



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: @2882219  
60 EAST 3RD STREET COMPANY, LLC D/B/A THE MAYFAIR APT HOMES  
1300 NORTH HARRISON STREET  
LEASING OFFICE  
WILMINGTON DE 19806

VS.

Civil Action No.: JP13-16-009012

SYSTEM ID: @2882220  
DELAWARE PEACE CLUB  
3616 KIRKWOOD HWY A-1013  
WILMINGTON, DE 19808

**Appearances:**

Plaintiff 60 East 3rd Street Company, LLC D/B/A The Mayfair Apt Homes  
Represented by and through Antranig N. Garibian, Esq.  
Defendant Delaware Peace Club  
Represented by and through Paris Carr, Form 50 Agent.

Before: Lee, D.C.M.; Gravell, J.; Bawa, J.

Heard: February 6, 2017  
Decided: February 17, 2017

**ORDER OF JUDGMENT  
ON TRIAL DE NOVO**

Plaintiff/landlord appeared by and through Antranig N. Garibian, Esq. and Defendant/tenant appeared by and through Paris Carr, its agent under Delaware Supreme Court Rule 57, on December 19, 2016 for trial *de novo* on this landlord tenant action for possession and past due rent. Trial began, but had to be continued until February 6, 2017. The *de novo* panel consisted of Deputy Chief Magistrate Bonita N. Lee, Judge Nina Bawa and Judge Kathy S. Gravell.

**History**

The instant action was filed July 29, 2016 with Delaware Peace Club and Paris Carr named as defendants. Trial occurred September 1, 2016 with a default judgment for Plaintiff entered on September 6, 2016. Defendant filed a Motion to Vacate a Default Judgment on September 9, 2016. The Motion was vacated and trial proceeded October 20, 2016 with judgment entered November 11,

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2016.<sup>1</sup> It was determined at trial that Defendant Paris Carr had not been a party to the lease and only signed as the agent for Delaware Peace Club. Paris Carr was dismissed as a party, but acted in her capacity as the agent for Delaware Peace Club. Defendant filed a Request for a Trial *de novo* November 15, 2016.

Defendant filed a counter-claim and motion to dismiss on November 22, 2016. Defendant reiterated its motion to dismiss at the conclusion of its defense. For the following reasons, the Court is denying the motion to dismiss. Defendant's motion to dismiss was based in part on improper notice. The Court determined Defendant ceded notice and jurisdiction by filing a counter-claim and not entering her appearance solely for the counter-claim at the time of the *de novo*. Defendant further cited the amount due in the five day letter was overstated as it should be based on the lease she presented and an e-mail from the previous management company; however, the e-mail was not presented at time of trial. The Court found that the controlling lease was Plaintiff's lease, as Defendant's own evidence showed the security deposit and rent were paid in accordance with that lease. Therefore the amount on the five day notice was understated. As this benefits Defendant and Plaintiff is limiting the rent claim to this amount, the Court finds the five day notice is not defective. Defendant also cited Fair Housing and the lease not being filed with the complaint as reasons for dismissal. Defendant did not elaborate on the Fair Housing complaint and the Court does not require the lease to be filed with a landlord tenant complaint.

Defendant's counter-claim for damages was based on allegations concerning the elevator, mail boxes, poor lighting in garage area, water damages to personal items, rodent infestation, loss of food and cost to eat in restaurants, lead paint, alternate living arrangements, broken inter-com system, stolen personal items, travel costs and lost work time due to preparing for trial. Defendant requested \$15,000.00 for Paris Carr as an independent contractor, \$15,000.00 for Delaware Peace Club based on loss of revenue, unfit rental unit and violations of the lease.

#### Pre-Trial Motion

Defendant moved to add Altman Management as a Plaintiff or to have the case dismissed. Altman Management managed the rental property when Defendant signed her lease with 60 East 3<sup>rd</sup> Street Company, LLC taking over July, 2016. Defendant argued the initial documents used, ledger and July 7, 2016 letter concerning non-payment of rent, had Altman Management's name on it. Plaintiff stated there was a July 10, 2016 letter concerning non-payment on Mayfair letterhead and Plaintiff was not seeking money due, if any, from prior to its takeover in July, 2016.

The Court denied Defendant's motion as the lease was between Delaware Peace Club and 60 East 3<sup>rd</sup> Street Company, LLC. Altman Management was an independent contractor acting as a management company prior to July 1 and the basis for this suit consists of rent due subsequent to the change in management.

#### Arguments and Exhibits

Plaintiff produced a five day letter and proof of mailing and a ledger showing amounts due. Plaintiff's witness produced a lease with a rental amount of \$865.00, but testified they only charged \$855.00. This witness also stated there had been no rent payments since July. Plaintiff's witness stated July late fees were waived as a courtesy.

In its defense, Defendant produced a five day letter with a later date. Defendant's lease showed a rental amount of \$614.30. Defendant produced documents showing it had paid \$865.00 a month for rent in March, April, and May 2016.

#### Counter-Claim

<sup>1</sup> The default judgment motion was granted and the default judgment of September 6, 2016 was vacated without argument.

Defendant's agent testified she had contacted City of Wilmington Department of Licenses and Inspections and presented an undated list of four items for owner to address; however, there was no follow-up or witness from the City of Wilmington. Defendant's agent stated there was nothing from License and Inspection to say the unit was uninhabitable.

Defendant agent testified Defendant had been denied essential services, but did not produce any evidence as to heat, water, or electric/gas/oil service. Defendant's agent testified she and Defendant had lost income because she had to defend the lawsuit which she characterized as malicious and not in keeping with the law. Defendant's agent averred she had hotel bills because she could not conduct business in the unit. Defendant's agent felt she should be reimbursed for items she states were stolen from her. Defendant's agent testified the unit was infested with rodents and produced photos of mice traps in the broiler to her oven. Defendant did not produce any photos showing evidence of infestation. Defendant's agent stated food in the unit was unusable and she had to dine out after finding a mouse in a trap. Defendant's agent stated a water leak in the kitchen ruined some electronics. Defendant's agent agreed current management was making improvements.

### Holding

The Court uses a preponderance of the evidence standard when ruling on landlord tenant actions.

The Court finds sufficient documents were introduced and testimony was given to prove they should be awarded possession and past due rent. On the case in chief, the Court finds for Plaintiff for rent due through February 6, 2017 of 6,318.41, with per diem of \$28.11, court costs of \$48.75 and post judgment interest of 6.25%. Possession is also awarded to Plaintiff.

On the counter-claim, the Court finds Defendant, Delaware Peace Club, did not produce sufficient evidence to prove by a preponderance of the evidence that it is owed a rent abatement or offset. Defendant had argued the unit was unsafe due to a break-in and mice infestation. The Court finds there was insufficient evidence to show Plaintiff was liable for the break-in. The only evidence of a possible rodent problem was a photograph of a mouse trap in the rental unit. Defendant did not produce sufficient evidence that a statutorily defined essential service was not present in the rental unit. Other items suggested or requested by Defendant were being addressed by the current management and the items do not rise to the level of essential service.

Neither Defendant nor Defendant's agent are entitled to a dollar judgment. The Court finds for Plaintiff on the counter-claim.

IT IS SO ORDERED this 17th day of February, 2017

  
\_\_\_\_\_  
(for) BONITA N. LEE (SEAL)  
Deputy Chief Magistrate

  
\_\_\_\_\_  
(for) KATHY S. GRAVELL (SEAL)  
Justice of the Peace

  
\_\_\_\_\_  
(for) NINA M. BAWA (SEAL)  
Justice of the Peace

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