

IN THE COURT OF COMMON PLEAS IN THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

TDR GROUP, )  
)  
) C.A. No. CPU5-13-001286  
) Appellant/Defendant-Below/  
) Counterclaim Plaintiff-Below,  
)  
)  
) v.  
)  
)  
) PAMELA A. CALDWELL and  
) STEPHAN K. NOLTING,  
)  
)  
) Appellees/Plaintiffs-Below/  
) Counterclaim Defendants-Below. )

Submitted: November 7, 2014  
Decided: January 28, 2015

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Dover, DE 19904  
*Pro Se* Appellants

**DECISION AFTER TRIAL**

This case involves a civil appeal of a decision by the Justice of the Peace Court pursuant to 10 *Del. C.* § 9571 and Court of Common Pleas Civil Rule 72.3. Appellees/Plaintiffs-Below, Pamela A. Caldwell and Stephan K. Nolting (“Caldwell and Nolting”), have filed the action against their landlord, Appellant/Defendant-Below, TDR Group, for the return of their security deposit that the TDR Group held during their rental

period, under the terms of a lease agreement. TDR Group contests the return of the security deposit and has filed a counterclaim for damages it alleges are due to it as a result of Caldwell and Nolting's breach of the lease agreement. The Court heard a trial for this matter and reserved decision. After considering the evidence introduced at trial and the oral summations of the parties, the Court finds for TDR Group and awards it \$604.68 in damages plus pre and post judgment interest at the legal rate of 5.75% from August 31, 2013, and court costs.

## FACTS

Caldwell and Nolting entered into a rental agreement (the "Lease") with the TDR Group for a townhome located in Dover, Kent County, Delaware (the "Property").<sup>1</sup> The Lease commenced on December 1, 2010, for an original term of one year. Pursuant to the Lease, Caldwell and Nolting provided the TDR Group with a \$1,200.00 security deposit. The Lease was renewed annually. The last renewal was on December 1, 2012, at the rental amount of \$1,200.00 per month and provided a lease end date of November 30, 2013. Other relative provisions of the lease are as follows:

**3. SECURITY DEPOSIT.** Tenant must deposit an amount equal to one month's rent as a security deposit to assure the faithful performance of the terms of this agreement by Tenant. The security deposit will be returned to Tenant without interest upon peaceful termination of the lease and surrender of possession less any deductions as permitted by the Delaware Residential Landlord-Tenant Code such as actual damages caused to the premises by the tenant which exceed normal wear and tear, or which cannot be corrected by painting and ordinary cleaning; rental arrearage due including late charges, returned check fees, and rental due for premature termination or abandonment of the rental agreement by the tenant; and reimbursement for all reasonable expenses incurred in renovating and re-renting the premises caused by the premature termination of the rental agreement by the tenant. Such security deposit shall be

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<sup>1</sup> The TDR Group is actually the property manager for the Property. It has legal standing to take the place of the owner and landlord of the Property for purposes of this litigation pursuant to 25 *Del. C.* § 5141(13).

held in an account with Wilmington Trust, a federally insured banking institution in the State of Delaware.

**16. ABANDONMENT OR BREAKING A RENTAL AGREEMENT.** If, for reasons other than those allowed by the Delaware Residential Landlord-Tenant Code, the Tenant moves from the rental unit before the Rental Agreement expires, the Tenant shall be liable for all damages and remedies provided to the Landlord under the Delaware Residential Landlord-Tenant Code.

**17. TERMINATION.** This agreement may be terminated at the end of the term by giving the other party at least sixty days written notice prior to the termination, and if no notice is given then this agreement shall continue on the same terms and conditions for one month periods, or until one party gives the other party sixty days written notice prior to termination, which sixty-day period shall begin on the first day of the month following the day of actual notice. Tenant agrees to contact Landlord one week prior to the termination of the Rental Agreement to schedule an appointment for the final inspection and the return of the keys. If Tenant wrongfully terminates this agreement prior to the end of the original term, Landlord may pursue all available legal remedies.

Caldwell and Nolting found a home that they desired to purchase during the last year of the Lease. They submitted a written 66 day notice of intent to vacate the Lease early on May 24, 2013, and, then, vacated and returned possession of the Property to the TDR Group on July 31, 2013, a full four months prior to the end date provided in the Lease.

Caldwell and Nolting took excellent care of the Property. TDR Group had no problem obtaining new tenants for it. The Property was rented to new tenants, who moved in early in August 2013, resulting in only 8 days when the Property was not rented.

The TDR Group next sent Caldwell and Nolting a security deposit letter as required by 25 *Del. C.* § 5514(f) within 20 days after Caldwell and Nolting had vacated the Property. The letter provided a list of damages that the TDR Group indicated was

due to it as a result of the relinquishment of the Property by Caldwell and Nolting. These damages include the following:

Total releasing fee for the Property	\$1,275.00
Total cost incurred to re-rent the Property (which included carpet cleaning/deodorization due to unapproved pet \$220.00, loss of rent for 8 days at \$41.13 per day \$329.00)	\$ 549.00
Total [amount due]:	\$1,824.00

The letter then indicated that Caldwell and Nolting would be given credit for the security deposit of \$1,200.00, thus, leaving a total due of \$624.00, that was due by August 31, 2013. The TDR Group later incurred expenses to rid the Property of fleas in the amount of \$95.00. It is requesting that the expense to de-flea the Property be awarded to it in addition to the amount of \$624.00 due as included in its security deposit letter.

Caldwell and Nolting contest the validity of the expenses incurred by the TDR Group as listed in its security deposit letter. They have commenced the present action seeking the return of their security deposit for the Property under the Lease. The TDR Group contests the return of the security deposit and has counter-claimed for damages in the amount of \$719.00, plus costs and other relief as the Court deems appropriate.

#### **RELEVANT DELAWARE RESIDENTIAL LANDLORD-TENANT CODE**

Section 5507(d)(2) of Title 25 of the Delaware Code provides as follows:

(d) If the tenant wrongfully quits the rental unit and unequivocally indicates by words or deeds the tenant's intention not to resume tenancy, such action by the tenant shall entitle the landlord to proceed as specified elsewhere in this chapter and the tenant shall be liable for the lesser of the following for such abandonment:

- (2) All rent accrued during the period reasonably necessary to re-rent the premises at a fair rental; plus the difference between such fair rental and the rent agreed to in the prior rental agreement; plus expenses incurred to re-rent; repair damage caused by the tenant (beyond normal wear and

tear); plus a reasonable commission, if incurred by the landlord for the re-renting of the premises. In any event, the landlord has a duty to mitigate damages.

Section 5514(c) of Title 25 Delaware Code provides as follows:

(c) The purpose of the security deposit shall be:

- (1) To reimburse the landlord for actual damages caused to the premises by the tenant which exceed normal wear and tear, or which cannot be corrected by painting and ordinary cleaning; and/or
- (2) To pay the landlord for all rental arrearage due under the rental agreement, including late charges and rental due for premature termination or abandonment of the rental agreement by the tenant; and/or
- (3) To reimburse the landlord for all reasonable expenses incurred in renovating and re-renting the premises caused by the premature termination of the rental agreement by the tenants. . .

Section 5514(f) of Title 25 Delaware Code which provides as follows:

(f) Within 20 days after the termination or expiration of any rental agreement, the landlord shall provide the tenant with an itemized list of damages to the premises and the estimated costs of repair for each and shall tender payment for the difference between the security deposit and such costs of repair of damage to the premises. . .

## DISCUSSION

In the present case, Caldwell and Nolting have the burden to prove by a preponderance of the evidence that they are entitled to the return of the security deposit they provided to the TDR Group pursuant to paragraph 3 of the Lease. The TDR Group has the burden to prove its counterclaim and/or an offset against the amount due back to Caldwell and Nolting for the security deposit by a preponderance of the evidence. The Court starts with the premise that although Caldwell and Nolting breached the Lease when they terminated it early, they are entitled to the return of the entire amount of the security deposit pursuant to paragraph 3 of the Lease unless the TDR Group can prove its counterclaim or an offset. Paragraph three of the Lease provides that “[t]he security

deposit will be returned to [Caldwell and Nolting] without interest upon peaceful termination of the lease and surrender of possession less any deductions as permitted by the Delaware Residential Landlord-Tenant Code such as actual damages caused to the premises by the tenant which exceed normal wear and tear, or which cannot be corrected by painting and ordinary cleaning; rental arrearage due including late charges, returned check fees, and rental due for premature termination or abandonment of the rental agreement by the tenant; and reimbursement for all reasonable expenses incurred in renovating and re-renting the premises caused by the premature termination of the rental agreement by the tenant.” Therefore, the Court will address each of the charges that the TDR Group has asserted against Caldwell and Nolting in its counterclaim.

A. Releasing Fee for the Property

The TDR Group alleges that it is entitled to a releasing fee for the Property in the amount of \$1,275.00. The releasing fee is the fee that was charged to the actual owner/landlord of the Property as the commission to the realtor for leasing the Property to the new tenants. The TDR Group is actually the property manager for the property and has assumed legal standing to take the place of the owner/landlord of the Property for the purposes of this litigation pursuant to 25 *Del. C.* § 5141(13). It charges a fee to the actual owner and landlord for the Property for its services as the property manager. The fee charged equals the amount of the first month’s rent under the new rental agreement and, then, 10% of each month’s rent thereafter. In this case, the actual owner and landlord of the Property was charged an amount of \$1,275.00 as the releasing fee for the Property since the new tenants that took possession of the Property in early August 2013, signed a lease whereby they paid a monthly rent of \$1,275.00.

The Court finds that the TDR Group has proved that the landlord for the Property is entitled to the reimbursement of the amount of the releasing fee by a preponderance of the evidence. This amount was charged to the actual owner and landlord for the Property. The landlord is entitled to that reimbursement from Caldwell and Nolting pursuant to paragraph 3 of the Lease and § 5507(d)(2) of the Delaware Residential Landlord-Tenant Code.

B. Costs Incurred to Re-Rent the Property

The Court finds that the TDR Group has proved that it is entitled to reimbursement for the cost of cleaning and deodorizing carpet in the Property in the amount of \$220.00 due to Caldwell and Nolting's pets. The Court also finds that the TDR Group has proved a loss of rent for eight days to which it is entitled. The Court does not approve of the total amount requested with respect to the lost rent as listed in the 20 day security deposit letter. In that letter, the TDR Group indicated that it was entitled to eight days of lost rent at the daily rate of \$41.13. This calculation was obviously based on the rent being charged to the new tenants of \$1,275.00 per month. The daily rate to which the TDR Group is entitled is only for the monthly rent paid by Caldwell and Nolting which is \$1,200.00. The daily rate based on this number would be \$38.71 (which is the \$1,200.00 rental amount divided by the 31 days contained in the month of August). Therefore, the TDR Group is entitled to a total of \$309.68 for the eight days of lost rent.

C. Cost to De-Flea the Property

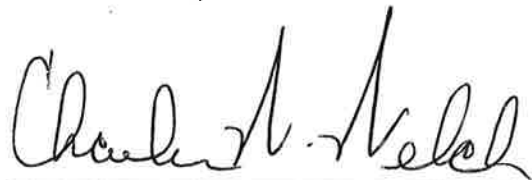
The TDR Group has also requested reimbursement for the cost it incurred to de-flea the Property, which totaled \$95.00. Given the testimony at trial, the Court finds that the

TDR Group has not met its burden of proof for its claim in this regard. Caldwell and Nolting never experienced a flea problem while they were the tenants of the Property. Additionally, there was property with high grass kept near the Property. The TDR Group simply could not meet its burden to prove that fleas infested the unit and/or the infestation was for a condition caused by Caldwell and Nolting.

### CONCLUSION

As a result of the Court's findings of fact, which are based upon the entire record, and the Court's above-referenced conclusions of law, the Court finds that the TDR Group is entitled to reimbursement for damages incurred by it as a result of Caldwell and Nolting's breach of the Lease, in the amount of \$1,804.68. Caldwell and Nolting are entitled to an offset for the security deposit in the amount of \$1,200.00. Therefore, judgment is entered for the TDR Group against Caldwell and Nolting in the amount of \$604.68, plus pre and post judgment interest at the legal rate of 5.75% per annum from August 31, 2013, and court costs.

**IT IS SO ORDERED this 28<sup>th</sup> day of JANUARY, 2015.**



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CHARLES W. WELCH  
JUDGE