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

2 BUBBLES LLC	§	
Plaintiff Below,	§	
Appellee	§	
	§	
VS	§	C.A. No. JP13-19-004300
	§	
ALBERTA BOWERS	§	
Defendant Below,	§	
Appellant	§	

TRIAL DE NOVO

Submitted: July 11, 2019
Decided: September 6, 2019

APPEARANCES:
2 Bubbles, LLC, Planitiff, appeared by and through John R. Weaver, Jr., Esq.
Alberta Bowers, Defendant, appeared by and through John D. Stant II, Esq.

Sean P. McCormick, Deputy Chief Magistrate.
James R. Hanby, Sr., Justice of the Peace.
Thomas P. Brown, Justice of the Peace.

JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
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CIVIL ACTION NO: JP13-19-004300

2 BUBBLES LLC V ALBERTA BOWERS

ORDER ON TRIAL DE NOVO

Procedural History of the Case at Bar.

This instant matter was filed on April 2, 2019 in which the Plaintiff 2 Bubbles LLC (hereinafter, "2 Bubbles") sought rent from February 1st onwards as well as possession of the unit, 715 W. 9th Street, Wilmington, Delaware 19801 as a result of non-payment of rent. After an initial pre-trial motion to dismiss was denied, the Defendant Alberta Bowers (hereinafter, "Bowers") asserted a counter-claim for rent abatement and sought that, in the event the court held that rent was due and owing, it construe the matter a good-faith dispute pursuant to 25 Del. C. §5716 and allow the Defendant ten days to pay the balance due in order to avoid eviction. A judgement for rent was given to the Plaintiff on June 21; the court below was not persuaded that a good faith dispute existed and accordingly awarded 2 Bubbles possession. This appeal followed.

History of Litigation between the Parties.

The history of litigation between the parties is lengthy and noteworthy for our purposes. In-point-of-fact, this instant matter is the third filing between the parties and the second to go before a three-judge panel. On September 25, 2018 civil action No. JP13-18-011313 (Paolino Properties Inc. v. Bowers) was filed in which rent and possession was sought; Bowers argued for abatement based upon conditions. At the time of filing Paolino was the property manager of the unit, which in turn is owned by 2 Bubbles. The Plaintiff prevailed at the court below but saw their claims dismissed with prejudice at the appellate level on February 7, 2019 when Paolino Properties abjectly failed to evidence their case. The counter claim was voluntarily withdrawn upon the dismissal of Plaintiff's case.

A somewhat contemporaneous case was filed on November 15, 2018 – JP13-18-013168, Bowers v. Paolino Properties and 2 Bubbles LLC in which a forthwith or expedited hearing was sought based upon a claim that the unit had no operable heating system. A hearing took place on November 26 at which time the magistrate presiding ordered Paolino to make necessary repairs within 72 hours. Despite this admonition, heat was not actually restored until December 15, 2018. Thereafter Bowers sought treble damages pursuant to 25 Del. C. §5313 and proposed that the two cases be joined; it was conceived that if the appellate panel (which had yet to consider the first matter) found that Bowers owed rent, the damages claimed by Bowers due to the loss of heat would act as an offset. The idea seemed to have merit; accordingly, the damages hearing pending Bowers v. Paolino and 2 Bubbles was held in abeyance pending the three judge panel's consideration of Paolino v. Bowers. As we know from the recitation of the history of the first matter, it was dismissed with prejudice. Since no rent was awarded, there was no potential for an offset. At that juncture, the three-judge panel decoupled the damage hearing from the appeal and returned it to the consideration of a single magistrate. At the subsequent damages hearing a monetary award was given in favor of Bowers in the form of rent abatement.

In its dismissal of the first matter (Paolino v. Bowers) the three-judge panel dismissed any and all claims for rent through January 31, 2019 – which is why rent claims in this instant matter stem from February 1, 2019.

The Plaintiff's Case

Two witnesses testified in support of the Plaintiff's case – Mr. Michael Purvis, sole owner of 2 Bubbles LLC, and the Defendant, Ms. Bowers. Mr. Purvis supplied the Panel with a lease entered into between Paolino Properties, Inc. and Ms. Bowers dated August 1, 2018. The lease set the monthly rental amount at $800.00 per month due on the first of the month with a $40.00 late fee if unpaid after the fifth of the month. He advised that he had employed Paolino Properties as a managing agent until late February of 2019. At that time he elected to no longer employ them because of what he considered their lack of competence in representing his interests at the February 7, 2019 de novo hearing. He testified that upon firing them, he directly took over management of the unit and informed Ms. Bowers of the change in management orally via telephone. A five-day letter dated February 21, 2019 conforming to the requirements of 25 Del. C. §5502 was likewise evidenced along with a certificate of mailing; the letter was sent by counsel on behalf of Paolino Properties who presumably were still acting in a managerial capacity as of that date. Lastly, an accounting of the rent due was supplied by Mr. Purvis. He testified that no rent had been received from February 1, 2019 onwards. This fact was

confirmed through the course of Ms. Bowers' testimony – when asked, she freely acknowledged that she had paid no rent since February 1. She advised that she had escrowed the money in some fashion, but had no documentation or proof deposits to support her claim. At the close of her testimony, the Plaintiff rested.

The Application for a Directed Verdict

After the close of the Plaintiff's case, the Defense moved for a directed verdict claiming that no evidence had been presented to establish a managerial relationship between 2 Bubbles and Paolino Properties. It was argued that the five-day letter in no way referenced the Plaintiff 2 Bubbles; the complaint in no way references Paolino. Without establishing a nexus between the two, the Defense held the Plaintiff had failed to meet the statutory requirements to prevail. In response, Plaintiff argued that the panel could find take notice of the relationship since it was exhibited in the previous filings. That in conjunction with Purvis' testimony should be sufficient to establish a nexus. Lastly, Plaintiff noted that 25 Del. C. §5703 allows that a proceeding may be initiated by either a landlord or an owner of a property (amongst other persons.) Further to that end, he likewise noted that 25 Del. C. §5502 allows that "A landlord or the landlord's agent may, any time after rent is due . . . demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in the notice . . . the rental agreement will be terminated." After some consideration, the panel denied the motion. It held that clearly from the testimony of Purvis in conjunction with the findings within the other cases a managerial relationship existed between Paolino and 2 Bubbles. While it certainly would have been cleaner for the five-day letter to reflect the party intending to bring suit, the possibility that it would not was contemplated pursuant to statute and therefore allowable.

The Defense Claim for Abatement

Bowers was recalled and testified regarding a litany of conditions dating from the onset of the tenancy and which she felt merited abatement. Amongst other conditions, she advised that there had been no stove; the refrigerator leaked or was inoperable (she testified that as of April, 2019 she was on refrigerator no. 3;) the window screens were torn; a variety of electrical outlets and/or appliances were not operable; and, there was trash and debris in the front and back yards. Bowers advised that she first left a note for Paolino seeking repairs. After that drew no response, she mailed Paolino a certified letter on September 19, 2018 advising of the need for repairs. After the notice was sent, Bowers claimed that Paolino made little if any attempt to resolve her concerns. If anything, she felt that conditions only

worsened. The loss of heat in the unit engendered both a second notice to Paolino as well as the forthwith-filing (Bowers v. Paolino) which ultimately led to a judgment in her favor at the damages hearing. At the time of that hearing, she advised both Paolino and Purvis that the refrigerator was again not working; it was not replaced until April. Subsequent notices regarding conditions in need of redress were sent by Bowers on November 21, 2018 and again on April 1, 2019. That final letter was directed to Rick Paolino, despite the fact that he was no longer property manager. When asked why she directed the letter to him, Bowers advised that she had never been made aware by Purvis that he was directly managing the property. She claimed that, aside from the replacement of the refrigerator, no other repairs were made.

Thereafter, Purvis was recalled and questioned regarding why it took two months to replace the refrigerator. He advised that he did not believe it a necessity because it was cold outside, and since he hadn't been paid rent in several months, he felt it not a priority. At that point, Defense Counsel evidenced a text-message conversation between Bowers' and Purvis' phones regarding a previous time when the refrigerator had stopped working. The conversation, dated December 17, 2018 was as follows:

> Bowers: Gm my fridge is not working and it is leaking and the roof is still leaking as well.
> Purvis: Might as well move. U will be kicked out by Xmas anyway. (followed by happy-face and thumbs-up emojis.) Lol . . . and merry Xmas. IF the fridge is giving u problems, put ur food outside. Just trin to be helpful.
>
> Bowers: Imma feed your mom with it. Just being smart but im bout [t]o go into my rent free warm home (followed by several laughing-face emojis.) So leave us along and stop harassing me gn! (followed by winking-face emojis.)
>
> Purvis: Yep, but ur credit is shit, u will have a judgement against u, ur still ignorant and black, and most of all I will continue to live better than u whilst u wallow in the dregs of society. U should beat your mother for not teaching u how to act civilized.

When pressed, Purvis advised that when that conversation had taken place, he was at a holiday party with other landlord-friends. He passed his phone around to show others the text chain and believed others may have been responsible for the most egregious and disdainful texts, not he. The follow up question asked by Defense Counsel – "So, it's okay to break the law? You feel it okay to not

fix things if rent is not paid?[1]" drew a response of "if it will inconvenience another to move on, yeah, I am okay with it. I mean, I know its not legal, but I am okay with it. Someone who has never paid rent? Yeah."

The Claim for Rent; Abatement Awarded

Payment of rent is a material term of a contract. The requirement of habitable conditions is also a material term. In the case in chief Plaintiff evidenced a rental debt existed. Calculated at the rent of $800/month (which in turn equates to a *per diem* amount of $26.67) plus a late fee of $40/month for the months of February 1 through August 31, 2019 equals $5,600.00 in rental debt and $280.00 in late fees for a combined total of $5,880.00. In his close, Plaintiff's Counsel reminded the panel that damages claimed pursuant to 25 Del. C. §5308 regarding the period of time when the unit lacked heat had been already considered and awarded and should not be taken into account. In that regard, he is correct. But, it is equally clear that the conditions complained of extend back to the beginning of the tenancy. At no point were they adequately addressed by Paolino Properties; it is equally clear that service did not improve once management changed hands. Conditions which materially deprived Bowers of a substantial part of the benefit of the bargain existed and continued to exist. Pursuant to 25 Del. C.§5308, the panel hereby orders that rental debt therefore shall be abated by two-thirds – leaving a net rental debt in the amount of $1,960.00.

Retaliatory Acts Prohibited

25 Del. C. §5516 states in pertinent part that "Retaliatory acts are prohibited." The code then goes on to define a retaliatory act as "an attempt on the part of the landlord to pursue an action for summary possession or otherwise cause the tenant to quit the rental unit involuntarily . . .after the tenant has pursued or is pursuing any legal right or remedy arising from the tenancy." Although not argued by the Defense, the panel cannot ignore Purvis' admission that he was willing to delay or simply not provide services in an effort to cause Bowers to quit the tenancy. Clearly, he recognized the illegal nature of his actions – he freely admitted as much. Of its own volition, the panel therefore invokes 25 Del. C. §5516(e); three months' rent ($2,400.00) shall be awarded to Bowers. This amount will act as an offset to rent due to 2 Bubbles, leaving a net judgement in Bowers' favor.

[1] The question drew an unspecified objection from Counsel for Plaintiff offered simultaneously as the answer was tendered. The panel allowed the question to stand, characterizing the answer as an admission by a party-opponent.

The Presence of Good Faith between the Parties

Now that it has been determined that a rental debt (however reduced) exists, the panel must consider the Defense request that the matter be declared a good-faith dispute pursuant to 25 Del. C. §5716 such that Bowers could remain in the unit providing she pay the debt. In that consideration, the panel refers back to the chain of texts dated December 17. Purvis' claim – that he passed his phone around and thus was not directly responsible for the language of the texts – quite frankly strains the confines of credibility. But, even if true, the act of subjecting Bowers to the derisive messages of others strikes the panel as particularly odious and disdainful. As for Bowers, her response (in which she reminds Purvis that she is living rent-free because of the heating issue) evidences clearly contempt of him on her part. There is no good faith in this instant matter. To the contrary, the relationship between the parties is toxic and must end. The panel will not invoke §5716 in this instance.

The Judgement of the Panel

Possession of the unit in question is hereby awarded to Plaintiff, 2 Bubbles, LLC along with the rental debt ($1,960.00) and the cost of filing ($47.50.) After offsetting the $2,400.00 penalty, the net judgment is entered in favor of Defendant Alberta Bowers against Plaintiff 2 Bubbles LLC in the amount of $392.50.

Evidence supplied by the parties shall be held in the clerical area for 30 days after the publishing of this order.

IT IS SO ORDERED 06th day of September, 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).