



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

TELEPHONE: (302) 577-2550

SYSTEM ID: @1842
COOLIDGE ADMIRALS CLUB LLC
41-2C FAIRWAY ROAD
NEWARK, DE 19711

VS.

Civil Action No: JP13-14-003777

SYSTEM ID: @2664768
TROY BILLIPS
03-1C FAIRWAY ROAD
NEWARK, DE 19711

DEFENDANT
SYSTEM ID: @2664769
CATHERINE BILLIPS
03-1C FAIRWAY ROAD
NEWARK, DE 19711

ORDER OF DENOVO APPEAL

Plaintiff Coolidge Admirals Club LLC is represented by Registered Form 50 Agent Bernadette Barone.

Defendants Troy and Catherine Billips are pro se.

A trial de novo appeal is heard June 3, 2014. This is an appeal of a decision heard April 30, 2014 by Judge James R. Hanby, Sr.

Plaintiff seeks unpaid rent in the amount of \$3,929.07. Possession of the rental property located at 03-1C Fairway Road, Newark, DE 19711 was surrendered May 9, 2014.

Defendants argue that they are entitled to a reduction in rent due to living conditions of infestation of flies and gnats. They assert they "might owe \$500". There is no written counterclaim filed; this is asserted at trial.

FACTS

Plaintiff Bernadette Barone presents the 5 day letter, lease and ledger to show the landlord is owed the following monies in rent: \$19.75 for November 2013, \$930.00 per month for December 2013 - April 2014 and 9 days in May at \$30.58 per day for a total of \$270.00. The total amount Plaintiff requests is \$3,929.07.

COUNTERCLAIM

The Defendants assert a verbal counterclaim for living for months with an infestation of flies and/or gnats. The problem began in October 2013. Mr. Billips testifies an exterminator came out twice and sprayed. Maintenance caulked his windows to stop the gnats from coming in. The problem persisted and the landlord moved the Billips to another rental suite in the end of October. Billips asserts his children were "getting sick with viral infections". He testifies they threw out food. He argues the problem persisted even after they were moved back to their rental property. He admits that he did not contact the County Inspectors to come out after they cleared the property as habitable. At this point he and his family decided to move but it took several months for them to financially afford to vacate the property.

Plaintiff witness Aloysuis Woerner, New Castle County Code Enforcement Inspector testifies he was called out by the tenants in October. He visited the property October 23, 2013 and found sewer flies in the defendant's apartment and the nearby laundry room. He believed there was a broken sewer pipe allowing the sewer flies to enter the building. His background includes 17 years in extermination and he could recognize the "bugs" as sewer flies. On his 2nd inspection November 18, 2013 he sees no evidence of the flies.

Plaintiff witness Ivan Lloudre, maintenance worker for the landlord, inspected the unit and surrounding laundry room. He checked for drain problems and believed it to be a cracked drain underneath the concrete. He broke through the concrete and sealed the drain. While this work was being done, the tenants were transferred to the alternative suite. He notes during the move-out inspection in May he found no live gnats. He did see dead ones.

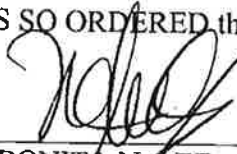
Ms. Barone presents a letter from Defendant that requests he be able to move out in December. The landlord sent a written response allowing the tenants to move without penalty. They paid no rent since December 2013 but remained until May 9, 2014. She was not aware of any lingering bug problems during the period of time.

FINDING

First the Court addresses the rent abatement counterclaim in order to determine what amount of rent is owed. Here the landlord addressed the gnat problem in a timely manner once they were aware of the condition through the defendants and New Castle County Code Inspectors. They moved the tenants to a furnished suite while the sewer was being repaired. They agreed to allow the tenants to break their lease several months later without penalty. Although the defendant asserts the problem lingered after their return to their apartment, he admits he did not complain again to either New Castle County Code Department or the landlord. It appears he has decided to simply move out and be done with his landlord. However, although he could have vacated without penalty, he remained in the apartment for the next 4 months and 9 days without paying rent. This Court cannot award rent abatement if the landlord was not put on notice of the persistent bug problem. Consequently no rent abatement is ordered.

The landlord is entitled to rent in the amount of \$3,939.07 from November 2013 through May 9, 2014 plus Court costs of \$41.50. Possession was surrendered May 9, 2014.

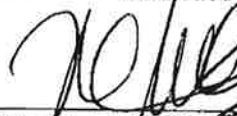
IT IS SO ORDERED this 12th day of June, 2014



(for) BONITA N. LEE
Deputy Chief Magistrate



NANCY C. ROBERT
Justice of the Peace



(for) SEAN P. MCCORMICK
Justice of the Peace

