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

COURT ADDRESS: 480 BANK LN DOVER DE 19904 CIVIL ACTION NO: JP16-12-005477

ROBERT GUSTAFSON ET AL VS SHARZIA WHEELER ET AL

SYSTEM ID: @2528262 JOSHUA RIGGINS 4662 MAHAN CORNER RD MARYDEL DE 19964

TRIAL DE NOVO

Submitted: November 30, 2012 Decided: November 30, 2012

Robert Gustafson and Etta Gustafson, Plaintiffs/Appellants, were represented by Timothy A.

Reisinger, Esq.

Sharzia Wheeler and Joshua Riggins, Defendants/Appellees, appeared pro se.

ORDER

Hutchison, J. Dillard, J. Warga, J.

On November 30, 2012, this Court, comprised of the Honorable Cathleen M. Hutchison, the Honorable Dwight D. Dillard, and the Honorable Tracy L. Warga, acting as a special court pursuant to 25 *Del. C.* § 5717(a) convened a trial *de novo* in reference to a Landlord/Tenant Summary Possession petition filed by Robert Gustafson and Etta Gustafson ("Plaintiffs") against Sharzia Wheeler and Joshua Riggins ("Defendants"). For the following reasons, the Court enters Judgment in favor of the Plaintiffs for unpaid rent, and possession remains with Defendants.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs filed a Landlord/Tenant Summary Possession petition with Justice of the Peace Court No. 16 seeking possession, court costs, accrued rent, and post judgment interest. This action was based on Defendants' failure to pay rent. At trial, judgment was entered in favor of Defendants. Thereafter, Plaintiffs filed a timely appeal of the Court's Order pursuant to 25 *Del. C.* § 5717(a). The trial *de novo* was thereafter scheduled.

TESTIMONY OF PARTIES & WITNESSES

It is undisputed that Plaintiffs entered into a lease agreement with Defendants on March 2, 2012, in the amount of \$1,100 per month, due on the second day of each month. Defendants paid rent in full through August 2012, but made only a partial payment of \$660 in September. No rent was received for October or November 2012. Defendants have accrued \$2,640 in unpaid rent and \$150 in late fees. Mr. Gustafson testified that he hand-delivered a 5-day notice to Ms. Wheeler on September 2, 2012, and mailed it by certified mail, no return receipt requested, the same day. Tracy Gustafson, Plaintiffs' daughter, testified that she was with Mr. Gustafson when he hand-delivered and mailed the notice. Mr. Gustafson testified that he lost the receipt for the certified mailing.

The 5-day notice provided to the Court by the Plaintiffs has two pages. The first page notifies the Defendants that rent is past due, and if it is not paid in full within 5 days, Plaintiffs would seek possession in a legal proceeding. The second page itemizes the rent due, late fees, and partial payment received in September. Ms. Wheeler acknowledged receiving the second page of the notification by hand-delivery, but testified that she never received the first page, or a certified mailing. Mr. Riggins testified that Plaintiffs have blocked access to half the property, and he does not believe the rental unit, in its current state of disrepair, is worth \$1,100 per month. However, he testified that he would like to stay through the end of the lease term.

DISCUSSION

Defendants admit they failed to pay rent as required by the lease agreement. In addition, Defendants did not provide any evidence to the Court that they made repairs to the rental unit to justify withholding payment of their rent.² Therefore, Plaintiffs are entitled to receive accrued rent and late fees from September through November. However, the Court finds Ms. Wheeler's testimony that she received only the second page of the 5-day notice by hand-delivery more credible than Plaintiffs' assertion that both pages were hand-delivered and sent by certified mail. Because of Plaintiffs' failure to serve Defendants with a proper 5-day notice, in accordance with 25 *Del. C.* § 5113, Defendants will retain possession of the rental unit.

Defendants argued they were withholding rent due to repairs Plaintiffs refused to make to the rental unit. Ms. Wheeler testified that she had used some of the unpaid rent to make repairs to the bathroom floor, but did not provide the Court with receipts concerning the repairs. Both parties provided photographs to the Court depicting the condition of the rental unit, but they were not considered in the Court's decision.

² 25 Del. C. § 5307 provides that a tenant must provide a landlord with written notice of necessary repairs. If the landlord fails to remedy the failure within 30 days or initiate reasonable corrective measures within 10 days from receipt of notice, the tenant may do the work or have the work done, and may deduct an amount not exceeding \$200 or one-half of 1 month's rent, whichever is less. No provision of the Code entitles a tenant to withhold all rent. 6CF14J (Rev. 9/15/04)

CONCLUSION

After considering the evidence and testimony presented, the panel finds Plaintiffs have proven the failure to pay rent by a preponderance of the evidence and issues a unanimous verdict in favor of Plaintiffs as follows:

Judgment in the amount of \$2,790.

Court Costs of \$40.

Post Judgment Interest of 5.75%.

The Court finds that Plaintiffs have not proven by a preponderance of the evidence that Defendants were served with a proper 5-day notice. Possession will remain with the Defendants. **IT IS SO ORDERED** this 30th day of November, 2012.

Judge Cathleen M. Hutchison

Judge Dwight D. Dillard

6CF14J (Rev. 9/15/04)