

On June 1, 2018 this Court, consisting of the Honorable James A. Murray, the Honorable Dana M. Tracy and the Honorable Wallace G. Edmanson II, acting as a special court pursuant to 25 *Del. C.* § 5717(a)¹ held a trial *de novo*² in reference to a Landlord/Tenant Summary Possession petition filed by Capital Green Apartments, LLC., (hereinafter referred to as Plaintiff), against Martin Berny (hereinafter referred to as Defendant). For the following reasons the Court enters judgment in favor of the **DEFENDANT**.

Factual and Procedural Background

Plaintiff filed a Landlord/Tenant Summary Possession petition with Justice of the Peace Court No. 16 seeking possession, court costs, post-judgment interest at the current legal rate, double holdover per diem and damages. This action is based on Defendant's alleged material breach of the lease agreement for repeatedly failing to prepare the rental unit for extermination of a bed bug infestation. Trial was held on April 16, 2018 with the Court reserving its decision. On April 20, 2018 the Court issued its written decision entering judgment in favor of Plaintiff.³ Thereafter, Defendant filed

¹ 25 *Del. C.* § 5717(a). *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....

² *De novo* trial. Trying a matter anew; the same as if it had not been heard before and as if no decision had been previously rendered. Black's Law Dictionary 435 (6th ed. 1990).

a timely appeal of the Court's Order pursuant to 25 *Del. C.* § 5717(a). Consequently, trial *de novo* was scheduled and held.

Testimony

Christina Williams is the property manager of Capital Green Apartments, LLC. Ms. Williams testified to a number of documents which have been executed between herself and Defendant over the years. On December 14, 2015 Parties executed a Model Lease For Subsidized Programs for unit number 824 located at 457 Sussex Avenue, Dover, DE, 19901 (hereinafter referred to as rental unit or unit).⁴ Attached to the back of the lease agreement is a Bed Bug Lease Addendum executed by the Parties on February 27, 2015.⁵ Thereafter, a Hud Lease Addendum⁶ was executed on December 20, 2017.⁷

Ms. Williams testified Defendant's current bed bug infestation is a health risk to other tenants as the bed bugs could migrate to other rental units

³ *Capital Green Apts, LLC., v Berny*, Del. J.P., C.A. No. JP16-18-001603, Dillard, J. (April 20, 2018).

⁴ Plaintiff's exhibit #1.

⁵ *Id.*

⁶ HUD – Department of Housing and Urban Development. Black's Law Dictionary 740 (6th ed. 1990).

⁷ Plaintiff's exhibit #2.

within the complex. She avers Defendant repeatedly failed to prepare his unit for treatment services, even after being advised of his requirement to do so.⁸

Scott Davis of Pest Pro Pest Control testified he is familiar with Defendant and the unit as he has eradicated bed bugs from Defendant's unit prior to the current infestation. The protocol Mr. Davis implemented is a chemical based treatment which requires three visits. Two visits are treatment based and the third is an inspection to determine if treatments were successful in eradicating the infestation. According to Mr. Davis, to achieve the highest level of treatment success, proper preparation of the unit is paramount and has a direct impact on the success or lack thereof.

Mr. Davis asserts Defendant never properly prepared the unit for any of his three visits. After each visit Mr. Davis prepared and supplied documentation to Plaintiff advising the lack of preparedness he found the unit for scheduled treatments and inspection.⁹

As a result of Defendant's repeated failure to properly prepare his unit, Ms. Williams issued by posting and certificate of mailing to Defendant a **"Notice of Material Non-Compliance of the Lease Agreement You have**

⁸ Plaintiff's exhibit #3. Pest Pro Pest Control Bed Bug Chemical Serviced Agreement. Signed by Defendant.

⁹ Plaintiff's exhibits #5, #8 and #14.

seven (7) days for corrective action".¹⁰ Thereafter, on January 23, 2018 Plaintiff, through Ms. Williams, issued "NOTICE OF LEASE TERMINATION" via certificate of mailing and receipt of hand delivery to Defendant.¹¹

Defendant asserts while he has struggled physically from time-to-time to meet preparation requirements, the unit was in compliance for the last inspection. Defendant states he was unaware he may be entitled to an accommodation for assistance in the preparation of the unit. Finally, Defendant asserted Plaintiff has attempted to terminate his lease agreement prior to his time to cure the breach fully lapsed.

Discussion

It is undisputed that a landlord/tenant relationship exists between the Parties and that Defendant's rent is subsidized.¹² Also, there is no question a bed bug infestation has been present in Defendant's unit and that attempts have been made to eradicate this infestation. Further, the Court is convinced Defendant was informed as to the protocol to prepare his unit by proof of his

¹⁰ Plaintiff's exhibit #7.

¹¹ Plaintiff's exhibit #9.

¹² Plaintiff's exhibit #1. Lease Agreement between the Parties.

signature on the Pest Pro Pest Control Bed Bug Chemical Treatment Service Agreement dated December 18, 2017.¹³

At dispute is whether Plaintiff provided required demand notice and time to cure pursuant to the Delaware Landlord/Tenant Code before termination of Defendant's lease agreement occurred. And, has Defendant complied with preparation requirements, if not, should he have received an accommodation to assist with preparation?

Plaintiff's "Notice of Material Non-Compliance of the Lease Agreement You have seven (7) days for corrective action" dated January 11, 2018 states in pertinent part:

You must correct this violation...within seven (7) days. Failure to correct ...could result in termination of your lease agreement. In accordance with Delaware Code 5513 Landlord Remedies Relating to Breach of Rules and Covenants, (a) if a tenant breaches any rules or covenant which is material to the rental agreement the landlord shall notify the tenant of such breach, in writing and show [sic] allow at least seven (7) days after such notice of remedy of correction of breach.¹⁴

Pursuant to 25 *Del. C.* § 5513(a) a landlord shall notify tenant of a breach in writing, and "shall allow at least 7 days **after such notice** [emphasis added] for remedy or correction of the breach." Plaintiff's demand notice is

¹³ Plaintiff's exhibit #3.

¹⁴ Plaintiff's exhibit 7.

dated January 11, 2018, pursuant to 25 *Del. C.* § 5112 time would begin to toll on January 12, 2018.¹⁵ This is the first day after such notice was issued. Defendant's time to cure under this demand notice expired at 11:59 p.m. on January 18, 2018.

Plaintiff's termination and eviction proceedings are based upon Defendant's failing to cure the breach within the time demanded (7 days). Plaintiff conducted a final inspection of Defendant's unit on January 18, 2018 at 1:00 p.m.¹⁶ Plaintiff's inspection occurred before Defendant's time to cure the breach had expired. Based on Plaintiff's failure to provide Defendant seven (7) days to cure after notice, Plaintiff's termination of Defendant's lease agreement is premature, as such, Plaintiff is unable to prevail at trial as Plaintiff failed to comply with the requirements of § 5513(a).

Conclusion

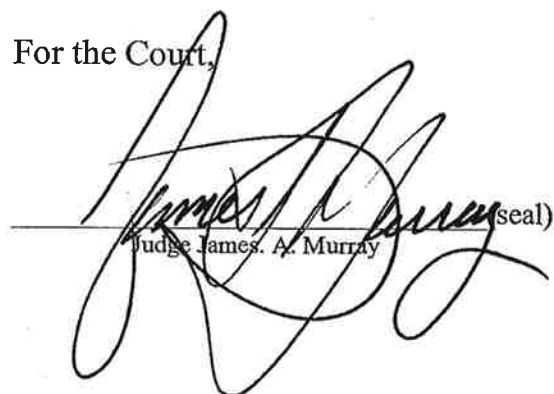
Based on the Court's fact finding inquiry, the Court's above-referenced conclusions of law and by a preponderance of evidence, the Court by unanimous verdict enters ***JUDGMENT for DEFENDANT.***

¹⁵ 25 *Del. C.* § 5112. **Time computation.** In computing any period of time prescribed or allowed by order of the Court or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included unless specifically included by statute, order or rule. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday. In which event the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation.

¹⁶ Plaintiff's exhibit #8.

IT IS SO ORDERED, this 29th day of June, 2018.

For the Court,

 (seal)
Judge James. A. Murray

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