



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: @2646469
BOWERS GROUP LLC
10 COMMERCE STREET
HARRINGTON, DE 19952

VS.

Civil Action No: JP13-14-000525

SYSTEM ID: @2646470
MICHAEL WATKINS
704 EAST 23RD STREET
WILMINGTON DE 19802

SYSTEM ID: @2646471
DANIELLE WATKINS
704 EAST 23RD STREET
WILMINGTON, DE 19802

ORDER

Trial *de novo*. April 29, 2014. All parties present: Landlord/Plaintiff Bowers Group LLC, represented by Michael G. Rushe, Esq. and Tenants/Defendants Michael Watkins and Danielle Watkins, pro se.

HISTORY

Plaintiff Bowers Group LLC (Bowers) filed a Summary Possession action in Justice of the Peace Court 13 on January 15, 2014. Trial was held on February 25th. The Court issued a judgment for Bowers for rent owed and possession of the property. Defendant Michael Watkins (Watkins) filed an appeal for a trial *de novo*. Trial was scheduled for April 29, 2014, before a three-judge panel.

DISCUSSION

The Watkins family moved into the rental unit at 704 E. 23rd Street, Wilmington, Delaware, on October 23rd or 26th, 2013. It is unclear from testimony from either party which date is correct. However, both parties agreed that a pro-rated amount of rent in the amount of \$245.00 was paid and accepted as October's rent. Monthly rent is \$900.00 by oral agreement: a signed written lease does not exist. Bowers stated that he signed the lease, gave it to Watkins without making a copy, then Watkins never returned it. Watkins stated he never received a written lease.

Bowers testified he has received a total of \$2700.00 from Watkins. Bowers averred he has not received rent for the month of December 2013 through the present court date. However, he submitted three hand-written receipts signed by all three parties: 1) \$245.00, dated October 13, 2013 for "Pro-Rated October Rent"; 2) \$2700.00, dated October 13, 2013 for "1st Monts Rent -900, Last Months Rent -

900, Security Deposit – 900”; and 3) \$900.00, dated October 13, 2013 for “December Rent”. Bowers testified that he made a mistake on the third receipt by writing that it was payment for December’s rent when it was actually for November’s rent.

Watkins testified he has paid rent for December 2013, January and February 2014, but admitted he has not paid for March and April 2014. He submitted his copies (separately handwritten, not photocopied) of the three receipts submitted by Bowers, and signed by all three parties. In addition, Watkins submitted copies of two money orders: one for \$700.00, dated December 7, 2013 and the other for \$200.00, dated December 9, 2013. Watkins testified that he always paid rent one month in advance. But at one point, he stated these two money orders were payment for *February* 2014’s rent and were mailed to Bowers. Later during cross-examination of Jared Bowers, Watkins asked, “Didn’t we pay you for *January* in December?” and asked if the two money orders for \$700.00 and \$200.00 were for *January*’s rent?

Bowers testified he did not receive the money orders. At another time, he testified that he had received the money orders, but in October for November’s rent. Watkins submitted a receipt for payment for “Money Order Inquir(ies)” for both and stated he has received the confirmations from the issuer that the money orders had been cashed by Bowers. Watkins did not submit these confirmations to the Court. He stated that he gave the confirmations to his up-coming new landlord. (Watkins did not indicate why he gave the confirmations to the new landlord.)

Bowers submitted copies of the 5-day letters mailed to Watkins and Danielle Watkins (D. Watkins) with proofs of mailing dated January 6, 2014. The 5-day letters specified that the rent was delinquent in the amount of \$1890.00: rent of \$900.00 for December 2013, rent of \$900.00 for January 2014, and 2 months of late fees for \$90.00. Watkins stated he never received the letter. D. Watkins did not address this issue either on direct or cross-examination.

Watkins and D. Watkins testified that the conditions of the rental unit were unacceptable: no stove, no refrigerator, and no heat, etc. They claim that since Bowers fixed nothing in the house, they withheld rent, putting it into escrow with an attorney representing them in a personal injury suit against Bowers. Bowers testified there was nothing wrong with the house.

FINDINGS

The Court finds that neither party’s credibility outweighs the other. As to Bowers: 1) The total money Bowers claims to have received from Watkins does not match the receipts he wrote and signed; 2) Bowers testified at one point that Watkins moved into the rental unit in September, designating the first month’s rent for September and the last month’s rent for August. However, he gave Watkins a receipt for a pro-rated amount of rent for October, indicating that Watkins moved into the unit in October; 3) Bowers claims the money orders submitted into evidence were given to him in October for November’s rent, yet the money orders are date-stamped by the issuer on December 7th and December 9th; 4) Bowers collected an additional \$900.00 for “Last Month’s Rent” over the \$900.00 security deposit which is a violation of the Landlord/Tenant Code: 25 Del. C. § 5514(3), which states “no landlord may require a security deposit in excess of one month’s rent...” .

As to Watkins: 1) Watkins testified the money orders dated December 7th and December 9th were for payment of February’s rent. However, on cross-examination later, he referred to the money orders as payment for January and he stated that he always paid rent one month in advance; 2) Watkins did not provide the documentation for the confirmations that Bowers cashed the money orders; 3) Watkins withheld the entire rent for the months of March and April which is a violation the Landlord/Tenant Code. In addition, the Code requires that the Tenant notify the Landlord in writing of any intention to withhold an amount of rent allowed by the Code. Watkins did not provide written notice to Bowers.

The Court finds that the Watkins family moved into the rental unit in October and there was an agreement on the amount of rent due and paid. The Court finds that the total amount of rent owed for the period running from November 1, 2013 through April 30, 2014 is \$5400.00. The Court finds that the total amount of rent paid by Watkins for this period of time is \$3600.00. Therefore, the Court rules for Bowers in the amount of \$1800.00.

The Court finds that Bowers cannot substantiate late fee charges of \$45.00 per month as there is no lease. However, Watkins agreed there was a late fee of \$25.00 per month. Therefore the Court awards a \$25.00 per month late fee for a period of four months.

The Court finds that Watkins did not substantiate the claims as to conditions of the rental unit. Therefore, the Court rules that no rent abatement is warranted.

The Court finds that the Plaintiff's 5-day letter is inflated as it contains the demand for \$900.00 for December's rent and late fees for December and January. Both parties produced a receipt for payment of December's rent. Therefore, the Court rules that possession remains with Watkins and D. Watkins. The Court finds that the issue of the security deposit is not ripe for adjudication since the defendants remain in possession of the unit.

CONCLUSION

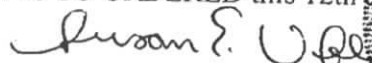
The Court rules for the Plaintiff in the amount of \$1900.00, plus court costs of \$40.00 and 5.75% post judgment interest.

The Court rules that possession of the unit remains with the Defendants. However, the Court takes note that the Defendants testified they were in the process of moving into a new rental unit. As soon as the Defendants have completely moved out and return the keys, the Plaintiff will be in possession of the unit.


The Court rules that the issue of the \$900.00 security deposit is not ripe for adjudication.

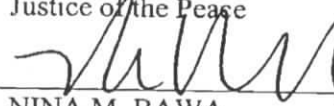
The Court instructs the parties that this order determines the amount of rent owed through April 30, 2014. The Plaintiff is entitled to rent for the amount of time Defendants remain in the unit, beginning with May 1, 2014.

IT IS SO ORDERED this 12th day of May 2014.



BONITA N. LEE
Deputy Chief Magistrate


MARIE E. PAGE
Justice of the Peace


NINA M. BAWA
Justice of the Peace

