IN THE JUSTICE OF THE PEACE COURT OF
THE STATE OF DELAWARE, IN AND FOR SUSSEX COUNTY
COURT NO. 17

ROBERT DONOHUE DONNA DONOHUE Plaintiff Below, Appellee	§	
V.	§	C.A. No. JP17-17-002580
GENE HARRIS ANTHONY CITRANO Defendant Below, Appellant	§	

TRIAL DE NOVO

Submitted: June 26, 2017
Decided: June 29, 2017

APPEARANCES:
ROBERT DONOHUE
DONNA DONOHUE
GENE HARRIS
ANTHONY CITRANO

All parties appeared *pro se.*

Before: Davis CM, Blakely DCM and Comly JP

Comly for the Court

IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE, IN AND FOR SUSSEX COUNTY COURT NO. 17

CIVIL ACTION NO: JP17-17-002580

ROBERT DONOHUE ET AL VS GENE HARRIS ET AL

ORDER ON TRIAL DE NOVO

The Court has entered a judgment or order in the following form:

PROCEDURAL HISTORY

Donna Donohue and Robert Donohue are the owner/landlords and Anthony Citrano and Gene Harris are the tenants for a rental unit known as 19114 Stonewood Lane, Rehoboth Beach, Delaware. The landlords filed a summary possession action seeking possession of the rental unit and accruing rent. The tenants deny the landlords are entitled to possession of the rental unit and filed a $34,927.91 counterclaim. Trial was held on May 17, 2017. The same day, the trial court entered a judgment granting the landlords possession of the rental unit but did not render a judgment on the counterclaim because the tenants had represented that they were going to pursue the counterclaim in the Court of Common Pleas. On May 23, 2017, the tenants filed a timely appeal pursuant to 25 *Del. C.* § 5717(a). This is the Court's decisions following the trial de novo.

FACTS

The parties entered into a rental agreement on April 13, 2015. The term commenced on April 15, 2015 and expired on April 30, 2016. The monthly rent is $1,300.00. Rent is due on the first of the month. The tenants paid the prorated rent of $650.00 for the period April 15, 2015 through April 30, 2015. The landlords hold a $1300.00 security deposit. Under paragraph 7 of the rental agreement, the tenants are responsible for the electric, gas, water sewer and rubbish. Bay Coast Realty acted as agent for the landlords. William T. Ferreri is the broker at Bay Coast Realty and Connie Holdridge is his administrative assistant.

As early as July 2015, the tenants sent both Bay Coast Realty and the landlords a list of complaints. Many of the listed items concerned the cleanliness of the rental unit when the tenants took possession. The tenants took it upon themselves to clean and repair many of the items listed. The tenants asked the landlords for permission to replace carpeting in the rental unit and permission was given. The tenants have also replaced some of the flooring. The tenants are not seeking reimbursement for the replacement of the carpet or flooring. At some point the tenants informed the landlords that they needed a larger washer and dryer and the landlords supplied the same. In November 2015, the tenants asked the landlords to replace the fireplace because they wanted to use it to "Knock the chill off" in the house instead of running the entire HVAC unit heating the entire house. The landlords agreed to replace the fireplace as long as the tenants agreed to have the gas service with Aero transferred into the tenants' name. The fireplace was subsequently replaced at a cost of approximately $675.00. The tenants allege that the gas was turned off between November 25th and November 30th 2015. In August 2016 when the tenants complained that the air conditioner was not functioning properly, Bay Coast Realty arranged for a service tech to check it out. Bay Coast Realty was given an estimate of the cost to replace the unit. The landlords subsequently went to the rental unit and had a second tech check out the unit. That tech indicated that there was nothing wrong with the AC unit.

On April 5, 2016, the parties agreed to a one year extension of the lease agreement. In November 2016 Connie Holdridge asked the tenants if they would be interested in a second one year extension of the lease agreement. No second extension was agreed to by the parties. On February 15, 2017, Connie Holdridge sent the tenants a notice that the lease expired on April 30, 2017 and that the owners decided not to extend the lease. The tenants indicated that they did not want to vacate the rental unit. The parties entered into negotiations concerning a two month extension of the lease agreement but no agreement was reached.

Rent has not been paid for the months of May or June 2017. The tenants represented that they attempted to pay the May rent but that they were locked out of the electronic payment system. The tenants also represented that they had opened an escrow account to hold May's rent.

DISCUSSION

The tenants argue that the February 15th notice was not valid because they had assumed that the rental agreement would be extended as it had been the previous year and that the February 15th notice was signed by Connie Holdridge, who was not a licensed realtor, and that made the notice invalid. 25 *Del. C.* § 5106(c) states in part, "[T]he landlord may terminate any rental agreement, other than month-to-month agreements, by giving a minimum of 60 days' written notice to the tenant prior to the expiration of the term of the rental agreement. The notice shall indicate that the agreement shall terminate upon its expiration date." The rental agreement expired on April 30, 2017. The February 15th notice was sent more than 60 days prior to the expiration of the rental agreement. The notice was sent to the tenants and they admitted that they received the notice on February 21st.

The question is, "Is Connie Holdridge 'the landlord'?" The definition of "Landlord" is found at 25 *Del. C.* § 5141(13). The definition is quite broad. Under 25 *Del. C.* § 5141(13)(c) a landlord is, "[A]ny person with whom the tenant normally deals as a landlord." The tenants routinely contacted William T Ferreri and Connie Holdridge at Bay Coast Realty when they had problems with the rental unit. In fact the tenants were specifically told not to contact the property owners but to contact Bay Coast Realty. There is no legal requirement that a person have a real estate license to act as a landlord. It is clear that during the term of the tenancy the tenants understood that Bay Coast Realty and Connie Holdridge were acting as agents for the property owners and therefore Connie Holdridge is a landlord as defined by the statute. Even though the tenants clearly indicated in the fall of 2016 that they wanted to extend the lease, there was no evidence presented that the landlords agreed to an extension. The fact that the landlords did not sign the first lease extension until April 2016 does not mean that the tenants can infer that the landlords will agree to extend the lease in 2017.

The Court finds that the notice sent by Connie Holdridge on February 15, 2017 satisfies the requirements of 25 *Del. C.* § 5106(c) and therefore the rental agreement terminated on its own terms on April 30, 2017. Base on that termination, the landlords have a right to possession pursuant to 25 *Del. C.* § 5702(1).

It is undisputed that rent was not paid for May or June 2017. The monthly rent is $1,300.00. The constable evicted the tenants on June 27, 2017. As a result the landlords are only entitled to rent through

that date. The *per diem* rent would be $43.33. The rent due and unpaid for June 2017 would be 27 times $43.33 or $1,169.91. The rent due and unpaid for May 2017 is $1,300.00. The total rent due and unpaid is therefore $2,469.91.

In their counterclaim the tenants are seeking $3,727.91 for the landlords' failure to provide essential services. There was a representation that the gas service was terminated for several days in November 2015. Under the lease the tenants are responsible for paying for the gas. Additionally, essential services, as defined by 25 *Del. C.* § 5308, are hot water, heat, water or electricity. The gas service that was terminated for several days was used for the fireplace. The fireplace was not the primary source of heat for the rental unit. There was no evidence presented that the landlords failed to provide heat or any other essential service. There was some suggestion that the HVAC system was not working in April and May of 2017 but there isn't proof by a preponderance of the evidence. There is insufficient evidence to support this claim.

The tenants were also claiming that they are entitled to the return of $31,200.00, the amount they paid for rent during the entire term of the lease, because the rental agreement is void. There was no evidence presented at trial to support this claim.

ORDER

Accordingly, a judgment in the sum of $2,469.91 plus $75.00 court costs is granted to Donna Donahue and/or Robert Donahue and against Anthon Citrano and/or Gene Harris. Possession of the rental unit is granted to the landlords. Post judgment interest to accrue at the current legal rate of 6.75% per year.

IT IS SO ORDERED 29th day of June, 2017

Justice of the Peace

JUSTICE OF THE PEACE COURT SEAL STATE OF DELAWARE

Information on post-judgment procedures for default judgment on Trial De Novo is found in the attached sheet entitled Justice of the Peace Courts Civil Post-Judgment Procedures Three Judge Panel (J.P. Civ. Form No. 14A3J).