was not lowered. Next, he observed the tenant appear in front of the group yelling “What the fuck you looking at?” The Officer repeated his order to turn down the music. The Defendant then stated “Fuck you mother fucker...this is how we party”. When the officer’s canine started to get agitated due to aggressive behavior by defendant, he was taken away to avoid escalating the situation. Others from the crowd tried to calm Wright down, but to no avail. When the officer attempted to arrest Wright she pulled away. The officer then used what he described as a “leg sweep” to bring her to the ground. According to the officer the incident began in the parking lot and ended with the arrest of the Defendant in the courtyard, closer to the residences. At some point while the Defendant was in custody, an officer administered a portable breathalyzer test on the Defendant which registered .16, considered twice the legal limit if a person was operating a motor vehicle. The Defendant was charged with Resisting Arrest and Disorderly Conduct (for the loud radio). In the Officer’s opinion Wright’s conduct could have escalated the situation, thereby threatening to cause irreparable harm. The officer also testified that part of the incident took place close enough to the residential building to interrupt the peaceful enjoyment of the other tenants.

Defendant does not dispute the fact that she was arrested for Disorderly Conduct and Resisting Arrest. Wright entered a plea to the Resisting Arrest charge.¹ On direct examination, Defendant acknowledged receipt of the termination notice. Defendant states she spoke with the manager the next day following the incident. According to the Defendant, Renee Devan, the property manager told her not to worry about the incident, never indicating she could be evicted. From July to October, Wright heard nothing from the landlord in reference to this incident, so she did not think there was a problem. Upon receipt of the termination notice, Defendant requested a hearing to discuss the proposed termination with the manager. The hearing was held sometime in November. After the hearing, the landlord decided to follow through with termination of Wright’s lease.

Witness Renee Devan, testified that both Cpl. Mousley and Ms. Wright came to her office on July 6th to inform her of the incident that occurred July 4th. She testified that the Officer’s account on that day was consistent with the testimony given today. Commenting on the delay between the day of the incident and the immediate termination notice, Devan stated it took time to get the police report. Devan denies ever telling the Defendant not to worry about the incident. Devan testified that she told the Defendant she had to get additional evidence. According to Devan’s testimony, the October 16th termination notice was sent after Devan found Defendant’s charges on a website. Although Devan considered Wright to be in violation of her lease, she states she continued to treat her as a tenant even to the point of starting the HUD recertification process. However, no new lease was signed.

Defense witness Creshelvelt Bateman, former resident of Cheltenham Village was standing outside with her children the night the Defendant was arrested. She acknowledged that Wright had been drinking. Bateman testified she observed the police officer motion to Wright to come over to him 3-4 times, however she could not hear what was being said. Bateman tried to get Wright into the house, but before she could do so, the officer came and kicked her to the ground.

¹ Plaintiff’s Exhibit, Court of Common Pleas Criminal Docket, “Defendant is discharged without judgment of guilt and the charge is hereby dismissed.” March 28, 2014

Arguments

Plaintiff argues Defendant's conduct constitutes material breaches of the Rental Agreement, the Rules and Regulations and the Residential Landlord Tenant Code and has caused, and continues to cause irreparable harm to Plaintiff's person or property.² Plaintiff argues the testimony and evidence has proven that defendant's conduct on July 4th resulted in her arrest on two criminal charges, Disorderly Conduct and Resisting Arrest. The Defendant entered a plea to the charge of Resisting Arrest and the Disorderly Conduct charge was dismissed. Finally, Plaintiff argues 25 Del. C. §5513(b) does not have a time restriction for filing and the Defendant was not harmed by the timing of the immediate termination notice.

Defendant argues that the Court should consider the conduct of the officer versus conduct of the Defendant. While Plaintiff considered the officer's presence on the property was to keep the disorderly moving along, the presence of the dog heightened the situation. Next, Defendant argues the 10 day meeting to discuss termination of her lease was held approximately a month after the landlord had already filed for summary possession, defeating the purpose of the meeting. Finally, Defendant argues that timing is an issue. The Defendant went to the landlord on July 6th to report the July 4th incident, as did the officer. Defendant contends that there was no need for the landlord to wait. Defendant points out that even after waiting to get additional evidence, the October 16th letter included incorrect statements as to what occurred on July 4th

Conclusion

25 Del. C. §5513 (b) permits a landlord to immediately terminate the rental agreement of a tenant when the breach by the tenant causes or threatens to cause irreparable harm to person or property. Black's Law Dictionary defines immediate as "occurring without delay". In Wilmington Housing Authority v. Kenneth Thompkins, the Defendant was allowed to remain in the unit for more than 60 days after the alleged violent act occurred and the Plaintiff did not send the notice terminating the Defendant's tenancy until more that 3 weeks after the alleged violent act occurred. The Thompkins Court ruled that Plaintiff's actions did not support a claim under 25 Del. C. 5505 (b) for irreparable harm³ Similarly, in Carrington Way v. Fleming, two witnesses testified that while conducting an inspection of the windows in defendant's unit, they detected a strong smell of marijuana. The inspection occurred April 10, 2009, but the notice of immediate termination was not sent until July 2009. The Court wrote "As to Plaintiff's claim of irreparable harm, the time lapse in between the alleged violations and the immediate termination letter make somewhat of a mockery of that theory".⁴ In both of those cases, Plaintiff was denied possession. The instant case raises similar issues of timeliness of the immediate termination notice when the landlord alleges that a tenant's conduct threatens harm to person or property that cannot be repaired or reversed. Plaintiff's attorney used an analogy for irreparable harm as "black ink in a bucket of water".

In the instant case, the landlord waited approximately 102 days after an incident occurred that it argues threatened irreparable harm, to send a notice of immediate termination. The incident that resulted in Defendant's arrest occurred July 4th. The landlord was told about the arrest by Cpl. Mousley and Ms. Wright on July 6th. No effective action to terminate the Defendant's lease was taken until the October 16, 2013 Notice of Immediate Termination. The property manager stated she was waiting on more evidence, but did not elaborate as to why or what additional evidence was needed. The manager filed after finding the charges against the defendant on an unnamed website. Surely, the charge information was available from the police officer. The landlord's failure to act with a sense of urgency to protect

² Notice of Termination of Rental Agreement, October 16, 2014.

³ Wilmington Housing Authority v. Thompkins, Civil Action No. JP13-97-1743 Appeal *de novo* (August 6, 2007)

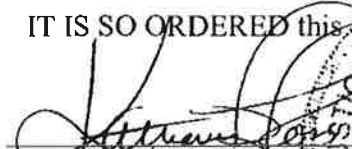
⁴ Carrington Way v. Fleming, Civil Action No. JP13-09-008743 (November 18, 2009)

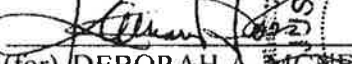
person or property, conflicts with the idea of immediate termination to prevent irreparable harm. The Court finds Plaintiff's delay does not support a claim under 25 Del. C. 5513(b) relating to a material breach of the lease that causes or threatens to cause irreparable harm.

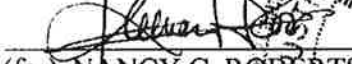
Further, after waiting for additional evidence, the October 16th letter included at least two incorrect statements. First, the landlord writes the police "were called" in response to Defendant's conduct. Cpl. Mousley testified he was on foot patrol in the area as an extra duty job the evening of July 4th. There was no testimony that the officer was called to the scene. An officer being called to the scene of a disturbance would imply that someone was disturbed by conduct of individual(s) and took action to alert the police. That was not what occurred in this case. Second, the October 16th letter stated the Defendant "shouted racial slurs". This allegation was not supported by the testimony of Cpl. Mousley. Witness Devan testified the officer's testimony in court was consistent with what he told her about the incident during their July 6th conversation. It is unclear how the discrepancies occurred, but there are discrepancies.

The testimony and facts adduced in this case do not support a finding in favor of the Plaintiff for immediate termination pursuant to 25 Del. C. 5513 (b) due to a breach by the tenant that causes or threatens to cause irreparable harm. For reasons stated, the Court holds Plaintiff failed to prove by a preponderance of evidence its right to possession. Judgment and possession is awarded to Defendant Isha Wright and against Plaintiff Cheltenham Village.

IT IS SO ORDERED this 13th day of July, 2014


(for) BONITA N. LEE
Deputy/Chief Magistrate


(for) DEBORAH A. MCNEIL
Justice of the Peace


(for) NANCY C. ROBERTS
Justice of the Peace

