



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

TELEPHONE: (302) 577-2550

PLAINTIFF

Scarborough Investors LP
Vanessa Romero-Morales, Agent
131-8 Scarborough Park Dr.
Wilmington, De. 19804

v.

CIVIL ACTION: JP13-12-014213

DEFENDANT

Jennifer Matthews
31-8 Scarborough Park Drive
Wilmington, De. 19804

ORDER

Trial de novo heard January 11, 2013. The three-judge panel consisted of Judge Bonita Lee, Judge Rosalind Toulson and Judge Nina Bawa. Plaintiff Scarborough Investors LP was represented by Form 50 agent Vanessa Romero-Morales. Defendant Jennifer Matthews was self-represented.

Plaintiff Scarborough Investors LP filed the instant action seeking unpaid rent and possession. Defendant Jennifer Matthews raised an oral counterclaim to recover money she spent in attempts to eradicate a mice infestation in her rental unit. Defendant also seeks money spent on fast food during the time she could not cook at her residence. Finally, she seeks money spent for gasoline used to go to her mother's residence where she stayed off and on as the mice problem continued.

Plaintiff presented testimony concerning unpaid rent from September 2012 through present totaling \$2,927.55 inclusive of late fees. Documentary evidence in support of Plaintiff's claim included: rental application; apartment rental agreement; move-in report; service orders (3); Orkin service orders (3); September 7, 2012 five-day letter with certificate of mailing; November 6, 2012 memo to all residents alerting them that Orkin and Maintenance would be entering their unit to complete special pest control measures. Orkin was out on July 3, 2012 and recommended sealing holes behind the refrigerator and bathroom baseboard. On December 21, 2013, the Orkin exterminator observed new mice droppings and recommended removal of the kitchen stove.

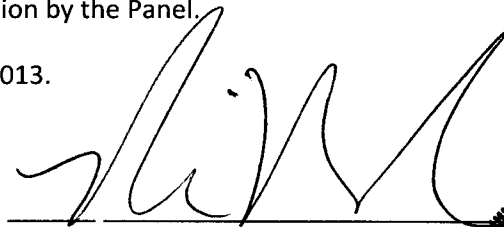
Defendant Matthews does not dispute owing rent from September through the date of this hearing. However, she believes failure of the landlord to adequately address the mice problem in her unit entitles her to a 50% percent rent reduction beginning in May. A certified letter was sent to the landlord on or about June 8, 2012 concerning the problem. Defendant also contacted the manager's assistant in July because she saw a mouse. Defendant Matthews presented numerous receipts from fast food restaurants and gas stations to support her claim that she could not eat in her apartment and was forced to stay with her mother several weeks. Finally Defendant presented pictures of mice feces in different areas of the apartment as well as holes and openings through which mice could enter. Steps were taken to caulk holes and various openings throughout the apartment, but the mice problem persisted. Defendant testified that a dead mouse was removed from her kitchen stove in July 2012; the stove was eventually replaced in January 2013 at the recommendation of the exterminator.

The Court believes the testimony and evidence of both parties proved that the tenant had to contend with a serious mouse problem for several months and that the landlord was aware of the problem. The Orkin exterminator made approximately 7 service visits to Defendant's building and/or apartment to address the rodent problem between May 2012 and December 2012. In addition to Orkin's exterminator services, the tenant also purchased items designed to eliminate rodents.

Plaintiff Scarborough Investors LP has established its claim for \$2,927.55 in unpaid rent and possession. However, the Court believes the rodent problem diminished the tenant's full use and enjoyment of the rental premises, thereby entitling the tenant to rent abatement. Although 25 Del. C. § 5306 permits termination of the lease for a condition which deprives the tenant of a substantial part of the benefit or enjoyment of tenant's bargain if the condition is not remedied within 15 days, Defendant Matthews wishes to remain in the unit until her lease ends in March. The Code also provides that a tenant may recover an amount equal to 1 month's rent and the security deposit. The Court applies this standard to determine the appropriate abatement given the facts of this case and using its equitable powers awards an abatement of \$1,450.00.

The Court considers this matter a good faith dispute pursuant to 25 Del.C. §5716 and orders that rent through the date of the *de novo* hearing (January 11, 2013) plus court costs, less the rent abatement, is to be paid within 10 days if the tenant wishes to retain possession of the rental unit. Therefore, Defendant Matthews must pay \$1,519.05 by January 25, 2013. If payment in full is not made by this date, the landlord may seek a Writ of Possession without further court hearing. Rent will continue at \$23.84 per diem beginning January 12, 2013 through the end of January, which is not included in the amount awarded in this order. Finally, the Court did not address the security deposit held by the landlord. This order represents a majority decision by the Panel.

IT IS SO ORDERED THIS 16th DAY OF JANUARY 2013.



Hon. Bonita N. Lee, for the majority three Judge Panel

