



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

TELEPHONE: (302) 577-2550

PLAINTIFF

Harmon Carey
900 N. Pine Street Suite 1
Wilmington, DE 19801

v.

Civil Action: JP13-12-010648

DEFENDANT

Jeffery Harris
c/o Jane W. Evans Esq.
100 W. 10th Street, Suite 203
Wilmington, DE 19801

ORDER

Trial de novo was convened on January 9, 2013, to hear the appeal for summary possession and unpaid rent. The panel consisted of Judge Bonita Lee, Judge Nina Bawa and Judge Katharine Ross. Plaintiff/Landlord Harmon Carey was self-represented. Defendant/Tenant Jeffrey Harris did not appear but was represented by Jane W. Evans, Esq.

Procedural Posture

The case sub judice was filed August 3, 2012. Previous to this date, on July 24, 2012, Defendant filed suit against Plaintiff alleging he was constructively evicted from the rental premises by Plaintiff's failure to provide heat and hot water. (JP13-12-009981) The Constable served the Landlord by posting a copy of the trial notice on the front door on July 27, 2012. All parties were present for trial on August 6, 2012. The decision in the constructive eviction case was issued August 22, 2012. The Court specifically noted in its decision that: "There was no counterclaim for any unpaid rent which must have been asserted here resulting in Defendant being barred from seeking this in another action".¹ No appeal was taken from the decision of August 22, 2012. The case before this Court is Plaintiff's appeal of the trial judge's decision in Civil Action No. 13-12-010648, barring the action under the doctrine of res judicata.

¹ C.A. No. JP13-12-009981 decided by J. Roberts August 22, 2012.

Arguments

Defendant argues that the instant case is a rehash of issues heard earlier as part of the constructive eviction/illegal ouster case. The trial judge issued an order barring the Landlord from pursuing unpaid rent up through August. Defendant further argues that the instant case involves exactly the same parties, same issues and same period of time. Defendant requests dismissal pursuant to the doctrine of res judicata.

Plaintiff asserts that the issues have not been heard. He argues that the issue of rent was never litigated and never decided in the previous case. Plaintiff contends that the instant action was filed prior to the hearing on the case filed by the tenant for constructive eviction. Plaintiff argues that he interpreted the judge's order barring him from seeking rent for the period through August to refer to filing of a new action, having nothing to do with the existing case.

Discussion

There is no factual dispute that the Landlord is seeking unpaid rent for the same period of time that the Tenant filed seeking treble damages for being constructively evicted. In Harris' complaint filed July 24, 2012, he alleged that the Landlord rented him an apartment in March 2012 that was condemned as unfit for habitation in December 2011. Harris sought treble the monthly rent for the inception of the lease through the date of the hearing, April 2012 through August 2012. In the instant action the Landlord seeks partial rent for April 2012 and full monthly rent for the months of May through August 2012. After a full hearing on that case, the judge issued an order that essentially barred the Landlord from seeking rent for that period of time in another lawsuit. The judgment became final when the written order was signed August 22, 2012, and neither party appealed.

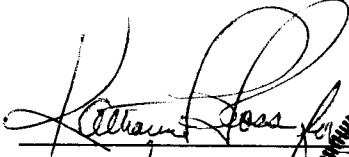
Plaintiff now argues that he interpreted the judge's order to mean he could not file a new case. However, the Court believes the language used by the trial judge is unambiguous. There was a full trial on the merits in the earlier case. The issue of rent paid and unpaid had to have been considered since Harris was seeking treble the monthly rent as damages for being constructively evicted. The trial judge's order indicates that there was testimony concerning unpaid rent.

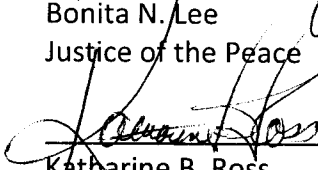
In Cooper v. Celente, Del. Super, C.A. No. 90C-JL-215, Babiarz, J. (Sept. 3, 1992), the Court listed the following as elements for consideration under the doctrine of res judicata: 1) the prior decision maker must have jurisdiction over the subject matter and the parties; 2) the same parties or their privies are involved in the latter proceeding; 3) the same "cause of action" has been brought, or the issue are the same as those raised before; 4) the issues were decided adversely to the contention of the party (the person against who res judicata is asserted); and 5) the prior decision was a "final decree."² Delaware Courts have adopted the general rule that res judicata gives preclusive effect not only to claims that were actually raised, but to those that might have been raised.³

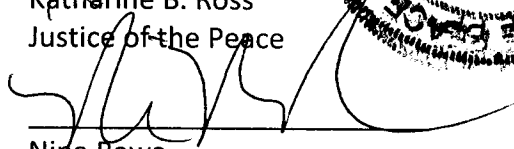
This Court concurs with the findings of the trial court judge. After review of both cases, the three-judge panel concludes that all of the elements listed above are present in this case. The trial judge had personal and subject matter jurisdiction; the parties are the same in the case presently before the three-judge panel and the earlier case; the issues are those that were raised or should have been raised in the prior case; the issue of unpaid rent was decided in a manner adverse to the Plaintiff in the pending case and the decree of the trial judge is final since there was no appeal.

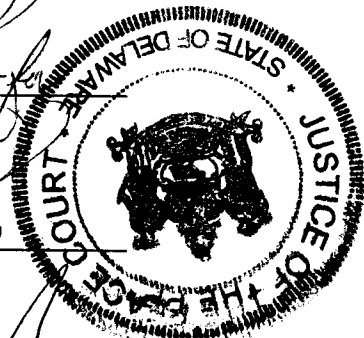
Therefore, the three-judge panel finds in favor of the Defendant. The instant action is barred under the doctrine of res judicata, and is dismissed with prejudice.

IT IS SO ORDERED this 5th day of February, 2013.


Bonita N. Lee
Justice of the Peace


Katharine B. Ross
Justice of the Peace


Nina Bawa
Justice of the Peace



² Playtex Family Products v. St. Paul Surplus, Del. Super, 564 A.2d 681, 683 (1989) (citing Epstein v. Chatham Park, Inc., Del. Super., 153 A.2d 180, 184 (1959))

³ Cooper v. Celente, Del. Super, C.A. No. 90C-JL-215, Babiarz J. (Sept. 3, 1992)