



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: @3046
HUNTLEY GLEN ASSOC
900 WOODCHUCK PLACE
BEAR, DE 19701

VS.

Civil Action No: JP13-13-015331

SYSTEM ID: @2633585
JONATHAN HUNKE
15 KORDA DRIVE
NEWARK, DE 19713

ORDER OF JUDGMENT
ON TRIAL DE NOVO

Trial *de novo* heard May 30, 2014. Plaintiff Huntley Glen Assoc. is represented by Michael P. Morton, Esq. Defendant Jonathan Hunke is self-represented. The three judge panel is comprised of Judge Bonita N. Lee, Judge Robert C. Lopez and Judge Susan E. Ufberg.

A judgment by default was entered against Defendant Hunke on January 13, 2014. Defendant filed a motion to vacate the default judgment on January 17, 2014. After a hearing, the motion was granted and trial proceeded on February 12, 2014. After trial, the Court entered a judgment by argument in favor of the Plaintiff for \$717.54 plus \$41.50 court cost plus 5.75% post judgment interest. Plaintiff filed a timely appeal of that judgment to a three-judge panel. At the time of trial, possession was no longer an issue.

Facts

The parties entered into a 10 month lease agreement for a rental unit located at 154 Antlers Lane in Bear, Delaware. The lease began September 4, 2013 and was to end July 3, 2013. The monthly rent was \$1,305.00. Defendant paid the landlord a security deposit in the amount of \$99.00. Defendant failed to pay rent as due on November 1, 2013. On November 6, 2013 the landlord sent a five-day letter demanding rent for November in the amount of \$1,305.00 and advising the Defendant that should he fail to pay within the five-day period, the lease agreement would be terminated and he would have no legal right to remain on the premises after that date. The Defendant failed to make the payment as demanded.

On November 20, 2013 Plaintiff filed this summary possession case seeking unpaid rent in the amount of \$1370.00, plus possession of the rental unit. Plaintiff now seeks additional monies for utility bills and other damages under a theory of abandonment.

Defendant Hunke testified he vacated the rental unit at the end of October 2013 and left the keys with a note at the rental office. Hunke had been involved in an incident with the downstairs neighbor that resulted in his arrest for Harassment. After his arrest, the court ordered that he have no contact with the downstairs neighbor. According to Hunke's testimony he returned to the apartment one last time with a police escort and has not returned since that day. Defendant

submitted the following documentary evidence in support of his version of events: A jurisdictional form dated October 19, 2013 from J. P. Court 11 indicates he was seen by a judge at J. P. Court #11 on two counts of Harassment; A second document was presented from an earlier incident when he was seen on September 25, 2013 by a judge at J.P. Court 2 on an Assault charge; Defendant also presented a copy of a new lease which began November 11, 2014.

Witness April Wright, Hunke's girlfriend testified she obtained a PFA (Protection from Abuse) order against the Defendant. She was there when the police escorted him off the premises, but did not go to the office with Hunke on that date. She was only told by Hunke that he dropped off the keys.

James E. Beeson III, bookkeeper for Huntley Glen testified Hunke has not made any rental payments since issuance of the five-day letter. He further testified that Plaintiff began receiving utility bills for the in November after Delmarva Power had switched the account over to the landlord. The first bill was issued November 26, 2014, with a due date of December 17th. A second bill was issued December 27, 2014, with a due date of January 14, 2014. A third bill was issued January 30, 2014, with a due date of February 20th. Beeson testified that to his knowledge no keys were ever turned in by Defendant. On December 10, 2014 he posted a Notice of Eviction on the door to Defendant's apartment. The notice was issued to advise the Defendant that a member of the landlord's staff would conduct an inspection of the unit on December 12, 2013. The purpose of the inspection was to determine how much manpower would be needed to remove the tenant's belongings from the residence upon eviction. The notice also included a reminder that the court that the landlord had already filed a court case for non-payment of rent and possession. The notice appears to have been issued by Kelley Crowley's whose name appears after the salutation. Beeson testified that generally the property manager walks through to determine damages however, he, himself walked through on December 12, 2013 and discovered the unit to be abandoned. He testified that did not observe any actual damage to the unit, as this is not his job.

Witness Kelly Crowley, property manager for Huntley Glen testified she did not personally receive keys to the apartment from Hunke, neither were any keys found in the office. According to Crowley's testimony, she is responsible for knowing when units are vacant. Crowley stated that usually when an apartment is vacated during office hours a key receipt is given and a forwarding address form is filled out. Crowley testified that normally the tenant is contacted for a final walk through with Beeson, and then a twenty-day notice is sent to the forwarding address. She did not learn that Defendant's unit was vacant until the last hearing in February. She testified that in this instance she has no present knowledge of any actual damages to the residence at the time that Defendant moved-out. She acknowledged that it is common practice for Delmarva bills to be transferred into the company's name when tenants cease paying them.

Witness Nicole Vottice, leasing consultant testified she never received keys from Defendant and had never met the Defendant.

After the original trial on February 12, 2014, the defendant was sent a Move-Out Statement listing rent due through February 12th, late fees and damage charges totaling \$5,747.37. There was also a credit for security deposit of \$99.00. Other documentary evidence submitted by Plaintiff included invoices from Venturi Technologies, Inc for carpet cleaning and patch (\$160.00) with service date of March 14, 2014 (\$160.00) and Primary Colors Painting Co. for painting 3 bedrooms (\$375.00) dated December 5, 2013.

Discussion

Plaintiff filed to terminate the Defendant's lease for non-payment of rent pursuant to 25 Del. C. 5502. Consistent with that claim, a five-day letter was sent demanding payment or the lease would be terminated. Specifically, the letter states "You have (5) bushiness days from the mailing or hand delivery of this notice to make payment in full. Your failure to pay the rent within this time period shall result in this office immediately terminating your rent agreement on the day after the five-day period expires." By sending the five-day letter and proceeding to file a summary possession case, Plaintiff has chosen its remedy. The case proceeded as a summary possession action for non-payment of rent.

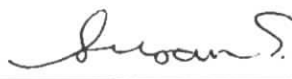
Plaintiff contends that it is entitled to rent through February 12th, the date of the original trial. According to the testimony from James Beeson, an inspection of the property was conducted December 12th at which time the landlord knew the unit was vacant. The Court notes that even prior to that date, on December 5th; an invoice was submitted to the landlord from Primary Colors Painting Co to paint the unit. Additionally, Plaintiff had received bills from Delmarva Power for 154 Antlers Lane in November, December and January indicating that services under the name of the defendant had been terminated and services were now switched to the name of the Huntley Glen Apts and Townhomes. There was no evidence that landlord sent notice to the Defendant for payment of these bills. The only evidence that comes close to a request for payment was the Move Out Notice send to the Defendant after the original trial.

When the Panel considers all the facts of this case including the contract for services to the unit, lack of rental payments, utility bills sent to the landlord, that were previously sent to the Defendant, plus no contemporaneous demand to the Defendant for payment, all support a finding that the landlord had knew that the Defendant had vacated the unit in November and took possession of the unit as of December 5th, when the landlord contracted with Primary Colors Painting Co. to paint the unit.

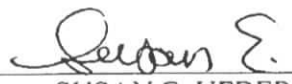
Consequently, it is the finding of the three-judge panel that Plaintiff knew the unit was vacant and took possession on December 5th. Accordingly, the Panel finds that the preponderance of evidence weighs in favor of the Plaintiff and against the Defendant for unpaid rent through December 5th in the amount of \$1,668.05 plus late fees for November and December of \$130.00. Plaintiff is also entitled to recover November's utility bill of \$7.94. The Court is unable to adequately prorate 5 days of utility usage for December. The Court does not believe a claim for damages pursuant to 25 Del. C. 5507 is properly before the Court, therefore no damages under this section of the Code are awarded.

In accordance with the Court's findings, final judgment is awarded in favor of Plaintiff Huntley Glen Associates and against Defendant Jonathan Hunke in the amount of \$1,675.99 plus \$41.50 court costs.

IT IS SO ORDERED this 24th day of July, 2014


(for) BONITA N. LEE
Deputy Chief Magistrate


(for) ROBERT C. LOPEZ
Justice of the Peace


SUSAN E. UFBERG
Justice of the Peace

