

**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: JP16-13-000362

FERN CIRCLE LLC VS AIMEE BROMLEY ET AL

TRIAL *DE NOVO*

Submitted: April 23, 2013

Decided: April 23, 2013

Fern Circle, LLC, Plaintiff/Appellee, was represented by Chad J. Toms, Esq.
Aimee Bromley and Charles Golt, Defendants/Appellants, appeared *pro se*.

ORDER

Cox, J.
Grapperhaus, J.
Warga, J.

On April 23, 2103, this Court, comprised of the Honorable D. Ken Cox, the Honorable Ralph Hays Grapperhaus, 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 petition¹ filed by Fern Circle, LLC ("Plaintiff") against Aimee Bromley and Charles Golt ("Defendants"). For the following reasons, the Court enters Judgment in favor of the Plaintiff for unpaid rent, late fees, court costs, and post judgment interest.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed a Landlord/Tenant Summary Possession petition with Justice of the Peace Court No. 16 seeking possession, unpaid rent, late fees, court costs, and post judgment interest. This action was based on Defendants' failure to pay rent. At trial, judgment was entered in favor of Plaintiff. Thereafter, Defendants 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 Plaintiff entered into a lease agreement with Defendants on May 23, 2012, in the amount of \$550 per month, due on the first day of each month, beginning June 1, 2012.² At the time the parties entered into the lease, Plaintiff acknowledged the fact that the oil heater was not functioning, and promised to fix it once Defendants filled it with oil.³ Defendants paid rent in full through September 2012, but made no rent payments from October 2012 through January 2013.

¹ Possession is not an issue on appeal.

² Plaintiff's Exhibit 1: Lease Agreement

³ Defendants testified that they had the oil heater fixed for \$800, but provided no receipt at trial.

Defendants have accrued \$2,200 in unpaid rent and \$110 in late fees.

On January 10, 2013, Plaintiff sent Defendant a 5-day letter, demanding unpaid rent and late fees.⁴ Defendant Aimee Bromley replied to the 5-day letter on January 14, 2013 with a list of necessary repairs to the rental unit, including the broken oil heater, holes in the floor, falling ceiling, leaky bathtub, rotted bathroom floor, and broken toilet.⁵ This was the first written notification sent to Plaintiff concerning necessary repairs to the rental unit. Defendants maintain that because of the condition of the rental unit, they are excused from paying rent.

DISCUSSION

Before deducting the cost of normal repairs from rent, 25 Del. C. § 5307(a) requires a tenant to notify a landlord in writing of the necessary repairs. In this case, Defendants did not notify Plaintiff of the holes in the ceiling and floors, leaky bathtub, or broken toilet *in writing* until after they were served with a 5-day notice. 25 Del. C. § 5307(c) provides that a tenant who is otherwise delinquent in his rent payments may not use this section of the Landlord-Tenant Code to withhold rent. Therefore, the Court finds that Defendants may not withhold any portion of the accrued rent for the cost of normal repairs. A tenant may withhold two-thirds of per diem rent for a landlord's failure to provide an essential service, such as heat, in accordance with 25 Del. C. § 5308(a)(2). However, a tenant must notify his landlord *in writing* of his intent to withhold rent until the condition is remedied. In this case, Defendants did not notify Plaintiff in writing that they would withhold rent due to lack of heat. In fact, Defendants testified that they had the oil heater repaired at their own expense in October 2012. However, Defendants failed to provide the Court with a receipt to show they paid for repairs to the oil heater. Therefore, the Court finds that Defendants may not withhold any portion of the accrued rent for lack of heat or for repairs made to the oil heater.

CONCLUSION

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

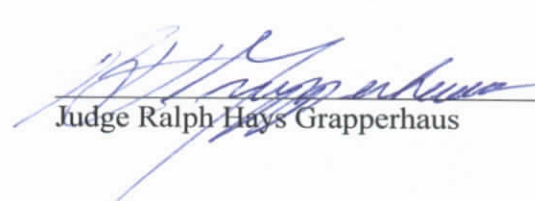
Judgment in the amount of \$2,310.

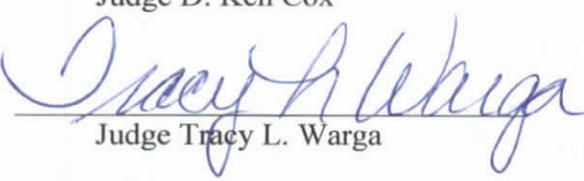
Court Costs of \$40.

Post Judgment Interest of 5.75%.

IT IS SO ORDERED this 23rd day of April, 2013.


Judge D. Ken Cox


Judge Ralph Hays Grapperhaus


Judge Tracy L. Warga

⁴ Plaintiff's Exhibit 3: 5-day Letter.

⁵ Plaintiff's Exhibit 4: A collection of correspondence between the parties concerning necessary repairs and Defendants' reasons for not paying rent.

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**FERN CIRCLE, LLC, PLAINTIFF
VS
AIMEE BROMLEY & CHARLES GOLT, DEFENDANTS**

Plaintiff Parties:

ATTORNEY FOR PLAINTIFF
SYSTEM ID: 004155
CHAD J TOMS
WHITEFORD TAYLOR PRESTON LLC
THE RENAISSANCE CENTRE
405 NORTH KING ST., SUITE 500
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PLAINTIFF
SYSTEM ID: @359561
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908 2-9 WOODCREST DR
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Defendant Parties:

DEFENDANT
SYSTEM ID: @2554267
AIMEE BROMLEY
955 BLACK SWAMP RD
FELTON, DE 19943

DEFENDANT
SYSTEM ID: @2554268
CHARLES GOLT
955 BLACK SWAMP ROAD
FELTON, DE 19943

Other Case Parties: