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

Edward M. Slaughter Jr., Melanie E. Slaughter,

> Plaintiffs Below, Appellees,

v.

Civil Action No. JP16-11-005848

Art Prentice, Rose Prentice,

Defendants Below, Appellants.

Submitted: January 20, 2012 Decided: January 24, 2012

Decision After Trial De Novo

Edward M. Slaughter, Jr. and Melanie Slaughter appeared pro se.

Art Prentice and Rose Prentice appeared pro se.

ORDER

Dillard, Magistrate Hutchison, Magistrate Sweet, Magistrate On January 20, 2012, the Court held a trial *de novo* for a Landlord/Tenant Summary Possession appeal filed by Art Prentice and Rose Prentice ("Defendants"), against Edward M. Slaughter, Jr. and Melanie E. Slaughter ("Plaintiffs"). This Special Court, comprised of the Honorable Dwight D. Dillard, the Honorable Cathleen M. Hutchison and the Honorable William J. Sweet, convened pursuant to 25 *Del. C.* § 5717(a). The Court reserved decision. This is the final order and decision by the Court.

History of Petition

The original trial was held on November 28, 2011 where the Court found in favor of the Plaintiffs. Judgment² was entered the same day in the amount of \$3048.40 plus court costs, post judgment interest and possession of rental unit at address 134 Oak Drive, Smyrna, DE, 19977. Defendants filed a timely appeal on December 5, 2011.

Testimony of Parties

Trial commenced and Plaintiff Melanie Slaughter testified that in 2010 the Defendants moved into their home which was being rented by her son-in-law. Plaintiff testified a verbal lease agreement for \$950.00 monthly rent plus utilities existed between the Plaintiffs and their son-in-law. The son-in-law moved out of the residence and the Defendants remained in the home and assumed the rental agreement.

Plaintiff testified the rent and utilities were paid without a problem until March 2011. Defendant Art Prentice was employed by Plaintiff Edward Slaughter and allowed \$30 per day to be withheld from his salary to pay for rent owed. Plaintiff testified utilities at the rental unit were disconnected a few times and they had to pay to have them reconnected.

Plaintiff introduced evidence of two 60 day notices to terminate tenancy, proof of mailing, 5 day letter for unpaid rent, gas/electric bills and photo depicting the current condition of rental unit. Plaintiff requested the Court award them rent from September 2011 to January 2012 totaling \$4750.00, \$345.00 for gas bill and \$238.00 for electric bill (Plaintiff's Exhibits 1-6). The Court notes the Plaintiffs' request for rent was not pro-rated for January 2012.

Defendants did not cross examine Plaintiff.

Plaintiffs rested their case.

¹ 25 Del. C. § 5717(a). Stay of proceedings on appeal. 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

² Slaughter v. Prentice, Del. J.P., C.A. No. JP16-11-005848, Wall, J. (Nov. 28, 2011).

Defendant Rose Prentice testified she and her family moved in with Plaintiffs' son-in-law in June 2010. Son-in-law Chapman moved out on July 4, 2010 and the Defendants agreed to take over the agreed upon rent of \$950.00.

Defendant testified there was a problem paying the rent in March 2011 and Defendant Art Prentice agreed to a daily deduction of \$30 from his salary by the Plaintiff. Defendant testified rent was paid in August but was late in September after the rental unit was flooded after a storm.

Defendant stated the Plaintiff fired her husband in September 2011 and they paid rent for October. No rent was paid for November to date but the utilities were paid. Defendant testified they did not receive a utility bill as the services were not allowed to be placed in their name. Defendant stated they had no receipts for paid rent or paid utilities as the Plaintiffs never gave them receipts.

Plaintiffs did not cross examine Defendant.

Defendants rested their case.

Discussion

The Court must establish, in the absence of a written lease agreement, if a landlord/tenant relationship existed between the parties. Both parties testified a verbal rental agreement existed between the parties for monthly rent of \$950.00 plus utilities. Plaintiffs entered into evidence proof of mailing and valid 5-day letter³ notifying the Defendants of past due rent along with possible legal actions if rent remained unpaid and their reservation of rights. The 5-day letter, dated October 28, 2011, requested rent for September and October. Defendants stated they paid rent through October but had no evidence to support their statement. Defendants admitted to not paying rent since November 2011. Defendants admitted to not paying the current utility bills.

³ 25 Del. C. § 5502(a). Landlord remedies for failure to pay rent. A landlord or the landlord's agent may, any time after rent is due, including the time period between the date the rent is due and the date under this Code when late fees may be imposed, 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 of the dwelling unit or any other proper proceeding, action or suit for possession.

Conclusion

Based on the foregoing, the panel finds by unanimous verdict that the Plaintiffs have proven their claim by a preponderance of evidence. Therefore, judgment is entered in favor of Plaintiffs Edward M. Slaughter, Jr. and Melanie E. Slaughter and against Defendants Art Prentice and Rose Prentice as follows:

Amount Claimed:

\$5,142.844

\$31.66 Per Diem Rent beginning 01/25/2012 until possession

Post judgment Interest @ 5.75%

Court Costs: \$40.00 Possession to Plaintiffs

IT IS SO ORDERED this 24th day of January, 2012.

Trial De Novo Panel

Dwight D. Dillard

Cathleen M. Hutchison

William J. Swee

⁴ Amount claimed of \$5,142.84 includes: Monthly Rent @ \$950.00 for September, October, November, December 2011 (Total \$3,800.00), Per Diem Rent at \$31.66 from January 1-24, 2012 (Total \$759.84), Electric bill \$238.00 and Gas bill \$345.00.