

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 14, 2015

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*Pro Se* Appellees

**DECISION ON APPELLANT'S MOTION IN LIMINE**

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 TDR Group held during their rental

period, under the terms of a lease agreement. Caldwell and Nolting are seeking double damages pursuant to 25 *Del. C.* § 5514(g)(1). 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.

Prior to trial, TDR Group moved in limine to dismiss Caldwell and Nolting's claim seeking double damages. The parties stipulated to the fact that Caldwell and Nolting had vacated and returned possession of the rental unit, and that TDR Group sent Caldwell and Nolting a security deposit letter as required by 25 *Del. C.* § 5514(f) within 20 days thereafter. It was also stipulated that Caldwell and Nolting received the letter. The letter provided a list of damages that TDR Group indicated was due to it as a result of the relinquishment of the rental unit by Caldwell and Nolting. These damages were for a total sum greater than the security deposit and resulted in TDR Group requesting a total amount of \$624.00 from Caldwell and Nolting that was in addition to the security deposit. Given these facts, TDR Group contends that Caldwell and Nolting are barred as a matter of law from seeking double damages pursuant to 25 *Del. C.* § 5514(g)(1) on the amount they claim is due to them from the security deposit.

Caldwell and Nolting oppose TDR Group's motion. They argue that although they received the 20 day security deposit letter required by 25 *Del. C.* § 5514(f), they dispute the damages alleged by the TDR Group. They contend that they are entitled to the full return of their security deposit and if they can prove that any of the security deposit is reimbursable to them, they are entitled to double damages as provided by 25 *Del. C.* § 5514(g)(1).

## LEGAL STANDARD

A party is not required to assert that a complaint fails to state a claim upon which relief can be granted in a responsive pleading. Ct. Comm.Pl. Civ. R. 12(b). A defense on this basis may instead be made in a motion to dismiss the claim. *Id.* But if a party introduces matters outside of the pleadings in such a motion, “the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56.” Ct. Comm.Pl. Civ. R. 12(c).

For a party to prevail on a motion for summary judgment, the court must find by a preponderance of the evidence that when the facts are viewed in a light most favorable to the non-moving party, there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. *Stein v. Griffith*, 2002 WL 32072578 at \*1 (Del. Ct. Comm.Pl. Dec. 12, 2002). The burden of proof rests upon the moving party.

The Delaware Residential Landlord-Tenant Code provides that “[w]ithin 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.” 25 *Del. C.* § 5514(f). If the cost to repair damages to the premises does not exceed the amount of the security deposit, the landlord must remit the remaining amount of the security deposit to the tenant within 20 days of expiration of the lease. *Id.* If the landlord does not provide the tenant with the itemized list of damages within 20 days, he is deemed to have acknowledged that no payment for repairs is due. *Id.* If the tenant accepts the itemized list of needed repairs and does not dispute them within 10 days of receipt, he is deemed to agree that the list of damages is accurate. *Id.* Failure by the

landlord to give the tenant “the security deposit or the difference between the security deposit and the amount set forth in the list of damages within 20 days from the expiration or termination of the rental agreement shall entitle the tenant to ‘double the amount wrongfully withheld.’” 25 Del. C. § 5514(g)(1).

### ANALYSIS

The parties in this matter have stipulated to the material facts. Thus, because no material facts are in dispute, under a summary judgment analysis, this Court must determine whether TDR Group is entitled to judgment as a matter of law.

Caldwell and Nolting claim that they are entitled to double the amount of their security deposit pursuant to 25 Del. C. § 5514(g)(1) because they received neither their security deposit nor the difference between their security deposit and the cost of needed repairs from TDR Group as required by §5514(f). Caldwell and Nolting argue that although the reason TDR Group failed to return the security deposit to them was because the landlord’s list of damages in the 20 day letter exceeds the amount of the security deposit held, they contest the calculation of damages. Further, they contend that if they can prove that TDR Group still owes them any balance back from the security deposit, they are entitled to double damages under §5514(g)(1).

The Court finds Caldwell and Nolting’s argument unavailing. First, TDR Group complied with the plain language of the statute. Section 5514(g)(1) provides that only the landlord’s “[f]ailure to remit *the security deposit or the difference between the security deposit and the amount set forth in the list of damages* [as required by 25 Del. C. § 5514(f)] within 20 days from the expiration” of the lease entitles the tenant to “double the amount wrongfully withheld” (emphasis added). The real issue is (1) whether the

landlord has sent the tenant the 20 day security deposit letter with a list of damages and (2) whether the landlord provided the tenant the amount the landlord in good faith calculated is due to the tenant within 20 days. In this case, the landlord, TDR Group, met those obligations.

### CONCLUSION

Based on the foregoing analysis, the Court finds that Caldwell and Nolting cannot prevail on their claim for double damages pursuant to 25 *Del. C.* § 5514(g)(1) since their landlord, TDR Group, complied with 25 *Del. C.* § 5514(f). Therefore, TDR Group's Motion in Limine to dismiss Caldwell and Nolting's claim for double damages is **GRANTED.**

**IT IS SO ORDERED this 14<sup>th</sup> day of JANUARY, 2015.**



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CHARLES W. WELCH  
JUDGE