



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

SYSTEM ID: @2751782
DIANNE MCKOY
29A REVELLE STREET
NEW CASTLE DE 19720

TELEPHONE: (302) 577-2550

VS.

Civil Action No.: JP13-15-003335

SYSTEM ID: @2751784
LASHONDA DANIELS
29 REVELLE STREET
NEW CASTLE, DE 19720

Appearances:

Plaintiff Dianne McKoy appeared Pro Se.
Defendant Lashonda Daniels appeared Pro Se.

Before: Lee, D.C.M., Ross, J., and Gravell, J.

Trial De Novo: May 20, 2015
Decided: June 4, 2015

ORDER OF JUDGMENT
ON TRIAL DE NOVO

All parties were present and a three-judge panel consisting of the Hon. Bonita N. Lee, Hon. Kathy S. Gravell and Hon. Katharine B. Ross, acting as a special court pursuant to 25 Del. C. § 5717 (a)¹ held a trial *de novo* in the matter of Dianne McKoy, Plaintiff versus Lashonda Daniels, Defendant. Plaintiff filed a Landlord/Tenant summary possession action against Defendant seeking \$5,950.00 in unpaid rent, possession, plus \$40.00 courts and post judgment interest at the legal rate. A trial was held on April 23, 2015 and judgment was entered in favor of Plaintiff. Defendant filed a timely appeal of the Court's order pursuant to 25 Del. C. § 5717 (a). At the appellate level Defendant filed a counterclaim for an unspecified amount claiming retaliatory eviction, fraud, endangerment, harassment and theft. For the following reasons the Court enters a net judgment in favor of Plaintiff.

¹ 25 Del. C. § 5717 (a) Nonjury trials.—With regard to nonjury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing, within 5 days after judgment, a trial *de novo* before a special court comprised of 3 justices of the peace other than the justice of the peace who presided at the trial, as appointed by the chief magistrate or a designee, which shall render final judgment, by majority vote...

Facts

The parties entered into a rental agreement in August 2012 for a rental unit located at 29 Revelle Street in New Castle, De. A lease renewal was signed by the parties September 28, 2013. The lease renewal and testimony, confirmed the monthly rent was \$850.00. In addition, a late fee in the amount of 5% would be assessed if rent was not paid by the 5th day of the month. McKoy testified that Daniels had not paid rent since August 2014. The landlord is seeking rent for September 2014 through the date of the *de novo* hearing. The constable evicted the Defendant earlier today; therefore Plaintiff seeks per diem rent for 20 days of May. Plaintiff submitted the following documentary evidence: lease renewal; five-day letter dated March 19, 2015; letter to gain entry into the apartment to make repairs; corrected five-day letter dated March 19, 2015.

Defendant does not dispute owing rent for September and October 2014. Daniels testified she stopped paying rent when she found out the property was in foreclosure. Defendant also testified concerning a leak in the unit, mold and mildew, broken cabinets and exposed wiring. According to the Defendant she informed the landlord's son in law, who lives upstairs, about the leak sometime in June 2014. Daniels referred to the son in law as the maintenance man for the unit. The son in law came to assess the problem. Although repairs were promised, no corrective action was taken until March 2015. Defendant also testified that the water was shut off for a few hours on two separate occasions. Pictures were provided of the areas stained by the water leak, exposed wiring and ill-fitting cabinets.

Victor Morgan, New Castle County Code Enforcement Officer inspected the rental unit on March 13, 2015 in response to a complaint call. Morgan testified that he observed water damage to the living room and dining room ceilings. He also observed loose cabinets in the kitchen and evidence of mold and mildew. A violation notice was issued to the landlord for these defects. Morgan conducted a re-inspection on April 2, 2015. At the re-inspection, the inspector noted that most of the repairs had been completed.

FINDINGS

The Court finds the Plaintiff met the preponderance of evidence standard proving Defendant failed to pay the agreed upon monthly rent of \$850.00 plus \$42.50 late fees for 8 months plus per diem for a total of \$7,749.17. (September 2014 through April 2015 plus 20 days of May) Pursuant to 25 Del. C. §5502² the landlord sent the Defendant five-day letter to cure the default. Accordingly, when the default was not cured within five days of the mailing of the notice, the instant case was filed.

Defendant's claim for damages due to a water leak was proven through testimony of the Defendant, Code Enforcement Officer, as well as pictures. The Court finds the landlord's son in law acted as agent for the landlord. The son in law observed the water leak damage firsthand. The court further finds the leak was not addressed until NCC Code Enforcement got involved. The Court, using its equitable powers awards 10% rent abatement (\$85.00) for 11 months (\$935.00). The remaining claims under Defendant's counterclaim were either not proven or not within the jurisdiction of this Court.

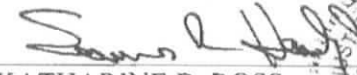
For reasons stated a net judgment is awarded in favor of Plaintiff McKoy in the amount of \$6,814.17 plus \$75.00 court costs, which includes \$35.00 for writ of possession and post judgment

² 25 Del. C. §5502 Landlords remedies for failure to pay rent. (a)A landlord or the landlord's agent may, any time after rent is due...demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in such notice, to be not less than 5 days after the date notice was given or sent, the rental agreement shall be terminated. If the tenant remains in default, the landlord may thereafter bring an action for summary possession.

interest at 5.75%. Possession was rightfully given to landlord through eviction by court constable on the day of trial.

IT IS SO ORDERED this 04th day of ~~JUNE~~ ~~2015~~


(for) BONITA N. LEE
Deputy Chief Magistrate


(for) KATHARINE B. ROSS
Justice of the Peace


(for) KATHY S. GRAVELL
Justice of the Peace

