

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

FAIRVILLE MANAGEMENT COMPANY, LLC	§	
AS MANAGING AGENT FOR	§	
CYNWYD VENTURES, LP	§	
Plaintiff Below,	§	
Appellee	§	
	§	
VS	§	C.A. No. JP13-18-010936
	§	
DORI WILLIAMS	§	
Defendant Below,	§	
Appellant	§	

TRIAL DE NOVO

Submitted: February 27, 2019

Decided: March 26, 2019

APPEARANCES:

Plaintiff/Appellee represented by David C. Zerbato, Esq., Morton, Valihura, & Zerbato, LLC

Defendant/Appellant represented by Dmitry Pilipis, Esq., Community Legal Aid Society, Inc.

THE PANEL:

Sean McCormick, Deputy Chief Magistrate

Beatrice Freel, Justice of the Peace

Christopher Portante, Justice of the Peace

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CIVIL ACTION NO: JP13-18-010936

**FAIRVILLE MANAGEMENT COMPANY, LLC
AS MANAGING AGENT FOR
CYNWYD VENTURES, LP
VS
DORI WILLIAMS**

ORDER ON TRIAL DE NOVO

Procedural Background

Plaintiff Fairville Management, LLC as Managing Agent for Cynwyd Ventures, LP (“Plaintiff”) represented by David C. Zerbato, Esq., filed Civil Action No. JP13-18-010936 on September 18, 2018 in Justice of the Peace Court 13. In this matter, Plaintiff sought summary possession of the rental unit located in the Cynwyd Club Apartments (“Cynwyd Club”), managed by Plaintiff, at 1312-03 Cynwyd Club Drive, Wilmington, DE 19808 (“the Unit”) claiming that Defendant Dori Williams (“Defendant”) materially breached her Rental Agreement with Plaintiff.

The trial before a single Justice of the Peace on November 19, 2018 resulted in a judgment in favor of Plaintiff, and against Defendant, for possession and court costs. Based on the evidence and testimony offered, Justice of the Peace James Hanby, Sr. found that Plaintiff had proven by a preponderance of the evidence that Defendant had indeed committed a rules violation for allowing an unauthorized individual, who is also a registered sex offender, to live in the Unit. Defendant, by and through her counsel, Dmitry Pilipis, Esq., subsequently filed an appeal which was granted by this Court and which stayed any eviction action against Defendant.

Prior to the scheduling of the trial de novo, Plaintiff filed a Motion to conduct a deposition of a witness, Vincent Giordano, due to unavailability, as defined by D.R.E. 804(a)(4) and pursuant to Justice of the Peace Court Civil Rule 27; Plaintiff argued that Mr. Giordano’s health prevented him from appearing in court. This Motion was opposed by Defendant and denied by the Court. The Court did, however, permit Mr. Giordano to testify by telephone.

A trial de novo was scheduled for February 27, 2019 before a three-judge panel consisting of Deputy Chief Magistrate Sean McCormick, Justice of the Peace Beatrice Freely, and Justice of the Peace Christopher Portante. Plaintiff/Appellee appeared, represented by David C. Zerbato, Esq. Defendant/Appellant appeared, represented by Dmitry Pilipis, Esq. and Stefanie Ramirez (permission given under Supreme Court Rule 56). The Court heard testimony from both parties, as well as additional witnesses, and reserved its decision on the matter.

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Factual Background

Defendant has resided at Cynwyd Club for approximately 16 years, but entered into her current Rental Agreement (“Agreement”) with Plaintiff, a federally-subsidized housing provider, on October 4, 2013 for a term to end on September 30, 2014 with rent of \$460.00 per month. Her tenancy has been on a month-to-month basis since that time. In the Agreement, the only permitted occupant of the Unit is Defendant.

On September 4, 2018, Plaintiff sent Ms. Williams an immediate termination notice (“the Notice”) for material breaches of the Agreement, “the rules and regulations”, and Delaware Landlord Tenant Code. The basis for the claim was explained as follows:

It has recently come to your landlord’s attention that you have been permitting an unauthorized occupant, Timothy Brown, who is a registered sex offender and fugitive, to reside in your unit. On August 23, 2018, an arrest warrant was executed at your residence and Mr. Brown was taken into custody by the New Castle County police. Officers informed management that Mr. Brown informed them that he had been residing in your rental unit for some time and had provided your address as his permanent residence. *Notice at *1.*

The Notice was sent by First Class Mail with Certificate of Mailing on September 4, 2018 and also hand-delivered, with receipt acknowledged by Defendant on the same date. The Notice stated that Defendant would be required to vacate the premises by the following day, September 5, 2018, or she would be considered a holdover tenant.

Specifically cited in the Notice were breaches of Paragraphs 5, 5(e), and 21 of the Agreement. In addition, the Notice cites breaches of terms listed on Page 13-1 of the Resident Handbook, a constituent part of the Agreement.

Timothy Brown, who is Tenant’s nephew, is a Tier 2 (Moderate Risk) Sex Offender and has been since August 2000. Detective Jerel W. Morton with the Delaware State Police Sex Offenders Apprehension and Registration Unit stated that, on August 23, 2018, following the conducting of surveillance on the Unit several days earlier, he executed an arrest warrant on Mr. Brown for a sex offender reporting violation. This was the second time Det. Morton had arrested Mr. Brown at the Unit, the first time being in 2015.

On August 23, 2018, prior to being arraigned by Justice of the Peace Court 2 following his arrest, Mr. Brown filled out the standard “Defendant History” Form (CJ703). On that form Mr. Brown indicated that his address was “1312 Cynwyd Club Drive” Wilmington, DE 19808”, the same address as the Unit (minus the actual apartment number—Apt. 3). He also wrote that he had been at the listed address for three (3) months.¹ Vincent Giordano, another resident of Cynwyd Club, testified that he had

¹ On the same form, Mr. Brown listed his “Nearest Relative” as his mother, Helen Slater, giving her address as 13112 Cynwyd Club Drive, which the Court takes to be “1312”, the Unit’s address without the specific unit number. Ms. Slater is not a tenant or authorized occupant of the Unit. Defendant stated that her sister (Helen Slater) and brother-in-law (Fred Slater) visited her every day to care for her but averred that they never stayed overnight, instead returning to their home in Elkton, Md. every evening. Defendant’s credibility is, thus, damaged by the contradicting statement made in Mr. Brown’s own hand that his mother resides in the Unit, a statement someone in his position is unlikely to make if untrue, as he

seen Mr. Brown at Defendant's residence and on the Cynwyd Club premises off and on for the past 2-2 ½ years. Mr. Giordano also testified that he often saw Mr. Brown exiting the Unit as early as 7 a.m. in the morning, making an assumption that this meant Mr. Brown was staying overnight at the Unit. When he discovered that Mr. Brown was a Registered Sex Offender by searching for his name online, Mr. Giordano reported this information to Plaintiff.

Nicole Draper, Assistant Manager at Cynwyd Club since May 1, 2018, testified that she believed it was reported to her by Mr. Giordano around July 2018 that Mr. Brown was living in the Unit, however there had been information in Defendant's tenant file about Mr. Brown since at least May 2018. This information included Mr. Brown's status as a Registered Sex Offender and a photo of him. Mr. Giordano testified that he told a couple of employees in the Cynwyd Club office approximately two years prior that Mr. Brown was a registered sex offender and living in Defendant's Unit.

No testimony or documentary evidence was proffered to suggest that Plaintiff had ever informed Defendant that Mr. Brown's presence at Cynwyd Club was of concern or that Plaintiff was seeking termination of the Agreement for related rules violations prior to the issuance of the Notice. It was firmly established that Plaintiff never sent Defendant a 7-day notice regarding a breach of the Agreement. In addition, Ms. Draper admitted that Plaintiff does ban individuals from its premises for being a "nuisance" but that there was no indication in Defendant's tenant file that Mr. Brown had ever been banned from the property. There was, in fact, no indication that *any* remedies other than immediate termination were ever even considered by Plaintiff.

Plaintiff did not give any explanation as to why no other avenues were pursued prior to the issuance of the Notice, except for Ms. Draper's statement that Plaintiff did not ban Mr. Brown due to an (unspecified) court action. The Court gathers from the context of Ms. Draper's statement, however, that she was alluding to the instant case against Defendant which, naturally, did not get filed until after the Notice was sent.

Defendant's counsel argued that Defendant did not permit Mr. Brown to stay in the Unit, and that immediate termination was not even the appropriate remedy as there was no threat of, or actual, irreparable harm in this situation. The main issue with Defendant's argument is Defendant's own testimony. In fact, in his closing argument, Defendant's counsel admitted that he was "a little bit confused by Ms. Williams' testimony [himself]"; the Court agrees. It found many inconsistencies in Ms. Williams' own statements, and her claim of ignorance of certain facts seemed, at times, to be unbelievable and convenient. These observations significantly affected her credibility as a witness in the eyes of the Court.

Defendant first claimed that Mr. Brown visited from time to time to shower and change clothes, but that he never stayed overnight. Shortly thereafter, she claimed that August 28, 2018—the day of Mr. Brown's second arrest at Cynwyd Club—was the first time Mr. Brown had ever been in her Unit, period. Defendant was now not only averring that Mr. Brown had never stayed overnight, but that he had never even been present in the Unit previously when, in fact, there is more than sufficient evidence

presumably would have nothing to gain, whereas Defendant would have every reason to deny the Slaters' residence at the Unit as she knows it would be in direct violation of her Agreement with Plaintiff.

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to demonstrate that he had, indeed, been in her apartment numerous times over a period of a couple of years and that he, more likely than not, also resided there for substantial periods of time.

In another instance, Ms. Williams stated that she had never received a copy of the Resident Handbook and then admitted she had and also that she had, indeed, read some of it. She acknowledged recalling some information regarding the reporting of guests. Ms. Williams claimed that she has never had an overnight guest in 16 years (*see supra* n.1) and that she did not know that Mr. Brown was a registered sex offender, but did know that he was a “pedophile” who had served time in prison. Despite questions of Defendant’s credibility, the burden of proof remains with Plaintiff.

Discussion

Upon signing the Agreement with Plaintiff, Defendant was also acknowledging that she received all 10 attachments to the Agreement, among which was the Resident Handbook. *Lease Agreement* at *8. The Resident Handbook states that: “[o]vernight guests are welcome in your home as long as it is not an ongoing occurrence. No guest may stay more than 14 days (i.e. two weeks) in a 365 day [sic] period...” *Resident Handbook & House Rules* at 12.

Plaintiff bases their case for summary possession on a claim of irreparable harm, as provided for in 25 *Del. C.* § 5513(b), which states in pertinent part that:

[w]hen a breach by a tenant causes or threatens to cause irreparable harm to any person or property, or the tenant is convicted of a class A misdemeanor or felony during the term of the tenancy which caused or threatened to cause irreparable harm to any person or property, the landlord may, without notice...immediately terminate the rental agreement upon notice to the tenant and bring an action for summary possession... 25 *Del. C.* § 5513(b).

Plaintiff’s own actions in relation to the timing of the termination notice do not support their contention that Mr. Brown’s residence in the Unit constituted irreparable harm. In *Wilmington Housing Authority v Kenneth Thompkins*, Del. J.P., C.A. No. JP13-97-1743, the Court ruled that plaintiff’s actions did not support a claim for irreparable harm as the plaintiff had sent the defendant notice of immediate termination three (3) weeks after an alleged incident which formed the basis for their claim of irreparable harm and permitted the defendant to remain in the unit for a period in excess of one month following the sending of the notice. In *Carrington Way v Fleming*, Del. J.P., C.A. No. JP13-09-008743, three (3) *months* elapsed between the incident and the issuance of the termination notice. The Court again found that the time lapse did not support any claim of immediacy or irreparable harm and left the tenant in possession.² The instant case presents a similar demonstration of lack of immediacy with no testimony given to support a legitimate reason for the delay in action.

² Also, compare *Cheltenham Village v. Isha Wright*, Del. J.P., C.A. No. JP13-13-013873 (possession remained with tenant because, despite there being a police investigation in the matter, no testimony was given to support the extent of the delay), with *Bethel Villas v. Daynette Spencer*, Del. J.P., C.A. No. JP13-14-007732 (possession awarded to landlord because delay of notice was due to an extensive police investigation).

The Court opines here that a landlord cannot legitimately, on an immediate basis, terminate a tenant's lease agreement for irreparable harm when the landlord has been aware of the issue on which they base their termination decision for a substantial period of time during which they were free to act (e.g. they did not need to await guidance from law enforcement) and did not do so. In the instant matter, Plaintiff was aware *at least* three (3) months before sending and hand-delivering the Notice to Defendant that Mr. Brown had been residing at the Unit for a period exceeding what would be permissible for a guest under the Agreement.

If other unauthorized individuals have been banned from Cynwyd Club in the past for simply being a "nuisance", as Ms. Draper testified, surely a non-resident sex offender who has a history of failing to report his address to the State of Delaware authorities—and was already once arrested at Cynwyd Club—would be a prime candidate for a property ban, at a minimum.

Immediate termination is, of course, not the only option for a landlord seeking possession based on a breach of lease terms. The Code section immediately preceding the language regarding irreparable harm addresses rules violations in general and how they may be addressed: "If the tenant breaches any rule or covenant which is material to the rental agreement, the landlord shall notify the tenant of such breach in writing, and shall allow at least 7 days after such notice for remedy or correction of the breach..." 25 Del. C. § 5513(a).

Section 5513(a) of Title 25 further specifies that "[s]uch notice shall substantially specify the rule allegedly breached and advise the tenant that, if the violation continues after 7 days, the landlord may terminate the rental agreement and bring an action for summary possession." *Id.* at § 5513(a)(1). The Code then provides for immediate termination in situations where an initial breach does not cause or threaten to cause irreparable harm *if* a situation involving a "substantially similar breach [occurs] within 1 year" (emphasis added). In such a situation, the landlord "may rely upon such notice as grounds for initiating an action for summary possession without further notice". *Ibid.*

Plaintiff never sent Defendant a 7-day notice, as required by 25 Del. C. § 5513(a). Such an action, if pursued in accordance with statute and rule, would likely have a different result here, as the Court believes it more likely than not that Defendant breached terms of the Agreement by having an unauthorized individual living with her. Plaintiff did not, however, afford Defendant the opportunity to cure the issue through § 5513(a), instead choosing to seek immediate termination under § 5513(b) with a claim of irreparable harm.

Conclusion

Based on the testimony given and documentary evidence presented, the Court opines that Mr. Brown was indeed an unauthorized occupant of the Unit. If, however, Plaintiff indeed was truly concerned about the potential for irreparable harm posed by the regular presence of a registered sex offender as an unauthorized occupant of a unit on their property, they certainly failed to act in a swift enough manner to adequately protect those they believe could be affected. Therefore, Plaintiff's argument in favor of immediate termination based on a claim of irreparable harm months—and, potentially, years—after being made aware of Mr. Brown's presence falls flat. Also, the Court believes it should be noted that Defendant has been in the custody of the Delaware Department of Correction

since his August 2018 arrest and, therefore, currently does not pose any risk to the tenants, guests, or staff of Cynwyd Club.

The Court wishes to state clearly that the fact Plaintiff chose to seek immediate termination instead of the more appropriate remedy of a 7-day notice for a Rules Violation in no way rehabilitates Defendant's credibility. However, the Court finds that Defendant was not afforded proper notice and that, without it, Plaintiff's case fails to meet its burden of a preponderance of the evidence.

Based on the foregoing, the Court finds in favor of Defendant Below/Appellant Dori Williams and against Plaintiff Below/Appellee Fairville Management Company, LLC, As Managing Agent for Cynwyd Ventures, LP. Possession of the Unit shall remain with Defendant.

IT IS SO ORDERED this 26th day of March, 2019.

/s/ Christopher R. Portante

Christopher R. Portante, Justice of the Peace,
for the Three-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).