



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: @2724019
BRENDA SENSENY
C/O DONALD L. GOUGE, JR.
800 N. KING STREET
#303
WILMINGTON DE 19801

VS.

Civil Action No.: JP13-14-014763

SYSTEM ID: @2724020
MS.. SHANE BOWEN
716 S. COLLEGE AVENUE
NEWARK, DE 19713

Appearances:

Plaintiff Brenda Senseny appeared represented by Donald L. Gouge, Esq.
Defendant Shane Bowen appeared represented by Brian T. Jordan Esq.

Before: Lee, D.C.M.; Ufberg, J.; and, Stallmann, J.

De Novo Trial: February 27, 2015
Decided: April 06, 2015

NOTICE OF JUDGMENT/ORDER

PROCEDURAL BACKGROUND

This case was originally a summary possession action brought by Plaintiff Brenda Senseny against Defendant Shane Bowen. Prior to the original trial, Defendant Shane Bowen raised a counter-claim for double damages for the failure of the Plaintiff to disclose location of security deposit within 20 days of Defendant's request. At the time of trial, Defendant returned full possession of the rental unit to Plaintiff by returning all keys and possession was determined to be no longer at issue. The matter proceeded as a debt action only. The case was originally heard before a single Judge (Ross, J.) on December 30, 2014 and a judgment was entered January 8, 2015. Defendant objected to the ruling and appealed to a three-judge panel. Trial de Novo was held on February 27, 2015. Deputy Chief Magistrate Lee, Judge Ufberg and Judge Stallmann constituted the panel. This is the Panel's decision

after trial.

EVIDENCE PRESENTED AND FACTUAL FINDINGS

Defendant rented a residential unit from Plaintiff in 2012. At the time of trial, Plaintiff presented credible testimony that at the time of the execution of the original lease, she provided Defendant with a copy of a summary of the Landlord-Tenant Code. This testimony was consistent with evidence submitted by Defendant in the form of a letter written to Plaintiff in which Defendant extensively quoted provisions of the Landlord-Tenant Code. (Defendant's Exhibit 3).

Although a second lease was apparently executed by Plaintiff in April 2014 and by Defendant in August 2014, the parties each acknowledged that this second lease was not considered to be controlling or in effect at the time of the events in question. Thus, after the initial term expired, the arrangement continued as a month-to-month tenancy in accordance with the pertinent provisions of the Landlord-Tenant Code.

The parties each acknowledge that on September 30, 2014, Plaintiff sent Defendant a "60 day notice to quit." The notice was not received by Defendant until October 1, 2014. Within the notice, Plaintiff asserted that the lease would terminate effective November 30, 2014 and that after that time, Defendant would be considered to be a holdover tenant. Defendant did not return the keys to Plaintiff until December 30, 2014.

Defendant testified that she texted a request for disclosure of the location of the security deposit on August 21, 2014 and sent a second request on August 29, 2014 via certified mail return receipt requested. The certified mail receipt placed into evidence by Defendant demonstrates that the August 29, 2014 letter was not received by Plaintiff until September 10, 2014. (Defendant's Exhibit 3). Defendant acknowledged that on September 18, 2014 Plaintiff hand-delivered a document identifying the location of the security deposit.

LEGAL ANALYSIS AND FINDINGS

Plaintiff's Complaint for Debt

Plaintiff seeks damages relating to Defendant's failure to vacate the rental unit on or before November 30, 2014.

As provided, in 25 Del. C. §5101(a), the Landlord-Tenant Code regulates and determines all legal rights, remedies and obligations of the parties to a rental agreement or a rental unit. 25 Del. C. § 5106(d) sets forth the steps to be taken to terminate a month-to-month tenancy and provides as follows in pertinent part:

§5106. Rental agreement; term and termination of rental agreement.

... (d) Where the term of the rental agreement is month-to month, the landlord or tenant may terminate the rental agreement by giving the other party a minimum of 60 days'

written notice, which 60-day period shall begin on the 1st day of the month following the day of actual notice...

25 Del. C. §5515 provides for penalties in the event that a tenant remains in possession after the termination of a tenancy as a "holdover" tenant and provides in pertinent part:

§ 5515. Landlord's remedies relating to holdover tenants.

(a) Except as is otherwise provided in this Code, whenever either party to a rental agreement rightfully elects to terminate, the duties of each party under the rental agreement shall cease.

(b) Whenever the term of the rental agreement expires, as provided herein or by the exercise by the landlord of a right to terminate given the landlord under any section of this Code, if the tenant continues in possession of the premises after the date of termination without the landlord's consent, such tenant shall pay to the landlord a sum not to exceed double the monthly rental under the previous agreement, computed and pro-rated on a daily basis, for each day the tenant remains in possession for any period. In addition, the holdover tenant shall be responsible for any further losses incurred by the landlord as determined by a proceeding before any court of competent jurisdiction.

In the instant matter, Defendant received actual notice of the termination of the tenancy on October 1, 2014. Therefore, under the plain language of 25 Del C. §5106(d), the 60-day notice period would begin on November 1, 2014 and the tenancy would terminate on December 30, 2015. The Panel notes that Defendant handed over the keys on December 30, 2014. Thus, although the summary possession action was filed prematurely, Defendant relinquished possession properly in accordance with the provisions of 25 Del C. §5106(d). Consequently, Defendant is not a holdover tenant and no amounts are due Plaintiff.

Based upon the forgoing, Plaintiff's Complaint for Debt Judgment is:

DISMISSED WITH PREJUDICE

Defendant's Counter-claim relating to the Security Deposit

Defendant seeks double damages relating to Plaintiff's failure to disclose the location of the security deposit within 20 days of her initial text request of August 21, 2014.

25 Del. C. §5514(g)(2) governs the obligation to disclose the location of the security deposits and sets forth penalties relating to any failure to properly disclose the information, as follows:

Failure by a landlord to disclose the location of the security deposit account within 20 days of a **written request** by a tenant or failure by the landlord to deposit the security deposit in a federally-insured financial institution with an office that accepts deposits within the State, shall constitute forfeiture of the security deposit by the landlord to the

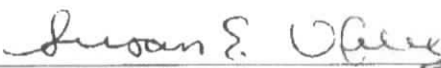
tenant. Failure by the landlord to return the full security deposit to the tenant within 20 days from the effective date of forfeiture shall entitle the tenant to double the amount of the security deposit. 25 Del. C. §5514(g)(2) . *[Emphasis added]*.

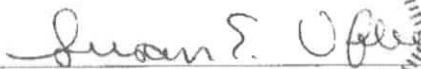
Under the plain language of the statute, a tenant is required to provide a landlord with a written request for disclosure as a pre-requisite to the imposition of a penalty. In the instant matter, the Panel finds that the text message sent on August 21, 2014 does not constitute written notice under the plain language of the statute. The Panel further finds that the written notice sent by the Defendant to the Plaintiff on August 29, 2014 via certified mail was not received by Plaintiff until September 10, 2014. Finally, as Defendant acknowledged during testimony that she was indeed provided with a copy of the document disclosing the location of the security deposit on September 18, 2014, the Panel finds that Plaintiff provided the information within the 20-day period required by the statute. Consequently, the imposition of a penalty under the provisions of 25 Del. C. §5514(g)(2) is unwarranted.


Based upon the forgoing, Plaintiff's Counter-claim is:

DISMISSED WITH PREJUDICE.

IT IS SO ORDERED this 06th day of April, 2015


(for) BONITA N. LEE
Deputy Chief Magistrate


(for) CHERYL S. STALLMANN
Justice of the Peace


SUSAN E. UFBERG
Justice of the Peace

