

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
COURT NO. 13**

ELITE PROPERTIES, LLC
Plaintiff Below,
Appellee

VS

ERIKA DENISE PEAK
WALTER DALE
Defendant Below,
Appellant

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§ C.A. No. JP13-18-000254
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TRIAL DE NOVO

Submitted: May 16, 2018
Decided: May 31, 2018

APPEARANCES:

Plaintiff Elite Properties was represented by Daniel Borges, Rule 57 Representative
Defendants Erika Denise Peak and Walter Dale were represented by Jillian M. Pratt, Legal Services

Sean McCormick, Deputy Chief Magistrate
Gerald Ross, Justice of the Peace
Amanda Moyer, Justice of the Peace

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
COURT NO. 13**

CIVIL ACTION NO: JP13-18-000254

ELITE PROPERTIES LLC VS ERIKA DENISE PEAK

ORDER ON TRIAL DE NOVO

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

Procedural Posture

This case was filed by Plaintiff on January 8, 2018, alleging rent delinquency including an unpaid water bill. The trial before a single Justice of the Peace took place on January 30, 2018, with a finding in favor of Defendants on the case in chief, as well as a judgment for Defendants on their counterclaim seeking termination of the rental unit. Plaintiff appealed timely and, after two day-of-trial continuances granted to Defendants, a three-judge panel consisting of Deputy Chief Magistrate McCormick, Judge G. Ross, and Judge Moyer heard the trial de novo on May 16, 2018. This is the Court's decision after trial. For the reasons stated below the Court finds in favor of Plaintiff on the unpaid rent and late charges in December 2017 and January 2018, and for Defendants on the inflated security deposit and the unlawfully withheld security deposit. No other awards are made.

Facts

Plaintiff seeks unpaid rent for December 2017 and January 2018, late fees, payment of a water bill, and reimbursement for a junk removal bill, for a total of \$3,133.88 plus court costs. Possession of the unit is not an issue. Defendants filed a counterclaim seeking rent abatement for rental unit conditions, reimbursement for personal belongings destroyed by a fire in the attached house, return of the extra \$1,050 security deposit paid (Defendants contended that they paid first month's rent and a double security deposit at the time of move in), and return of double the amount of security deposit wrongfully withheld, for a sub-total of \$11,539 (minus renter's insurance reimbursement) for a total of \$10,739.

Plaintiff testified he met Defendants for the first time on November 15, 2017, during an inspection in preparation to take over management of the property from a different management company. Plaintiff stated that the only request made at that time was to install a light in the alley outside, and there was no mention of insects or damage to their personal belongings due to a fire. Plaintiff asserted that he received no other requests or complaints from Defendants from November 15 through January 2018. Plaintiff indicated that three more inspections were conducted over this time period and a Pest Control service was ordered as preventive maintenance only. Plaintiff maintained he received no rent payment in December and January, he tried to reach Defendants to establish a payment plan in December, and that he could not get a commitment from them as of December 11, 2017. Plaintiff stated when the property was vacated at the end of January 2018, it smelled of pets and urine, Defendants' discarded personal belongings were left at the curb, and the property had to be cleaned inside and outside.

Plaintiff submitted copies of the lease agreement, five-day letter, unpaid water bill, printout of text correspondence with Defendants, photo of Defendants' personal belongings left curbside, and a junk removal invoice.

Defendants moved for a directed verdict on (1) the security deposit since Plaintiff gave no testimony on this issue and did not provide Defendants a list of damages to the rental property, and (2) the alleged rent due and owing since Plaintiff gave no testimony on the conflicting amounts of rent owed. The Court ruled only that the \$1,050 extra security deposit was unlawful under 25 Del. C. §5514(a)(2). It determined that it would move forward with the case on the alleged rent due and owing.

Defendants testified that when they moved into the rental property in July 2017, they saw dead roaches and the front door did not shut properly; the roach issue was eventually resolved with traps and Maintenance advised the door frame would have to be replaced. Defendants asserted that the house next door had a fire on September 27, 2018, and the smoke and water created mildew that aggravated Ms. Peak's severe asthma condition. Defendants stated that their personal belongings were damaged by the fire, including a mattress, couch, luggage, coats, curtains, and some linen items. Defendants claimed further there were leaks in the upstairs ceiling when it rained heavily. Defendants contended the smoke damage was the only lingering effect of the fire when Elite took over and that it got better over time. Defendants maintained the bugs and gnats were the biggest issue, and they told Plaintiff the issue was resolved but that it came back after the fire. Defendants stated that they sent Plaintiff by and through Counsel a certified letter with forwarding address, and they never received their security deposit or a notice of damages after vacating the property on January 31, 2018. Finally, Defendants dispute Plaintiff's claim of being owed rent late fees and payment of a water bill.

Defendants submitted copies of receipts for payment of a double security deposit and first month's rent, photos of rental property conditions, text messages with Plaintiff, and certified mail receipts.

Discussion

Plaintiff's claim of rent due and owing for December 2017 and January 2018 is unchallenged. Defendants testified the lease was broken because they "came into hard times ... just came from out of a situation." However, Defendants dispute the late charges asserting the lease agreement is verbal and the late charges are not applicable. On this point, there is no dispute that Defendants signed a written lease agreement on June 30, 2017, to live at 1001 Linden St., Wilmington, DE 19805. Nor is it disputed that Elite Properties, LLC did not have them sign a new lease when they took over management of the property, and that the tenancy continued based on the terms of said lease agreement. The terms therein include a monthly rent of \$1,050; a late charge of \$52.50 for any rent not made within five (5) days of when due; and a security deposit of \$1,050. Accordingly, the Court finds in favor of Plaintiff on the December 2017 and January 2018 rent plus late charges.

As for the unpaid water bill, 25 Del. C. §5312 provides in pertinent part:

(a) A landlord may install, operate and maintain meters or other appliances for measurement to determine the consumption of utility services by each rental unit. Only if the *rental agreement* so provides, and in compliance with this section, may a landlord charge a tenant separately for the utility services as measured by such meter or other appliance.

(i) A landlord may bill a tenant for such utility services monthly or quarterly as set forth in the rental agreement, and a tenant who pays for utility services pursuant to this subsection shall be entitled to *inspect the bills* and records upon which such charges were calculated as set for in subsection (d) of this section.

The lease agreement between the party's states that "Lessor shall be responsible for arranging and paying for all utility services required on the Premises. (Electric and gas, water and sewer and cable)." Additionally, Defendants maintained they never received the water bill during their tenancy. Moreover, Plaintiff testified he did not personally send Defendants a water bill, and he had no knowledge of whether or not anyone else sent it to them. For all the above reasons, Plaintiff is not awarded reimbursement for the water bill.

As for the security deposit, 25 *Del.C.* §5514 provides in pertinent part:

- (a)(2) No landlord may require a security deposit in excess of *one* month's rent where the rental agreement is for one year or more.
- (c) The purpose of the security deposit shall be:
 - (1) To reimburse the landlord for actual damages caused to the premises by the tenant which exceed normal wear and tear, or which cannot be corrected by painting and ordinary cleaning; and/or
 - (2) To pay the landlord for all rental arrearage due under the rental agreement, including late charges and rental due for premature termination or abandonment of the rental agreement by the tenant; and/or
 - (3) To reimburse the landlord for all reasonable expenses incurred in renovating and re-renting the premises caused by the premature termination of the rental agreement by the tenants ... not to exceed one month's rent.
- (e) If the landlord is not entitled to all or any portion of the security deposit, the landlord shall remit the security deposit within 20 days of the expiration or termination of the rental agreement.
- (f) Within 20 days after the termination or expiration of any rental agreement, the landlord shall provide the tenant with an itemized list of damages to the premises and the estimated costs of repair for each and shall tender payment for the difference between the security deposit and such costs of repair of damage to the premises. Failure to do so shall constitute an acknowledgment by the landlord that no payment for damages is due.
- (g) Penalties.
 - (1) Failure to remit the security deposit or the difference between the security deposit and the amount set forth in the list of damages within 20 days from the expiration or termination of the rental agreement shall entitle the tenant to double the amount wrongfully withheld.

In the case *sub judice*, Defendants signed a one-year lease and provided evidence that Plaintiff collected a security deposit in the amount of two month's rent. Furthermore, Plaintiff testified he did not provide Defendants an itemized list of damages or unreasonable cleaning needed, nor did he return their security deposit to them. Plaintiff maintained he never received a forwarding address; however, Defendants credibly refuted this claim by showing a certified mail receipt with forwarding address sent by and through Counsel. Thus, the Court finds that Plaintiff violated (a)(2), (e), and (f) above and awards Defendants the inflated \$1,050 security deposit unlawfully collected, as well as double the amount of security deposit wrongfully withheld.

As for the reimbursement for cleaning and junk removal, Plaintiff testified that the vacated property smelled of pets and urine and required a professional cleaning service. Plaintiff submitted as evidence (1) an invoice from Turis Home Improvement for "cleaning throughout the house and removal of contents and debris", and (2) a photo of the tenants' personal belongings left on the curb as trash. The evidence presented suggests that cleaning and trash removal were required beyond what is reasonable. However, since Plaintiff failed to provide Defendants a list of actual damages and unreasonable cleaning needed, he is not awarded any reimbursement for the cleaning service and junk removal.

As for the rent abatement, §5308 provides in pertinent part:

(a) If the landlord substantially fails to provide hot water, heat, water or electricity to a tenant, or fails to remedy any condition which materially deprives a tenant of a substantial part of the benefit of the tenant's bargain in violation of the rental agreement ... and such failure continues for 48 hours or more, after the tenant gives the landlord actual or written notice of the failure, the tenant may:

(1) Upon written notice of the continuation of the problem to the landlord, immediately terminate the rental agreement; or

(2) Upon written notice to the landlord, keep two-thirds per diem rent accruing during any period when hot water, heat, water, electricity or equivalent substitute housing is not supplied.

Even if all of Defendants' claims regarding the rental unit conditions are true, they only meet the requirements of (a)(1), which allows the tenant to promptly terminate the rental agreement. Defendants made no claims under (a)(2) that would permit them to keep two-thirds per diem rent accrued during December 2017 and January 2018. Despite the mix of concerns expressed, they maintained that the biggest issue ultimately was bugs and gnats. Thus, Defendants are not awarded any rent abatement.

Finally, as for Defendants' personal belongings damaged by fire, §5309 provides in pertinent part:

(a) If the rental unit or any other property or appurtenances necessary to the enjoyment thereof are damaged or destroyed by fire or casualty to an extent that enjoyment of the rental unit is substantially impaired, and such fire or other casualty occurs without fault on the part of the tenant, or a member of the tenant's family, or another person on the premises with the tenant's consent, the tenant may:

(1) Immediately quit the premises and promptly notify the landlord, in writing, of the tenant's election to quit within one week after vacating, in which case the rental agreement shall terminate as of the date of vacating.

(2) If continued occupancy is lawful, vacate any part of the premises rendered unusable by fire or casualty, in which case the tenant's liability for rent shall be reduced in proportion to the diminution of the fair rental value of the rental unit.

The Code makes no provision for the landlord to reimburse a tenant for personal belongings damaged by fire, regardless of how or where the fire started and who is responsible. Rental properties typically require tenants to obtain renter's insurance to protect against personal possessions lost due to fire, burglary, or other misfortune. Accordingly, Defendants are not awarded anything for their personal belongings damaged by the fire.

Conclusion

For the foregoing reasons, the Court awards a judgment of \$2,205 to the Plaintiff for the unpaid rent and late charges in December 2017 and January 2018. It awards a judgment of \$3,150 to the Defendants for the inflated security deposit and the unlawfully withheld security deposit. The difference nets out to \$945 in favor of the Defendants. No other awards are made in this matter.

IT IS SO ORDERED 05th day of June, 2018


SEAN P. MCCORMICK
Deputy Chief Magistrate

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(for) GERALD ROSS III
Justice of the Peace

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(for) AMANDA MOYER
Justice of the Peace



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).

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
COURT NO. 13**

COURT ADDRESS:
1010 CONCORD AVE
WILMINGTON DE 19802

CIVIL ACTION NO:
JP13-18-000254

ELITE PROPERTIES, LLC, PLAINTIFF

VS

ERIKA DENISE PEAK, WALTER DALE, DEFENDANT

Plaintiff Parties:

COUNTERCLAIM PLAINTIFF
SYSTEM ID: @3037368
ERIKA DENISE PEAK
P.O. BOX 9143
WILMINGTON, DE 19809

PLAINTIFF

SYSTEM ID: @2752069
ELITE PROPERTIES, LLC
P.O. BOX 2511
WILMINGTON, DE 19805

COUNTERCLAIM PLAINTIFF

SYSTEM ID: @3058239
WALTER DALE
1001 LINDEN STREET
WILMINGTON, DE 19805

Defendant Parties:

ATTORNEY FOR DEFENDANT
SYSTEM ID: 005605
JILLIAN M PRATT
LEGAL SERVICES CORPORATION OF
100 WEST 10TH STREET
SUITE 203
WILMINGTON, DE 19801

DEFENDANT

SYSTEM ID: @3037368
ERIKA DENISE PEAK
P.O. BOX 9143
WILMINGTON, DE 19809

DEFENDANT

SYSTEM ID: @3058239
WALTER DALE
1001 LINDEN STREET
WILMINGTON, DE 19805

COUNTERCLAIM DEFENDANT

SYSTEM ID: @2752069
ELITE PROPERTIES, LLC
P.O. BOX 2511
WILMINGTON, DE 19805

Other Case Parties:

AGENT
SYSTEM ID: FA10853
DANIEL BORGES
ELITE PROPERTIES LLC
PO BOX 2511
WILMINGTON, DE 19805

**JUSTICE OF THE PEACE COURT
CIVIL POST- JUDGMENT PROCEDURES
THREE JUDGE PANEL**

[This information is not legal advice and not a substitute for seeking legal advice from an attorney. This information is not binding on the court if incorrect or misunderstood. It relates to frequently asked questions concerning post-judgment procedures but does not address all of the possible procedures and may not apply in your particular case. Forms for these procedures may be obtained from any Justice of the Peace Court civil location. All motions must include the name of the court, the names of the parties, the case number, the date the motion is filed with the Justice of the Peace Court and a title indicating the reason for the motion. Court costs or fees must accompany the motion, unless the person has requested, and the court determined, that the person may proceed in forma pauperis (without paying costs or fees or posting bond because they have no money to pay).]

All payments should be made directly to the prevailing party. The Court does not accept payment on judgments.

Pursuant to 10 Del. C. § 9567(b), prevailing parties are reminded of their duty to file a satisfaction of the judgment within 90 days of payment in full.

FAILURE OF A PARTY TO APPEAR FOR THE PANEL TRIAL

As provided by Justice of the Peace Civil Rule 72.1(f), if the Appellant (the party who requested the appeal trial) or both parties fail to appear for the trial, the judgment of the court below shall stand unless the Appellee appears and has filed a counterclaim.

If the Appellee (the party against whom the appeal was taken) fails to appear and a DEFAULT JUDGMENT is entered, that party may file a Motion To Vacate the judgment pursuant to Justice of the Peace Civil Rule 60. The Motion must show; (1) the Appellee's failure to appear was the result of actions of a reasonably prudent person; and (2) the outcome would be different if the trial were held; and (3) the party that appeared would not be prejudiced by having the trial. The Motion must be filed within 10 days, starting the day after the judgment was signed by the De Novo Panel. **A FEE OF \$15.00 MUST ACCOMPANY THIS MOTION.**

MOTION FOR A NEW TRIAL

Either party has 10 days, starting the day after the judgment was signed by a Judge, to file a Motion For A New Trial as provided under Justice of the Peace Court Civil Rule 59. This Motion shall be in writing and shall briefly and succinctly state the reasons for the request. A Motion For A New Trial will be heard by the Panel of Judges who originally heard the case. The reasons for which a new trial may be granted are limited. For example, the reason given for requesting a new trial may be newly discovered evidence. However, for the Panel to grant a motion for a new trial based upon newly discovered evidence, the party requesting the new trial must show all of the following: (1) the newly discovered evidence is important enough to change the result in the case; (2) the evidence could not have been discovered prior to the original trial with reasonable investigation; and (3) the evidence does not merely repeat or dispute evidence presented in the original trial. **A FEE OF \$15.00 MUST ACCOMPANY THIS MOTION.**