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

SEAFORD PRESERVATION ASSOCIATES LLC	§	
JOHNNIE MAE WHITE	§	
ANTHONY WHITE	§	
Plaintiff/Counterclaim Defedant Below,	§	
Appellant	§	C.A. No. JP17-18-002282
	§	
VS	§	
	§	
	§	
JOHNNIE MAE WHITE		
ANTHONY WHITE		
Defendant/Counterclaim Plaintiffs Below,		
Appellee		

TRIAL DE NOVO

Submitted: July 30, 2018
Decided: September 6, 2018

APPEARANCES:
Plaintiff/Counterclaim Defendant represented by David C. Zerbato, Esq.
Defendants/ Counterclaim Plaintiffs represented by Olga K. Beskrone, Esq.

Alan Davis, Chief Magistrate
Richard Comly, Justice of the Peace
John Martin, Justice of the Peace

JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
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COURT NO. 17

CIVIL ACTION NO: JP17-18-002282

SEAFORD PRESERVATION VS JOHNNIE MAE WHITE ET AL

ORDER ON TRIAL DE NOVO

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

Procedural Posture

Plaintiff, Seaford Preservation Associates, LLC, operates Seaford Meadows Apartments and rents a federally subsidized unit to Defendants. Plaintiff brought this action on April 11, 2018 seeking possession of the unit and court costs, alleging that Defendant Johnnie Mae White had breached a material term of her lease by violating a ban on her entering the office and that her behavior in breaching the ban constituted criminal behavior. Defendants brought a counterclaim for the towing cost of a vehicle removed from the parking lot of Plaintiff during a paving project. A single judge heard the matter and found in favor of the defendants on both the plaintiff's claim and the counterclaim.

Plaintiff appealed timely and a panel consisting of Chief Magistrate Davis, Judge Comly and Judge Martin heard the matter de novo on July 30, 2018. This is the Court's decision after trial. For the reasons stated below, the unanimous Court finds in favor of the defendants on the original claim and a majority of the Court finds in favor of the counterclaim defendant on the counterclaim.

Facts

The facts of this case are largely agreed upon. Early in 2017 Johnnie Mae White came to the business office of the complex and spoke with the manager. While she was there, a vendor was either there or entered the room. Mrs. White took some offense that she was discussing matters concerning her tenancy with this third party in the room and began to give the manager a hard time about it. At one point she insinuated that the manager and this vendor must be in a relationship if she would not ask him to leave. The language that was used was something akin to, "You must be running with him if you won't ask him to leave." This was apparently an animated conversation, with Mrs. White pointing and waving her hands about with a bit of a raised voice. By all accounts she never cursed or uttered threatening language. She then left.

The manager was quite upset with this implied allegation of her cheating on her husband. She discussed the matter with her supervisor – the regional manager - and, on January 12, 2017, they delivered a letter to Mrs. White indicating that she was no longer allowed to enter the business office unless she made prior arrangements. The letter indicated that if she returned to the office they would consider it a material breach of her lease. Mrs. White could still pay her rent through a drop box and transact business with the company, but was essentially "banned" from the business office.

A couple of months after management sent the letter, they called a meeting with Mrs. White to discuss another matter unrelated to this litigation. The property manager and her regional manager attended this meeting. By all accounts this was not a contentious meeting. Mrs. White recalls asking about whether she was still "banned" from the office and that the regional manager said no. The management does not recall this issue

being discussed and stands by the letter. Management's position is that, if there had been a change in status, they would have notified Mrs. White in writing.

Despite the "ban," Mrs. White was in the office "numerous times" afterward, according to the testimony of the property manager, who only testified about details with regard to two such occasions. These same instances form the basis of this suit's claims. The first occurred after Mrs. White's car had been towed (the subject of the counterclaim) while she was out of town. The second happened when she disputed a charge for some drip pans that she had asked for in advance of an inspection, but felt that she had been given a used product. On both occasions management remembered her being upset and loud, but there was no indication of her threatening, cursing, or otherwise engaging in criminal behavior. There is no video evidence of these instances, nor is there written documentation of the incidents. After the second occurrence, management contacted their counsel and had a letter issued on January 8, 2018 terminating the lease.

The incident involving the towing of Mrs. White's car is pertinent to the counterclaim. The Court finds these facts relevant to that inquiry. The complex was having the parking area paved on a rotating basis. While the project had been in the works for some time, the contractor only gave management a short window of notice before the work would actually begin. The section of the complex where Mrs. White parked her vehicle happened to be the first area to be paved. Management provided notices of the imminent paving to affected residents; unfortunately, Mrs. White was out of town with a friend and was not aware of the notice. Management posted the notice on her door. Her husband, who has difficulty reading, took down the notice and put it on the counter for his wife to review when she returned. This was their normal routine to compensate for his reading issues. He did not notice that vehicles were being removed from the lot as he went about his business the day the work was to begin. Once Mrs. White's car was the last one in the lot, the management took and documented significant steps to try to reach Mrs. White or her husband. Those attempts were unsuccessful until after they approved the towing of the vehicle. Upon returning to Delaware the next day, Mrs. White went to the office to express her displeasure and inquire how she was going to be repaid for the towing bill.

Positions of the Parties

Plaintiff takes the position that Mrs. White was properly banned from the office, that she violated that ban and that they made it known that they would treat violation of the ban as a material breach of the lease. The Plaintiff further claims that the company should not be responsible for the cost of towing Mrs. White's car since they gave notice of the need to move the car and made further attempts to reach Mrs. White when it became clear they were going to have to remove her vehicle.

Defendants claim that the management cannot ban a tenant from the principal place where the business of the community is transacted. They further assert that the conduct of Mrs. White does not rise to the level of "good cause" necessary for the termination of the lease. Finally, they believe they should prevail on the counterclaim because they were not given adequate notice prior to the commencement of the paving work and that Mr. White was unable to read the notice that was given, rendering it ineffective.

Discussion

In the letter banning Mrs. White from the management office, Plaintiff relies upon the language contained in Paragraph 23 (10)d2 of the lease which states, in pertinent part, that the landlord may terminate the lease for repeated minor violations of the lease that disrupt the livability of the project and interfere with the management of the community. It further quotes community Rule 28 that says the tenant is to cooperate with management in landlord-tenant matters and not to interfere in the management of the community. The rule bars "improper behavior such as abusive and threatening language or actions."

The letter indicates that the behavior of Mrs. White was "rude and disrespectful." Mrs. White admits that her choice of words was wrong. But nothing in the testimony of the community management or Mrs. White gives indication that her behavior that day in the management office was "abusive or threatening." In fact, the Court specifically asked the management witness if she felt threatened or if Mrs. White acted in a manner that made her think she was at risk. The answer was no. Mrs. White claims she does not curse and this was uncontested by the plaintiff. There was no testimony that any action Mrs. White took that day or anything she said, no matter how rude, negatively affected the ability of the personnel to manage the property or limited the livability of the community.

The Court finds that Mrs. White was, as the plaintiff's letter notes, "rude and disrespectful" – especially in making an inference that the management representative was engaged in an improper relationship with the vendor. The management representative rightfully took offense at this comment and was embarrassed, but she was never threatened and she was able to continue to do her job. Being offended and embarrassed are vastly different than the standards these rules and lease provisions seem to be designed to protect against.

The rules and the lease are intended to protect the community from injurious behavior; they do not say that tenants must be absolute model citizens at all times. Tenants in communities are human beings subject to becoming upset and wishing to express their displeasure at a particular situation. Just because they live in a rent subsidized community does not mean they give up that very human condition. They cannot breach the peace, but merely being upset does not rise to that standard. In this case, it is clear this was not a breach of the peace, as the management representative's first call was to her supervisor, not to the police.

The Court finds, unanimously, that the office had no grounds upon which to bar Mrs. White from the management office initially. As such, her repeated forays into the office to deal with landlord-tenant matters were not material breaches of the lease.

As to the Counterclaim, the majority of the Court finds that, though the notice given in advance of the paving was short, it was evidently effective for everyone except the Defendants. Plaintiff was not on notice that Mr. White had difficulty reading. Management was aware that the notice was posted on the door of the defendants' unit and that the notice had been removed at some point, leading to the logical conclusion that the tenant had taken it off. They were also aware that Mr. Smith was in and about the community during this period. Finally, the management made numerous and significant attempts to reach Mrs. Smith prior to towing the vehicle when it became evident that her car was the only one remaining and their prior notice had been ineffective. For that reason, the majority of the Court rules in favor of the Counterclaim Defendant on the counterclaim.

Conclusion

For the reasons stated above, the Court rules, unanimously, in favor of the Defendants on the question of possession. The majority of the Court finds in favor of the counterclaim defendants on the counterclaim. The parties shall bear their own costs.

IT IS SO ORDERED 06th day of September, 2018

/S/Alan Davis
Chief Magistrate

JUSTICE OF THE PEACE COURT
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).