

IN THE JUSTICE OF THE PEACE COURT NO. 16
OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

FRANCIS OSEI-AFRIYIE,

Plaintiff Below/Appellee,

v.

HUBERT J. PETERSON and
TARTENISHA R. PETERSON,

Defendants Below/Appellants.

§
§
§
§
§
§
§
§
§
§
§

C.A. No. JP16-17-000717

Before **ARNDT, MURRAY** and **HUTCHISON**, Magistrates.

ORDER

This is a *de novo* appeal as provided by 25 *Del. C.* § 5717(a) to a Three Judge Panel from a decision dated February 20, 2017.¹ The panel consisting of Judges Arndt, Murray and Hutchison convened on April 3, 2017. Francis Osei-Afriyie (“plaintiff”) was represented by Gary R. Dodge, Esquire. Hubert J. Peterson (“Mr. Peterson”) and Tartenisha R. Peterson (“Ms. Peterson”) (“defendants”) were represented by Victoria J. Hoffman, Esquire.

Pretrial defendants stipulated to the 60 day notice to terminate the rental agreement effective January 31, 2017, monthly rent at \$860.00 and possession. Trial proceeded on plaintiff’s claim for rent and defendants’ claim of rent abatement. After hearing testimony and reviewing the evidence, the panel finds for plaintiff.

TESTIMONY AND EVIDENCE

Plaintiff testified that defendants lease agreement terminated on January 31, 2017. Defendants have not paid rent for January, February and March. Plaintiff introduced as evidence the lease agreement dated May 26, 2014 signed by Tartenisha Robertson² and a second lease agreement dated February 1, 2016 signed by Hubert Peterson and Tartenisha Peterson.³ Defendants remain in possession of the rental unit.

¹ *Osei-Afriyie v. Peterson*, Del. J.P., C.A. No. JP16-17-000717, Sweet, J. (Feb. 20, 2017).

² Plaintiff’s Exhibit 1.

³ Plaintiff’s Exhibit 2.

Defendants admitted into evidence the following documents: City of Dover inspection report dated July 20, 2016,⁴ City of Dover inspection report dated August 23, 2016⁵ and eight pages of photographs taken by Hubert Peterson depicting alleged issues with the rental property.⁶ Jake Shepherd, Code Enforcement Officer, testified that inspections are conducted for safety concerns and maintenance of the property. The violations noted in the report include: Install smoke detectors, repair deteriorated kitchen floor, paint doors and windows, paint exterior surfaces, caulk around bathtub or shower, repair brickwork, repair or replace door sill or threshold, repair, replace or remove damaged or deteriorated yard fence and repair or replace faulty toilet and properly mount and secure the toilet to the floor.

George Nottingham (“Mr. Nottingham”) testified that he did repair work to the rental unit. He made repairs as requested by the plaintiff using the City of Dover violation list. Mr. Nottingham also testified that the kitchen floor was damaged by improper installation of the water line by Rent-A-Center for the refrigerator. Mr. Nottingham also fixed the fence.

Israel Santos (“Mr. Santos”) testified that he was asked by Mr. Peterson to install a big gate with two wings on the fence. The gate was installed, but did not include a center post. Mr. Santos believed the wind caused it to blow over.

Mr. Peterson testified he took pictures with his cell phone on February 28, 2017 at the request of counsel. Mr. Peterson detailed the various violations to include: Water leaks, problems with the toilet and floor, cabinets that were not flush, a split door frame, a mouse hole, a missing smoke detector, several loose sockets, sockets without cover plates and a closet with the nail heads pushing out.

Ms. Peterson testified that she had complained to the plaintiff about the issues from the time they moved in. Some repairs were made by Mr. Nottingham, but when the floor was put down, it had to be redone because the tiles were not sticking properly.

Plaintiff contends that the work was complete for the final inspection and that all of the violations were addressed. Plaintiff’s introduced a picture depicting repairs to the fence.⁷

FINDINGS AND CONCLUSION

After considering the evidence and testimony, the panel unanimously finds that plaintiff has proven his case by a preponderance of the evidence for unpaid rent. The panel further finds defendants have not proven their counterclaim for rent abatement. Defendants signed two lease

⁴ Defendants’ Exhibit 1.

⁵ Defendants’ Exhibit 2.

⁶ Defendants’ Exhibit 3.

⁷ Plaintiff’s Exhibit 3.

agreements acknowledging that the premises were examined and in good order, repair, and in a safe, clean and tenantable condition. The lease agreement dated February 1, 2016 also contains an acknowledgement that the defendants received a copy of the Landlord Tenant Code. The Code Enforcement officer testified that the violations found at the premises were of a “cosmetic” nature. Defendants did not establish by testimony what benefit or enjoyment they did not receive.

Based on the foregoing, the panel finds by unanimous verdict in favor of plaintiff Francis Osei-Afryie and against defendants Hubert J. Peterson and Tartenisha R. Peterson as follows:


Judgment \$2,666.01⁸
Per Diem Rent @ \$28.67 until possession
Court Costs \$40.00
Possession to plaintiff of 13 Spruance Road, Dover, DE 19901
Post Judgment Interest @ 6.50%

The stay of the Writ of Possession is lifted. A writ of possession may issue immediately.


Decision announced in open Court.

IT IS SO ORDERED this 3rd day of April, 2017.

Trial De Novo Panel


Ernst M. Arndt
Justice of the Peace


James A. Murray
Justice of the Peace


Cathleen M. Hutchison
Justice of the Peace

⁸ \$2,580 (\$860.00 per month – January, February, March) plus \$86.01 (April rent - \$28.67 per diem rent, 3 days).