

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

CHELTENHAM VILLAGE DWELLING,
FAIRVILLE MANAGEMENT COMPANY

Plaintiff(s)

v.

JUQUIETA POPE and
MARIA POPE

Defendant(s)

C.A. No. JP13-12-007593

TRIAL DE NOVO

Case Submitted: December 11, 2012

Case Decided: January 4, 2013

Appearances: Plaintiff(s) Cheltenham Village Dwelling/Fairville Management Company,
represented by Michael Morton, Esq.;

Defendant Juquieta Pope, *Pro Se*

Before: LEE, Deputy Chief Magistrate; **ROBERTS** and **UFBERG**, Magistrates.

ORDER

Procedural History

On June 5, 2012, Plaintiff filed this action as a "Forthwith Complaint" seeking to recover unpaid rent and possession of the residential rental unit located at 1101 Kingstown Building, Newark, Delaware, which had been rendered uninhabitable due to a fire occurring on April 19, 2012. A Default Judgment was entered against the co-defendants on June 8, 2012 granting possession and rent due to Plaintiff. On June 11, 2012, the Defendants filed a Motion to Vacate the Judgment, which motion was granted after a hearing on July 12, 2012. On August 1, 2012, Plaintiff filed a Motion to Amend the Complaint, seeking damages resulting from the fire, which motion was granted on August 2, 2012. In addition, on August 2, 2012 Defendants filed a pro se Debt Action for reimbursement for substitute housing costs, as they had been out of the unit since the date of the fire. The trial on all issues was held on July 12, 2012. Judgment was entered on August 7, 2012 in favor of the Plaintiff in the amount of \$15,000.00 plus court costs, post-judgment interest. Possession of the unit was transferred to Plaintiff on September 12, 2012, pursuant to an execution of the Writ of Possession, as Defendants did not post bond pending appeal.

Defendant, J. Pope filed a timely appeal on August 10, 2012.¹ On October, 11, 2012: Augusto A. Cordova, Esq. entered his appearance on behalf of Defendant J. Pope; filed an Answer and Counterclaim to the original complaint; as well as, a Motion to Vacate the August 2, 2012 Order. A hearing was held regarding the pre-trial motions as well as several additional oral motions on October 18, 2012, for which an Order was entered on November 9, 2012, limiting the issues in dispute and directing Defendant J. Pope to file and serve a Bill of Particulars relating to Count 1 of her Counterclaim. A trial was scheduled for December 11, 2012.

On November 16, 2012, Attorney Cordova filed a Motion to Withdraw as Defense Counsel. The Motion was unopposed and was granted by the Court on November 30, 2012.²

Trial Commenced on December 11, 2012, at which time, Plaintiff made an oral Motion to Dismiss Defendant J. Pope's Counterclaim for failure to file and serve a Bill of Particulars as per the Order of November 9, 2012. Plaintiff's Motion was granted and the matter proceeded solely on Plaintiff's Complaint and Amended Complaint.

Testimony of the Parties and Witnesses

Plaintiff's first witness was Michael Krabbs, maintenance technician for the premises. He testified that he was at the rental unit immediately upon being alerted that a fire was in progress. When he first arrived at the unit, he was unable to enter it due to the excessive smoke. He further testified that the automatic sprinkler was turned off at the earliest possible moment as soon as the fire department's arrived at the scene and ascertained the safety of the unit. He immediately entered the unit and observed fire damage including the melted knobs on the back part of the oven and heavy damage to the back and left side of the oven and the wall, as well as, extensive water damage caused by the activation of the sprinkler system through the entire unit. He also observed extensive smoke damage to the dining room, kitchen and living room. The microwave located approximately two feet from the stove on the right side was undamaged as was the immediate area of the microwave. He further testified that the unit was rendered uninhabitable as a result of the fire, water and smoke. Extensive repairs were required including water extraction and repair of drywall.

Plaintiff's second witness was John L. Marinangeli, asset manager for the company. He testified that he personally inspected the rental unit immediately following the fire. He took several photos of the damage which accurately reflected the condition of the unit. The photos were entered into evidence without objection. (Plaintiff's Exhibits 1 and 2) He observed multiple rooms sustaining fire, water and smoke damage, including the kitchen, dining room and bedroom. He stated that he is familiar with issues relating to fires, as he has been involved with fire remediation seven or eight times over the years. He observed burned food items in the trash in the kitchen and burnt food stains on the stove. He coordinated all repair work and offered estimates of the costs of the repairs into evidence of approximately \$31,528.09. The repair estimate was entered into evidence without objection. (Plaintiff's Exhibit 3). He also offered the

¹ Defendant, Maria Pope did not properly join in the appeal, therefore the Judgment of August 7, 2012 remains in full force and effect as against her.

² Within the Motion, Attorney Cordova detailed Defendant J. Pope's alleged failure to cooperate with him regarding the preparation and filing of the Bill of Particulars.

invoices relating to water extraction and smoke remediation into evidence totaling \$7826.82. The invoices were entered into evidence without objection. (Plaintiff's Exhibit 4). He further testified that an investigation as to the cause of the fire was performed in accordance with standard operating procedures for the company, for which standard reports were generated. The investigation records were entered into evidence without objection. (Plaintiff's Exhibits 5 and 6). Within the report dated April 20, 2012, Defendant J. Pope admitted to causing the fire by leaving food unattended on the stove.

Plaintiff called witness Sheila Ann Hill, regional manager for the company. She testified that the fire in the unit placed other residents at risk. She further testified that the company sent a letter dated May 21, 2012 to Defendant terminating the lease based upon breach of material lease provisions relating to the negligent fire. A copy of the letter was entered into evidence without objection. (Plaintiff's Exhibit 10). Within the letter, Defendant was advised of numerous breaches of the lease, including: Lease Paragraph 10(b), "The Tenant agrees to (2) use all appliances, fixtures and equipment in a safe manner and only for the purposes for which they are intended... (4) not destroy, deface, damage or remove any part of the unit, common areas or project grounds." Ms. Hill further testified that once the unit was rendered uninhabitable due to the fire, Defendant was no longer eligible to receive a rental subsidy under the H.U.D. program, therefore, as of May 1, 2012 the Defendant was responsible for the full market price of the rental price of \$1314.00 per month. This information was provided to Defendant on May 22, 2012 via memo. A copy of the memo was entered into evidence without objection. (Plaintiff's Exhibit 15). Hill testified that Defendant knew of her obligation to pay full rent as she had received a copy of the HUD-Delaware Residential Landlord/Tenant Code and New Castle County information regarding "Tenant's Rights and Responsibilities on June 24, 2011. The Acknowledgement of receipt was entered onto the record without objection (Plaintiff's Exhibit 13). In addition, the obligation to pay market rent where a unit is negligently damaged by a tenant is set forth in paragraph 11 of the lease. Ms. Hill testified that the company had not received any rental payments from Defendant since April 2012 and that the extensive repairs to the unit were completed in November 2012.

Defendant testified that she did not know how the fire in the Rental Unit occurred. She stated that she called 911 and then got her granddaughter out of the unit and put the fire out herself. She testified that the damage to the unit was not the result of the fire, but rather occurred because the automatic sprinkler system was not turned off quickly enough. She states that after the fire, she was locked out of the unit and was not permitted to resume her occupancy. She received a letter dated April 23, 2012 from the management indicating that she was responsible for relocating herself until the unit was repaired. The letter was entered onto the record without objection. (Defendant's Exhibit 4). She did not agree to pay the entire \$1314.00 and understood that her responsibility was only \$107.00 per month in accordance with her lease. The lease was entered into evidence without objection. (Defendant's Exhibit 5). She acknowledged receiving the memo of May 22, 2012, however, she testified that she didn't pay any rent after she was locked out because she wasn't permitted to reside in the unit.

Defendant called witness Timothy Parnell. He testified that he arrived at the unit after the fire had already been put out by Defendant. He states the unit was very smoky. He states that he got there before the firemen got there.

Discussion

As provided, in 25 Del. C. sec. 5101(a) the Landlord-Tenant Code regulates and determines all legal rights, remedies and obligations of the parties to a rental agreement or a rental unit. Under 25 Del. C. sec. 5513(b), "When a breach by a tenant causes or threatens to cause irreparable harm to any person or property...the landlord may, without notice, remedy the breach and bill the tenant as provided in subsection (a) of this section; immediately terminate the rental agreement upon notice to the tenant and bring an action for summary possession, or do both."

In the instant case, Plaintiff argues that it is entitled to summary possession as Defendant's negligence relating to the fire in the unit caused extensive damage, threatened harm to the Defendant as well as other renters and caused financial harm. Plaintiff provided credible evidence to support its claim that the fire was negligently caused by Defendant. Three witnesses described the damage to the apartment as being centered around the back of the stove. The photographs clearly show damage to the back of the stove and the surrounding wall. Furthermore the incident report of April 20, 2012 includes a statement made by Defendant in which she acknowledged that she had left something unattended on the stove, went to lay down in the bedroom then smelled something burning and went back to the kitchen and discovered the fire. In addition, at least one witness specifically testified as to seeing burnt food left in a bag in the kitchen after the fire. Furthermore, the Plaintiff presented credible testimony and evidence of extensive smoke, water and fire damage to the unit, rendering the unit uninhabitable and in need of extensive repair and water extraction.

Defendant offered no testimony or evidence relating to the cause of the fire.

Based upon the forgoing, the panel finds: Plaintiff has demonstrated by a preponderance of the evidence that the fire was caused by Defendant negligently leaving food unattended on the stove-top; the fire caused extensive fire, smoke and water damage; and, as a result the unit was rendered uninhabitable. As Defendant's negligence threatened to cause irreparable harm to Plaintiff, under 25 Del. C. sec. 5513(b), Plaintiff is entitled to possession.

Plaintiff also seeks reimbursement for the costs of repairs in accordance with paragraph 11(a) of the lease, which provides in pertinent part:

11. Whenever damage is caused by carelessness, misuse or neglect on the part of the Tenant... the Tenant agrees to pay:
 - a. the cost of all repairs ...

In support of its application for reimbursement for the cost of repairs to the unit, Plaintiff offered the testimony of John L. Marinangeli, asset manager for the company. Marinangeli testified that he coordinated all repair work and prepared estimates of the costs of approximately \$31,528.09. Marinangeli also offered into evidence an actual invoice reflecting the cost of water extraction prepared by Polygon for the amount of \$7826.82.

Defendant provided no testimony regarding the repair invoice, however, Defendant claimed that the water damage was caused by the contributory negligence of Plaintiff, to wit: failure to immediately turn the automatic sprinkler system off, after she had already contained the fire.

On the issue of water damage, Plaintiff offered the testimony of Michael Krabbs the maintenance technician. He testified that the automatic sprinkler was turned off at the earliest possible moment as soon as the fire department ascertained that it was safe to do so, at the time of its arrival at the scene. He stated he was unable to enter the unit prior to the arrival of the fire department, as the unit was extremely smoky and it would be dangerous to do so.

Krabbs' testimony is consistent with that of Defendant's witness Timothy Parnell who described the unit as very smoky prior to the arrival of the fire department on the scene.

The panel finds that Defendant has failed to meet her burden of proof of establishing Plaintiff's contributory negligence in regard damage to the unit.

Thus, the Panel finds that Defendant is solely liable for the costs of the damage to the unit. In a civil case before a Justice of the Peace, a bill estimate, receipt, or statement of account which appears to have been made in the regular course of business may be admitted into evidence by the Court if the Justice of the Peace is satisfied that the document is reliable. D. R.E. 803 (23). The Panel finds that the estimate for repairs created by Marinangeli, although made in the regular course of business, does not contain sufficient detail to render it reliable. The Plaintiff has not met its burden of proof in establishing that it incurred \$31,528.09. In contrast, the invoice prepared by Polygon in regard to the water extraction contains detailed descriptions of the work to be performed in each room, the estimated labor costs and materials, and the structural drying and smoke and odor cleanup protocols. Therefore, the Panel finds the document to be a reliable reflection of costs. Thus, the Panel finds that Defendant is responsible for reimbursement for costs associated with water extraction in the amount of \$7826.82.

Plaintiff also argues that under the terms of the lease it is entitled to full market rent of \$1314.00 for the period commencing May 1, 2012 until the date of possession, to wit: September 12, 2012 pursuant to paragraph 11(b) of the lease agreement which provides, in pertinent part:

11. Whenever damage is caused by carelessness, misuse or neglect on the part of the Tenant... the Tenant agrees to pay: ...

b. rent for the period the unit is damage whether or not the unit is habitable. The Tenant understands that HUD will not make assistance payments for any period in which the unit is not habitable. For any such period, the Tenant agrees to pay the HUD-approved market rent rather than the Tenant rent shown in paragraph 3 of this agreement.

Defendant admitted that she had not paid rent since April 2012. Her explanation as that she did not believe that she had to do so as she was not permitted to resume residence within the unit after the fire.

It is undisputed that the unit was rendered uninhabitable after the fire until November 2012. Thus, the Panel finds that as the damage to the unit was caused by the Defendant, under paragraph 11 of the lease agreement, Defendant owes fair market rent of \$5256.00 for the period of May 1, 2012 through August 1, 2012 and a per diem rate of fair market rent of \$525.60 for the period of September 1, 2012 through September 12, 2012.

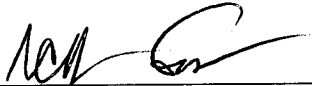
ORDER

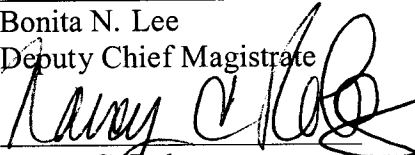
Based upon the forgoing, the panel finds by unanimous verdict in favor of the Plaintiff, Cheltenham Village Dwelling/Fairville Management Company. Therefore, the Court enters judgment in favor of Plaintiff Cheltenham Village Dwelling/Fairville Management Company and against Defendant Juquieta Pope, as follows:

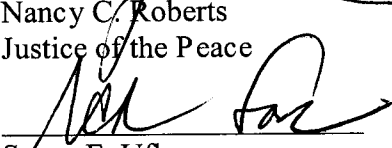
Judgment in the Amount of \$13,608.42
Court Costs of \$40.00
Post Judgment Interest @ 5.75%
Possession to Plaintiff

IT IS SO ORDERED this 8th day of January 2013

Trial De Novo Panel


Bonita N. Lee
Deputy Chief Magistrate


Nancy C. Roberts
Justice of the Peace


Susan E. Ufberg
Justice of the Peace

