

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

BETHEL VILLAS 2009 ASSOCIATES LP
Plaintiff Below,
Appellant

VS

RAYIANA BERRY-MILLS
Defendant Below,
Appellee

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C.A. No. JP13-18-011684

TRIAL DE NOVO

Submitted: February 6, 2019

Decided: March 13, 2019

APPEARANCES:

Plaintiff, represented by David C. Zerbato, Esq.
Defendant, *Pro Se*

Sean McCormick, Deputy Chief Magistrate
Peter Burcat, Justice of the Peace
Christopher Portante, 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: JP13-18-011684

BETHEL VILLAS ASSOCIATES VS RAYIANA BERRY MILLS

ORDER ON TRIAL DE NOVO

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

Procedural Background

The Plaintiff, Landlord Bethel Villas 2009 Associates, LP (“Bethel Villas 2009”), represented by David C. Zerbato, Esq., filed Civil Action No. JP13-18-011684, on October 5, 2018, in Justice of the Peace Court 13. Bethel Villas 2009 sought possession of a rental property occupied by Defendant herein, Rayiana Berry-Mills (“Ms. Berry-Mills”), based upon alleged rules violations by Ms. Berry-Mills.

A trial, before a single Judge, was conducted below on December 4, 2018. On December 11, 2018, an Order was signed finding in favor of Defendant Berry-Mills, and Ordering possession to remain with Ms. Berry-Mills. On December 12, 2018, Bethel Villas 2009, by and through Mr. Zerbato, filed an appeal for a *Trial de Novo* (“TDN”). On December 12, 2018, the request for a TDN was granted.

On December 20, 2018, the Court scheduled a TDN for January 14, 2019. On January 3, 2019, Mr. Zerbato requested a continuance due to unavailability of an indispensable witness. As possession remained with Ms. Berry-Mills, it was determined there would not be any prejudice to Ms. Berry-Mills from granting the request for a continuance. The TDN was re-scheduled for February 6, 2019, before a three-judge panel consisting of Deputy Chief Magistrate Sean McCormick, Justice of the Peace Peter Burcat, and Justice of the Peace Christopher Portante. On February 6, 2019, Plaintiff/Appellant Bethel Villas 2009 appeared, represented by David C. Zerbato, Esq., and Defendant/Appellee Ms. Berry-Mills appeared *Pro Se*.

Facts

Plaintiff/Appellant is the Landlord for a rental property commonly known as 403 E. 4th Street, Apt. C2, Wilmington, Delaware 19801. Defendant/Appellee is the tenant for the said rental property. The Parties entered into a signed subsidized Lease Agreement for the rental property. The term of the Lease was July 20, 2018 through July 19, 2019. Included with the Lease were “House Rules and Regulations” and a “Bethel Villa Apartments Lease Addendum for Drug-Free Housing.” Both additional documents were signed on behalf of Bethel Villas 2009, and signed by Ms. Berry-Mills. The Lease Agreement included the following language: “The Tenant understands that this monthly rent is less than the market (unsubsidized) rent due on this unit. This lower rent is available either because the mortgage on this project is subsidized by the Department of Housing and Urban Development (HUD) and/or because HUD makes monthly payments to the Landlord on behalf of the Tenant.” Plaintiff/Appellant has contended it is important to note HUD’s involvement in the lease, as the Court should be applying

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Federal standards provided by the *Code of Federal Regulations* when considering the terms and conditions of the Lease Agreement herein.

Bethel Villas 2009 has alleged that Ms. Berry-Mills' conduct caused, or threaten to cause, irreparable harm to other tenants and/or the community and/or threatened the "health, safety or right of peaceful enjoyment of the premises by other residents." Bethel Villas 2009 contended that on or about September 2, 2018, Ms. Berry-Mills' sister, and other Ms. Berry-Mills guests, engaged in a physical and verbal altercation with a resident of Bethel Villas 2009. Bethel Villas 2009 further contended the altercation was captured on video and the Wilmington Police responded to the rental complex. Based upon the contentions of the Landlord of a breach of Tenant's Rental Agreement, the Rules and Regulations, and the *Delaware Landlord Tenant Code*, on October 2, 2018, the Landlord (Bethel Villas 2009) sent Ms. Berry-Mills a Notice to vacate the rental property and return possession of the rental property to the Landlord. Ms. Berry-Mills did not vacate the rental property nor return possession of the rental property to the Landlord. As such, Plaintiff/Appellant filed their Action for Possession.

At the TDN on February 6, 2019, both Parties made opening statements. Thereafter, Plaintiff/Appellant called Dolores Martin as their first witness. Ms. Martin testified she was the property manager for the Bethel Villas 2009 rental complex. Her responsibilities included lease signings, rent collection, and enforcing the terms and conditions of the leases for the property. Ms. Martin testified she was familiar with Defendant/Appellee Ms. Berry-Mills. Plaintiff/Appellant Bethel Villas 2009 had a document marked as Plaintiff/Appellant Bethel Villas 2009's "Exhibit P-1," identified as the Lease Agreement signed by Ms. Berry-Mills. P-1 was introduced into evidence without objection. Ms. Martin testified Ms. Berry-Mills signed the lease on July 20, 2018, for a lease term through July 19, 2019, and that Ms. Berry-Mills did not have any questions when the lease was signed. Ms. Martin further testified that on September 3, 2018, she learned about a fight that had occurred on the property on September 2, 2018. Ms. Martin reviewed videos from September 2, 2018 from cameras around the rental complex, and communicated with her regional manager regarding the fight and the videos. Plaintiff/Appellant Bethel Villas 2009 had a document marked as Plaintiff/Appellant Bethel Villas 2009's "Exhibit P-2," identified as a "Notice of Immediate Termination" dated October 2, 2018. Ms. Martin testified she received P-2 from Plaintiff/Appellant Bethel Villas 2009's attorney, and thereafter mailed the letter to Ms. Berry-Mills. In addition, Ms. Martin testified she posted a copy of P-2 on Ms. Berry-Mills' apartment door. Ms. Martin stated Ms. Berry-Mills did not vacate the rental property as instructed. P-2 was introduced into evidence without objection. Plaintiff/Appellant Bethel Villas 2009 had a thumb drive marked as Plaintiff/Appellant Bethel Villas 2009's "Exhibit P-3," identified as copies of the videos of the inside and outside of buildings in the rental complex, including the building where Ms. Berry-Mills resided. P-3 was introduced into evidence without objection. The TDN panel and Parties watched the video. Ms. Martin concluded her testimony by stating the police were called to the scene on September 2, 2018, but no charges were filed against any individuals.

On cross-examination, Ms. Martin stated the fight on September 2, 2018 appeared to be a mutual fight amongst the participants.

Plaintiff/Appellant Bethel Villas 2009's next witness was Cherrell Clark. Ms. Clark testified she lived in the same building as Ms. Berry-Mills. Ms. Clark stated on September 2, 2018, she was walking with her friends back to her apartment building. As Ms. Berry-Mills' sister and friends were coming out of the apartment building, Ms. Berry-Mills' sister made a statement to Ms. Clark. Ms. Clark testified she "went up to Ms. Berry-Mills' sister and asked why she was making comments." At that point, a guy named "Bruce" came up to Ms. Clark. Ms. Clark stated she told Bruce to mind his own business, but rather than back off, Bruce struck Ms. Clark in the face and everyone started fighting. Ms. Clark

concluded her testimony by stating she went back to her apartment and Bruce and other individuals were banging and kicking on Ms. Clark's door.

On cross-examination, Ms. Clark admitted there were on-going problems with herself and Ms. Berry-Mills.

Plaintiff rested.

Defendant/Appellee Ms. Berry-Mills did not make any motions, and called herself as her first witness. Ms. Berry-Mills testified she was not present outside of her apartment and therefore did not have control over her sister or Ms. Berry-Mills' guests outside her apartment building. Ms. Berry-Mills stated the video presented by Plaintiff/Appellant Bethel Villas 2009, P-3, did not show her sister attacking Ms. Clark. When Ms. Berry-Mills became aware there was a disturbance outside of her building, she tried to separate the participants. Ms. Berry-Mills further testified she called her mother to come to the scene as her mother was a friend of Ms. Clark's, and Ms. Berry-Mills was hopeful her mother could calm down Ms. Clark. Ms. Berry-Mills denied she had any conflicts with Ms. Clark, and she noted there had not been any other complaints against Ms. Berry-Mills.

On cross-examination, Ms. Berry-Mills testified Bruce was her sister's friend and that he was in fact at her apartment on September 2, 2018. Ms. Berry-Mills stated her sister and friends had plans to go to the *East Side Day* events located near her apartment. She further stated she was aware Ms. Clark and Ms. Clark's friends were returning from the *East Side Day* events that day. Ms. Berry-Mills re-confirmed that she had no control over her friends after they left her apartment. Ms. Berry-Mills stated that when she became aware of the altercation outside, she did everything she could to break up the altercation. Ms. Berry-Mills denied Bruce and others were kicking Ms. Clark's door or were threatening Ms. Clark. On re-direct, Ms. Berry-Mills noted there was no camera view of Ms. Clark's door. The Court noted there were no audio recordings associated with P-3. Ms. Berry-Mills again stated she had no other problems or complaints at the rental property.

Ms. Berry-Mills' next witness was her mother, Bridget Waters. Ms. Waters confirmed she had known Ms. Clark for years as they had grown up together. Upon her arrival at Ms. Berry-Mills' rental property, she went downstairs and spoke with Ms. Clark and asked her why she was causing problems. Ms. Waters described Ms. Clark as "hooping and hollering," and that she made a derogatory comment to Ms. Waters. Ms. Waters stated Ms. Clark and Ms. Clark's friends jumped on Ms. Berry-Mills' sister and assaulted Ms. Berry-Mills' friends. On cross-examination, Ms. Waters admitted she was not present when the altercation started, but rather was at the *East Side Day* events before being called by Ms. Berry-Mills to come to Ms. Berry-Mills' apartment.

Defendant/Appellee rested.

Upon inquiry from the Court, Plaintiff/Appellant confirmed a letter regarding the incident on September 2, 2018 had been sent to Ms. Clark, but the parties had reached an undisclosed stipulated agreement.

Mr. Zerbato made a closing statement. Mr. Zerbato argued there was no testimony or witnesses to support Ms. Berry-Mills' contention that Ms. Clark was the aggressor. Mr. Zerbato stated Ms. Berry-Mills violated the Rules and Regulations for the rental community and Plaintiff/Appellant Bethel Villas 2009 properly advised Ms. Berry-Mills that her lease was terminated, and she should have vacated the rental property. Mr. Zerbato argued a strict liability standard was applicable in this matter, and as such, possession of the rental property should be returned to the Landlord.

Ms. Berry-Mills made a closing statement. Ms. Berry-Mills argued she had no control over what happened outside of her apartment building, and when she became aware of the altercation, she did everything she could to stop the fight and separate the individuals involved in the dispute.

Findings

A plaintiff has the burden of proving their case by a preponderance of the evidence. “Preponderance of the Evidence is a standard of proof that is met when a party's evidence indicates that the fact ‘is more likely than not’ what the party alleges it to be. Evidence which, as a whole, shows the fact to be proved is more probable than not. 9 Del. Admin. Code 303-5.0.

Plaintiff/Appellant Bethel Villas 2009, introduced into evidence, without objection, as P-1, a Lease Agreement signed on behalf of Plaintiff/Appellant and signed by Defendant/Appellee. Therefore, there is no dispute that the Parties agreed to, and entered into, the said Lease Agreement commencing July 20, 2018 and continuing through July 19, 2019. The *Landlord-Tenant Code* regulates and sets forth the legal rights, remedies and obligations of all of the parties to a residential rental agreement within the State of Delaware. See 25 Del.C. §5101, et seq. The case at bar is a residential Landlord-Tenant action. As per the Lease Agreement, and the included “House Rules and Regulations” and “Bethel Villa Apartments Lease Addendum for Drug-Free Housing,” a tenant was obligated to not engage in, or permit, unlawful activities in the rental property or common areas of the rental complex. In addition, the tenant was not to make or permit noises or acts that would disturb the quiet enjoyment of other tenants. Plaintiff/Appellant Bethel Villas 2009 has contended Defendant/Appellee Rayiana Berry-Mills had violated 25 Del.C. §5511, which states in pertinent part:

Rules and regulations; tenant obligations.

(a) The tenant and all others in the premises with the consent of the tenant shall obey all obligations or restrictions, whether denominated by the landlord as "rules," "regulations," "restrictions" or otherwise, concerning the tenant's use, occupation and maintenance of the rental unit, appurtenances thereto and the property of which the rental unit is a part, if:

(1) Such obligations and restrictions promote the health, safety, quiet, private enjoyment or welfare, peace and order of the tenants; promote the preservation of the landlord's property from abuse; and promote the fair distribution of services and facilities provided for all tenants generally; and

(2) Such obligations and restrictions are brought to the attention of the tenant at the time of the tenant's entry into the agreement to occupy the rental unit; and

(3) Such obligations and restrictions are reasonably related to the purpose for which they are promulgated; and

(4) Such obligations and restrictions apply to all tenants of the property in a fair manner; and

(5) Such obligations and restrictions are sufficiently explicit in the prohibition, direction or limitation of the tenant's conduct to fairly inform tenant of what tenant must or must not do to comply; and

(6) Such obligations or restrictions, if not made known to the tenant at the commencement of tenancy, are brought to the attention of the tenant and if said

obligations work a substantial modifications of the lease agreement they have been consented to in writing by tenant.

(b) All tenants and other guests of the premises with the consent of tenant shall conduct themselves in a manner that does not unreasonably interfere with the peaceful enjoyment of the other tenants.

Emphasis added.

A Landlord's remedy for a breach of rules and covenants is addressed in *25 Del.C. §5513(b)*, which states in pertinent part: "When a breach by a tenant causes or threatens to cause irreparable harm to any person or property . . . the landlord may . . . immediately terminate the rental agreement upon notice to the tenant and bring an action for summary possession; or do both.

Plaintiff/Appellant Bethel Villas 2009 has contended Defendant/Appellee was responsible on September 2, 2018 for the conduct of her guests, and specifically her sister, who engaged in a physical and verbal fight with another resident, Ms. Cherrell Clark. That conduct was deemed by Bethel Villas 2009 to be disruptive to the health, safety and rights of other tenants to peaceful enjoyment of their premises. It must be noted that Plaintiff/Appellant did not produce any testimony or evidence that Defendant/Appellee personally participated in the altercation on September 2, 2018.

Defendant/Appellee Ms. Berry-Mills has contended she had no control over her sister, and her other guests, once they left her apartment building. She further contended the altercation was started by Ms. Clark and in fact, Ms. Berry-Mills took immediate corrective action upon becoming aware of the altercation outside, and removed, from her apartment building.

The Court finds that Bethel Villas 2009 cannot satisfy their burden of proof by a preponderance of the evidence that Ms. Berry-Mills was personally in violation of the lease terms, including the Rules and Regulations for the rental property. There was no dispute that an altercation occurred at the apartment complex, and the altercation involved Ms. Berry-Mills' sister and other guests of Ms. Berry-Mills. There is no dispute that the altercation occurred outside of Ms. Berry-Mills' apartment building. However, there was disputed testimony presented regarding kicking and yelling at Ms. Cherrell Clark's apartment door located two (2) floors below Ms. Berry-Mills' apartment. Unfortunately, there was no security camera positioned to view Ms. Clark's apartment door. If Ms. Clark were to be believed, the actions of Ms. Berry-Mills' guests inside of the apartment building, while Ms. Berry-Mills was present and in the stairwell, could be viewed as violating the right of quiet enjoyment of tenants in the building. However, there was conflicting testimony presented which questioned the veracity of the testimony of Ms. Clark. Therefore, Plaintiff/Appellant has not been able to prove by a preponderance of the evidence that there was in fact kicking and yelling at Ms. Clark's door. As for the altercation outside of Ms. Berry-Mills' apartment building, there has not been evidence produced to prove that Ms. Berry-Mills could have reasonably foreseen that there would be a verbal and physical altercation between Ms. Clark and her guests and the guests of Ms. Berry-Mills. To the contrary, Ms. Clark stated she confronted Ms. Berry-Mills' guests when Ms. Clark overheard a statement to which she took exception. Upon learning of the altercation outside her apartment building, Ms. Berry-Mills tried to intervene and calm the situation. In addition, recognizing Ms. Clark was involved, Ms. Berry-Mills immediately called her mother, Ms. Bridget Waters, a friend of Ms. Clark, to come to the scene to assuage the situation.

Plaintiff/Appellant has argued that pursuant to the *Code of Federal Regulations*, Ms. Berry-Mills would be strictly liable for the actions of her guests. Mr. Zerbato presented to the TDN panel the case of *Carvel Gardens Associates LLC v. Kesheena Greene*, C.A. No. JP17-16-006834 (Del. J.P., Decided July

28, 2017). In the *Carvel Gardens Associates LLC v. Kesheena Greene* case, Chief Magistrate Alan Davis, writing for the *Trial de Novo* panel, confirmed that it “is well settled that federal law preempts state law with regard to the standard by which a person may be immediately evicted from federally subsidized housing without necessity of notice and an opportunity to cure.” (citing *Milwaukee City Hous. Auth. V. Cobb*, 860 N.W. 2d 267, 272 (Wis. 2015)). C.M. Davis confirmed that it is the responsibility of a plaintiff to prove at trial that the actions of the defendant/tenant knowingly violated a provision of the lease agreement and/or rental community Rules and Regulations, thereby constituting “a threat to the health, safety and welfare of the residents.” *Carvel Gardens Associates LLC v. Kesheena Greene*, at Page 3. C.M. Davis went on to cite the case of *Howell v. Justice of the Peace Court 16*, (WL 2319147 2007). In that case, the Delaware Superior Court, when considering provisions in the lease agreement at issue, found that the Justice of the Peace Court must make specific findings that: “(1) the tenant, a member of the tenant’s household, a guest or any other person **under the tenant’s control**; (2) engaged in criminal activity; (3) that threatens the health, safety or right to peaceful enjoyment of the Management’s public housing premises by other residents or employees of the Management.” *Id.* At Page 7 (emphasis added). The Plaintiff herein has the burden of proving Defendant/Tenant had control of her guests. As stated above, Plaintiff has not met this burden. The mere showing that Ms. Berry-Mills’ guests may have engaged in what may be deemed as criminal activity is not sufficient. A moving party must show more than a mere “documentation of criminal activity.” *D.C. Housing Authority v. Whitfield*, 2004 WL 1789912 (D.C. Super). Plaintiff/Appellant has argued that they are not required to establish a showing of criminal activity by guests of Defendant/Appellee, as the standard to be employed is solely strict liability. Plaintiff/Appellant has argued there is no dispute that a number of individuals were Ms. Berry-Mills’ invited guests, and those individuals engaged in criminal activity on the premises of the rental community. This Panel does not agree with Plaintiff/Appellant’s interpretation of the standards to be employed, and strict liability is not applicable. As cited by C.M. Davis, in the case of *Powell v. Housing Authority of the City of Pittsburg*, the Pennsylvania Supreme Court held that if the United States Congress had intended a statute to impose strict liability for eviction standards, “it would have done so. By not imposing strict liability language, Congress intended this standard require some demonstrated causal connection between the crime and the threat to others.” *Carvel Gardens Associates LLC v. Kesheena Greene*, at Pages 4-5, citing *Powell v. Housing Authority of the City of Pittsburg*, 812 A.2d 1201 (Pa. 2002).

Conclusion

For the foregoing reasons, the Court finds in favor of Defendant/Appellee and against Plaintiff/Appellant, and Defendant/Appellee shall remain in possession of the rental property pursuant to the terms and conditions of the signed Lease Agreement.

IT IS SO ORDERED 13th day of March, 2019

/s/ Sean P. McCormick (SEAL)
Deputy Chief Magistrate,
On behalf of the 3-Judge Panel

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).