

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

TIM RIALE	§	
Plaintiff Below,	§	
Appellant	§	
	§	
VS	§	C.A. No. JP17-19-000696
	§	
	§	
ANN DYSON	§	
Defendant Below,	§	
Appellee		

**TRIAL DE NOVO**

Submitted: May 21, 2019

Decided: July 8, 2019

**APPEARANCES:**

Dean A Campbell, Esquire, Law Office of Dean A Campbell for Time Riale  
Ann Dyson was self-represented

Alan G Davis, Chief Magistrate  
Shiela G Blakely, Deputy Chief Magistrate  
William P Wood, Justice of the Peace

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

**CIVIL ACTION NO: JP17-19-000696**

**TIM RIALE VS ANN DYSON ET AL**

**ORDER ON TRIAL DE NOVO**

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

**Procedural Posture**

Plaintiff, Tim Riale, brought this action in his capacity as a landlord for the owner of a 16 acre piece of property on Linechurch Road in Delmar, Delaware. He initiated the action January 31, 2019, seeking possession of the property, based on a failure to pay rent and a violation of the terms of the lease. The Court heard the initial trial on March 6, 2019 and delivered an opinion on March 26<sup>th</sup>. The single Justice of the Peace dismissed the action as to George Dyson as an improper party. She ruled in favor of the Plaintiff on the issue of rent, but found a good faith dispute with regard to that issue. The judge further ruled in favor of the Defendant on the issue of the rules violation with regard to allowing her son to live on the property.

The Court scheduled this case for a three judge panel on April 17, 2019. Chief Magistrate Davis, Deputy Chief Magistrate Blakely and Judge Wood heard the appeal. The Court ordered post-trial briefing on the issue of the applicability of 25 Del. C. §158 and 30 Del. C. §5401(5) with regard to the facts of this case. For the reasons stated below the Court finds those statutes inapplicable, but finds in favor of the Plaintiff on the question of rent and the rules violation, subject to a good faith dispute. Due to the unique nature of this case, the Court is staying execution on any writ of possession for 30 days to allow Defendant to make proper arrangements for the transfer of the property.

**Facts**

The Court finds the following facts applicable to this action:

In December 1997, George Dyson, Sr. and his wife, Ann Dyson, defendant in this matter, entered into a lease for 16-acre farm referred to in the lease as "Evergreen," owned by a man named David Walton, of Baltimore Maryland. They made contact with Mr. Walton originally through an intermediary but soon began dealing with him directly, but they never met. He explained to them that he was an absentee owner and that he had previously had a mobile home on the property but that it had been destroyed because no one was there to watch over it. He was looking for someone to rent the property for a long period of time to ensure it was well kept.

They signed a purported 47-year lease for the property. He expected the Dysons to live there and assisted them in placing on the property a mobile home that they purchased. Mr. Walton took care of permitting and other regulatory issues. The terms of the lease included rent at \$150 per month and a prohibition on assignment or subletting without prior written approval. Mrs. Dyson testified, credibly, that she sent rent checks for a long period of time, but they were never cashed; upon inquiry Mr. Walton indicated to her that he was just happy to have someone on the property and he did not need

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the money. Later, after George Dyson, Sr. died, Mrs. Dyson called Mr. Walton and said she was going to have to let the property go unless her son could move in, as she could not live there anymore. According to her testimony, Mr. Walton was fine with that arrangement, though they never reduced it to writing.

David Walton died on September 16, 2017. His heir hired plaintiff to check into the property on Linechurch Road. In doing so, Mr. Riale discovered Mr. George Dyson, Jr. living on the property. After conversations in which Mr. Dyson made it clear he was not sure of the terms of the lease, Mr. Riale engaged legal representation on behalf of his client. A trial was scheduled, where Mrs. Dyson appeared and presented the 47-year lease. Though Plaintiff and his client disputed the lease, they dismissed that action and brought the present case, based on the lease.

#### Positions of the Parties

Plaintiff claims that the lease itself is unenforceable, as it violates the provisions of 25 Del. C. §158<sup>1</sup> and 30 Del. C. §5401(5)<sup>2</sup> with regard to the requirement that long-term residential leases must be recorded and transfer tax be applied and paid. Alternatively, the Plaintiff claims that rent has not been paid since the death of Mr. Walton and the defendants are in violation of the prohibition against assignment or subletting. He asserts he has given the proper notice under the lease and is therefore entitled to possession and a judgment for back rent to the date of Mr. Walton's death.

Defendants claim that the lease was modified by the actions of the parties over a long period of time. Mr. Walton never cashed any of the original rent payments and eventually told Mrs. Dyson to stop sending them. Further he agreed to the substitution of George Dyson, Jr. as tenant when Mrs. Dyson no longer felt she could live there.

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#### <sup>1</sup> § 158 Enforceability of certain leases and documents pertaining to lands and tenements

No document defined or described in § 5401(5) of Title 30 and not exempt from transfer tax on the basis of § 5401(1) of Title 30 or otherwise, shall be enforceable in any court of this State unless such document, or a memorandum thereof identifying the parties thereto, the premises, and the duration of the interest created thereby, including any renewals and purchase options, shall have been recorded in the office of the recorder of deeds in the county in which the premises or any part thereof are located within 15 days of the commencement of the term provided by such document; provided, however, that upon recordation and payment of any and all taxes, penalties and other charges relating thereto, any document rendered unenforceable by this statute or any predecessor statute shall be renewed and revived with the same force and effect as if it had never been unenforceable.

<sup>2</sup> (5) The term "document" defined in paragraph (1) of this section shall include the following:

- a. Any writing purporting to transfer a title interest or possessory interest for a term of more than 5 years in a condominium unit or any unit properties subject to the Unit Property Act;
- b. Any writing purporting to transfer a title interest or possessory interest of any lessee or other person in possession of real estate owned by the State or other political subdivision thereof;
- c. Any writing purporting to assign or transfer a leasehold interest or possessory interest in residential property under a lease for a term of more than 5 years. For this purpose, the term "residential property" means any structure or part of structure which is intended for residential use, and excluding any commercial unit subject to tax under § 2301(a)(6) of this title, relating to commercial lessors.

## Discussion

The Court feels it necessary to address one minor contention repeatedly brought to its attention during the course of trial. Plaintiff's counsel openly questioned the validity of the lease, indicating that it was ridiculous to think that two parties who never met would agree to a lease of such a length. The Court finds that the circumstances leading to the lease are somewhat unusual, but not preposterous or beyond the realm of possibilities. Certainly stranger things have happened with regard to property in Sussex County. Mrs. Dyson's testimony was clear and unflinching and the Plaintiff would have the Court throw out the lease on a mere inference. If the Plaintiff wishes to allege fraud, there is a vehicle to do so. Failing that, the Court is presented with a document that has consistent handwriting, and a fax copy date of December 23, 1997, and will take it at face value.

The Court also wishes to clarify something in Plaintiff's opening brief. In that brief, the Plaintiff contends that this action is based on a month-to-month tenancy and the defendant is raising the lease as an affirmative defense and are therefore obligated to prove it valid. This is not the procedural or factual posture of this case. Plaintiff brought this action based on the lease, giving notice according to the terms of the lease. Plaintiff cannot now claim that the existence of the lease is an affirmative defense. The court has ruled the lease valid above, and now turns to the argument that it is unenforceable.

Plaintiff contends that the lease should be rendered unenforceable by the application of 25 Del. C. §158 and 30 Del. C. §5401(5). Those provisions, read in conjunction, require the recordation of any residential lease document that would be subject to the transfer tax law.

Specifically, 25 Del. C. §158 states:

No document defined or described in § 5401(5) of Title 30 and not exempt from transfer tax on the basis of § 5401(1) of Title 30 or otherwise, shall be enforceable in any court of this State unless such document, or a memorandum thereof identifying the parties thereto, the premises, and the duration of the interest created thereby, including any renewals and purchase options, shall have been recorded in the office of the recorder of deeds in the county in which the premises or any part thereof are located within 15 days of the commencement of the term provided by such document; provided, however, that upon recordation and payment of any and all taxes, penalties and other charges relating thereto, any document rendered unenforceable by this statute or any predecessor statute shall be renewed and revived with the same force and effect as if it had never been unenforceable.

And 30 Del. C. §5401 states that the transfer tax is applicable to lease documents under these circumstances:

(5) The term "document" defined in paragraph (1) of this section shall include the following:

c. Any writing purporting to assign or transfer a leasehold interest or possessory interest in residential property under a lease for a term of more than 5 years. For this purpose, the term "residential property" means any structure or part of structure which is intended for residential use, and excluding any commercial unit subject to tax under § 2301(a)(6) of this title, relating to commercial lessors.

The facts before the Court are that the lease is for 47 years. While the title of the document says it is a residential lease, and the intention of the parties was for the Dyson's to live on the property, the

lease is actually for a “16+/- acre farm known as Evergreen.” The residential unit placed on the property is owned by Mrs. Dyson. Examining the language of the transfer tax statute closely, it clearly states that, for the purposes of that statute, “the term ‘residential property’ means any structure or part of structure which is intended for residential use.” A land lease is not a “residential property” for purposes of the transfer tax statute because it is not “a structure or part of a structure.”<sup>3</sup> Since the transfer tax statute does not apply, then the lease is a valid lease and the Plaintiff is obligated to abide by its terms in the removal of the tenant.

Turning to the claims based on the lease itself, the Court finds that the claim for rent would normally be disallowed, due to the inaccuracy of the several rent due notices that were issued. However, the circumstances of this case are such that the defendants were the only ones in possession of the lease and knew the actual rent amount that should have been paid during the lease term. The arrangement that Mrs. Dyson had with Mr. Walton was effective until such time as Mr. Walton died; the oral agreement not to have to pay rent died with him.<sup>4</sup> However, Plaintiff is not entitled to rent from the date of death. Plaintiff may collect rent only after written notice to the tenant that they were expected to start paying rent. Therefore, the Court awards a judgment in the amount of \$1200.00, reflecting rent due of \$150.00 per month starting from November 9, 2018

The Court finds that the Plaintiff has given appropriate notice for the rules violation relating to the Dyson’s son living on the property. The lease clearly contemplates that this contract is not able to be assigned or the property sub-leased without written consent of the owner. While Mr. Walton was content to let Mrs. Dyson allow her son to live on the property, again, that agreement terminated with Mr. Walton’s death. The new owner is within her rights to enforce the terms of the contract. Therefore, the Court finds in favor of the Plaintiff on this issue.

With regard to these two issues the Court awards possession to the Plaintiff, but also finds a good faith dispute existed. Defendant was unaware of the death of Mr. Walton and had reason to believe that the agreement reached with him would be effective for the term of the lease. As such, pursuant to the terms of 25 Del. C. §5716<sup>5</sup>, Ms. Dyson has ten days from the date of this decision to pay the full amount of rent due and remove her son from the property to retain possession. Should she be unable to fulfill either or both of those conditions, the Plaintiff may apply for a writ of possession. The Court notes, however, due to the unique nature of this lease and the use of this property, the writ will

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<sup>3</sup> It is generally understood that a lease of land includes buildings and improvements that are located on the land at the time of the execution of the lease, unless the language of the lease specifically states otherwise. In this instance, however, the residence was not on the land at the time of lease execution, but was subsequently added by Mrs. Dyson. 51C C.J.S. Landlord & Tenant §289, p. 740

<sup>4</sup> Oral modifications to a written contract may be asserted based upon course of conduct, however, the modification must be proved with, “specificity and directness as to leave no doubt of the intention of the parties to change what they previously solemnized by formal document.”

*Reeder v. Sanford School, Inc.*, Del. Supr., 397 A.2d 139, 141 (1979). In this instance, it would be unjust to bind the Plaintiff to an oral modification made by a previous party to the lease. Additionally, Mr. Walton is no longer available to testify regarding his intentions in the modification of the lease. Permitting Mrs. Dyson to continue to use the property while paying no rent would be an unjust enrichment.

<sup>5</sup> § 5716 Stay of proceedings by tenant; good faith dispute.

When a final judgment is rendered in favor of the plaintiff in a proceeding brought against a tenant for failure to pay rent and the default arose out of a good faith dispute, the tenant may stay all proceedings on such judgment by paying all rent due at the date of the judgment and the costs of the proceeding or by filing with the court an undertaking to the plaintiff, with such assurances as the court shall require, to the effect that defendant will pay such rent and costs within 10 days of the final judgment being rendered for the plaintiff. At the expiration of said period, the court shall issue a warrant of possession unless satisfactory proof of payment is produced by the tenant.

be stayed for 30 days from the end of the good faith dispute allowance to allow Ms. Dyson and her son an opportunity to extricate themselves from 20+ years of attachment to the property.

#### Judgment

The Court finds in favor of the Plaintiff on the question of back rent and material breach of the contract. The Court also finds a good faith dispute, giving Ms. Dyson 10 days to resolve both the rent and the assignment to her son. As such, the Court enters a monetary judgment in the amount of \$1200.00 in favor of the Plaintiff, per diem rent of \$5.00 plus court costs and post-judgment interest at the legal rate. If that amount is not paid and/or Mr. Dyson does not cease to inhabit the property within that time, Plaintiff may apply for a Writ of Possession. Such writ shall not issue until at least 30 days from the end of the 10-day grace period.

IT IS SO ORDERED 08th day of July, 2019

/s/ Alan G Davis (SEAL)  
C.M. Davis for the Court

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).