

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

Capital Green Apartments, LLC.	:	CIVIL ACTION NO. JP16-16-007568
	:	
Plaintiff Below	:	
Appellee,	:	
	:	
v.	:	
	:	
	:	
Althea Nixon,	:	
	:	
Defendant Below	:	
Appellant.	:	
	:	

Submitted: March 20, 2017  
Decided: April 20, 2017

***Trial De Novo***

Capital Green Apartments, LLC. appeared represented by Michael P. Morton, Esquire.

Althea Nixon appeared represented by Brian S. Eng, Esquire and Paige C. Chapman pursuant to Delaware Supreme Court Rule 55.

***ORDER***

Murray, J  
Sweet, J  
Dillard, J

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On March 20, 2017, the Court held a trial *de novo* for a Landlord/Tenant Summary Possession appeal filed by Althea Nixon (“Defendant”), against Capital Green Apartments LLC (“Plaintiff”). This Special Court, composed of the Honorable James A. Murray, the Honorable W. J. Sweet and the Honorable Dwight D. Dillard, convened pursuant to 25 *Del. C.* § 5717(a).<sup>1</sup> The Court reserved decision. This is the final order and decision by the Court.

### **History of Petition**

The original trial was held on January 30, 2017 where the Court found in favor of the Plaintiff. Judgment<sup>2</sup> was entered in the amount of \$4,448.43 for double holdover rent, court costs, post judgment interest and possession of rental unit. Defendant filed a timely appeal on February 9, 2017.

### **Pretrial**

Plaintiff motioned the Court to dismiss counterclaim. The Court held its ruling on the motion in abeyance until counterclaim was presented.

### **Trial**

Plaintiff asserted due to failing to comply with necessary procedures for the treatment of bed bugs, Defendant violated the rules of her lease agreement. Plaintiff alleged they are entitled to recover double rent as Defendant is a holdover tenant, possession of rental unit, per diem rent until unit is vacated, court costs and post judgment interest at Delaware legal rate. Plaintiff introduced the following exhibits into evidence:

1. Lease for subsidized programs
2. Notice of material non-compliance dated February 1, 2016
3. Notification of lease termination dated September 20, 2016
4. Amended notice of immediate termination dated November 28, 2016
5. Follow up bed bug service notice dated October 30, 2015
  - a. Payment arrangement agreement for damages due dated August 10, 2016
6. Pest Pro invoice for initial bed bug treatment dated October 29, 2015
7. Final inspection after supplemental bed bug treatment notice dated November 29, 2015
8. Results of final bed bug treatment notice dated December 21, 2015
9. Follow up bed bug service notice dated January 4, 2016
10. Results of final bed bug treatment notice dated February 26, 2016
11. Notice of bed bug prevention dated September 20, 2016

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<sup>1</sup> 25 *Del. C.* § 5717(a). Stay of proceedings on appeal. Nonjury trials. -- With regard to nonjury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing, within 5 days after judgment, a trial *de novo* before a special court comprised of 3 justices of the peace other than the justice of the peace who presided at the trial, as appointed by the chief magistrate or a designee, which shall render final judgment, by majority vote....

<sup>2</sup> *Capital Green Apartments, LLC v. Nixon*, Del. J.P., C.A. No. JP16-16-007568, Hutchison, J. (Feb 6, 2017).

12. Payment arrangement agreement for damages due dated February 29, 2016
13. Hold over notification dated October 24, 2016
  - a. Pest Pro heat treatment preparation guide
14. Pest Pro invoice (no charge supplemental service) dated November 26, 2015
15. Pest Pro invoice (no charge end of service inspection) dated December 18, 2015
16. Pest Pro invoice (second series) dated January 2, 2016
17. Pest Pro invoice (no charge supplemental treatment) dated February 1, 2016
18. Pest Pro invoice (no charge K-9 bed bug detection) dated August 5, 2016
19. Pest Pro invoice (heat treatment) dated July 23, 2016
20. HUD tenant eligibility and rent procedures form signed by tenant May 18, 2016

On direct examination, Defendant testified she received and read all notices sent by Plaintiff. Defendant testified she understood preparing her home for bed bug treatment was her responsibility and she failed repeatedly to fully prepare home for the chemical treatments. Defendant stated she understood she would be responsible for treatment expenses due to her lack of preparedness should the treatments fail to eradicate the beds bugs.

Witness Aaron Scott Davis, Pest Pro technician, testified to the unprepared condition of the rental unit during his multiple visits to treat for bed bugs.<sup>3</sup> Witness Davis noted on invoice dated August 5, 2016<sup>4</sup> that during a follow up inspection their K-9 detected no bed bug activity and ‘this tenant poses a risk of re-infestation’.

### **Counterclaim**

Defendant motioned the Court to reduce the amount of their counterclaim to \$500.00 for repayment of one bed bug treatment paid by Defendant. Defendant asserted they should not have to pay for bed bug treatment as she reported the problem per the lease agreement. Plaintiff asserted Defendant failed to comply with bed bug addendum of lease agreement section 4<sup>5</sup> by failing to properly prepare rental unit for bed bug treatment on multiple occasions.

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<sup>3</sup> Plaintiff's exhibits #6,14,16,17

<sup>4</sup> Plaintiff's exhibit #18

<sup>5</sup> Default. Failure to promptly report bed bug, failure to comply with treatment instructions or any other violation of any other provision of this Addendum is a violation and breach of the Lease Agreement. Said violation and breach constitutes grounds for eviction, and/or termination of occupancy...In addition, Resident may be held liable for all costs, damages and expenses as additional rent, including the costs of treatment resulting from bed bug infestation during, or as a result of, Resident's occupancy if any of the following apply: the Resident failed to promptly report the infestation, and/or failed to properly prepare the apartment for treatment, and/or failed to comply with any other term of the Addendum.

## Discussion

For the Plaintiff to prevail based on material noncompliance of rental agreement, they must demonstrate the actions of the Defendant encompassed the noncompliance.

Defendant's rental unit was treated initially for bed bugs on October 28, 2015, supplemental treatment on November 24, 2015, final inspection on December 22, 2015, second treatment on December 31, 2015, supplemental treatment on January 28, 2016, Heat treatment on July 22, 2016 and K-9 bed bug inspection on August 4, 2016. Plaintiff was notified on September 19, 2016 that bed bugs were again found in Defendant's rental unit.

Defendant was served multiple notices concerning preparation and follow up for treating bed bugs. Along with the lease's bed bug addendum, Defendant was well aware of the steps needed to rid the unit of infestation and the possible outcome of continuing to be a hazard to self and other tenants. Pursuant to the lease agreement, once a rental unit becomes infected by bed bugs, the tenant is *required* to obtain mattress covers. Defendant failed to purchase mattress covers.

Defendant was served a notification to vacate apartment in 30 days on September 20, 2016 due to material noncompliance<sup>6</sup> with her lease agreement. Defendant did not vacate unit and was served a notice of immediate termination of November 30, 2016. Defendant did not vacate unit and Plaintiff asserts Defendant is now a holdover tenant<sup>7</sup>.

Plaintiff also claims irreparable harm as the basis for their petition as defined in 25 *Del. C.* § 5513(b)<sup>8</sup>. Although months passed between the initial report of bed bugs to the notice of lease termination, this does not lessen the irreparable harm faced by the Plaintiff. If there were no re-infestation, the harm was repairable but that was not the case. There is no reason to believe the bed bugs infestation would cease as long as the Defendant resides in the rental unit. After repeated treatments Defendants unit continues to be infested with bed bugs which jeopardizes adjoining units as bed bugs are known migraters.

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<sup>6</sup> Paragraph 23 of the lease agreement states in part: (c) The landlord may terminate the Agreement for the following reasons: (1) the Tenant's material noncompliance with the terms of this Agreement;...The term material noncompliance with the lease includes: (1) one or more substantial violations of the lease; (2) repeated minor violations of the lease that (a) disrupt the livability of the project; (b) adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities, (c) interfere with the management of the project, or (d) have an adverse financial effect on the project...

<sup>7</sup> 25 *Del. C.* § 5515 Landlord's remedies relating to holdover tenants: (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.

<sup>8</sup> 25 *Del. C.* § 5513(b) Landlord remedies relating to breach of rules and covenants: (b) When a breach by a tenant causes or threatens to cause irreparable harm to any person or property, or the tenant is convicted of a class A misdemeanor or felony during the term of the tenancy which caused or threatened to cause irreparable harm to any person or property, the landlord may, without notice, remedy the breach and bill the tenant as provided in subsection (a) of this section; immediately terminate the rental agreement upon notice to the tenant and bring an action for summary possession; or do both.

### Conclusion

The Court finds material noncompliance by Defendant as bed bug eradication was difficult to accomplish due to Defendants repeated lack of preparation. Also, after the bed bugs were considered eradicated, they returned to the Defendant's unit. As none of the Defendants neighbors had bed bugs before, during or after treating Defendant's unit, the Court must conclude the Defendant is the reason for the infestation. Defendant failed to comply with the requirement to obtain mattress covers to inhibit the spread of bed bugs per her lease. The Court finds the actions of the Defendant to be a material breach of the lease agreement.

The Court finds no basis for the Defendant not to have been billed for supplement bed bug treatment as she was the reason additional treatments were necessary.

Based on the Court's fact finding inquiry, conclusions of law and by a preponderance of the evidence, the Court by unanimous vote finds in favor of the Plaintiff. The Court dismisses the counterclaim.

Judgment from written request proffered in court:

Judgment - \$4576.56 (rent through April 20, 2017)

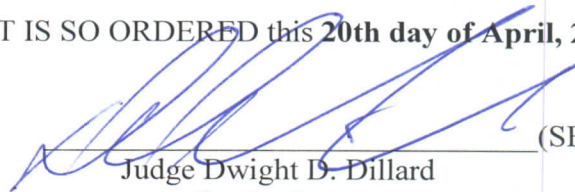
Court costs - \$50.00

Per Diem beginning April 21, 2017 until possession- \$32.23

Post Judgment Interest at 6.5%

Possession to Plaintiff

IT IS SO ORDERED this **20th day of April, 2017.**

  
\_\_\_\_\_  
Judge Dwight D. Dillard (SEAL)  
For the Court

## NOTICE OF APPEAL RIGHTS

Any party has 15 days starting the day after the judgment is signed by the judge to appeal the judgment of the Justice of the Peace Court to the Court of Common Pleas of the above county. If the judgment involves an action for summary possession in a landlord/tenant case, then either party has 5 business days, starting the day after the judgment is signed by the judge, to appeal the judgment to a three judge panel at the Justice of the Peace Court where the judgment was ordered. You must complete all of the appeal requirements within those periods. To prevent dismissal, the appeal must name all of the parties as they were originally named in the Justice of the Peace Court action. (This applies even if the action was dismissed in the Justice of the Peace Court against one or more of the parties.) Additional information on appeal procedures is found in the attached sheet entitled "Justice of the Peace Courts Civil Post-Judgment Procedures". (J.P. Civ. Form No. 14A) If no appeal is filed, parties may remove all exhibits from the Court no sooner than 16 days and no later than 30 days, from the date of this judgment. If not removed, the Court may dispose of the exhibits without further notice to the parties.

Final Date of Appeal of a Civil Case to the Court of Common Pleas is 15 days from the judgment.

Final Date for Appeal of a Landlord/Tenant case to a 3 Judge Panel is 5 days from the judgment.

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

**COURT ADDRESS:  
414 FEDERAL STREET ROOM 173  
DOVER DE 19901**

**CIVIL ACTION NO: JP16-16-007568**

**CAPITOL GREEN APARTMENTS, LLC., PLAINTIFF  
VS  
ALTHEA NIXON, DEFENDANT**

**Plaintiff Parties:**

ATTORNEY FOR PLAINTIFF  
SYSTEM ID: 002492  
MICHAEL P MORTON  
MICHAEL P. MORTON, P.A.  
GREENVILLE PROFESSIONAL CENTER  
3704 KENNETT PIKE  
GREENVILLE, DE 19807

PLAINTIFF  
SYSTEM ID: @2670470  
CAPITOL GREEN APARTMENTS, LLC  
416 SUSSEX AVENUE  
DOVER, DE 19901

COUNTERCLAIM PLAINTIFF  
SYSTEM ID: @2920616  
ALTHEA NIXON  
519 RIVER ROAD  
DOVER, DE 19901

**Defendant Parties:**

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416 SUSSEX AVENUE  
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**Other Case Parties:**

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