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6CF14A3J (3/1/19)

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

CIVIL ACTION NO: JP17-19-004012

HOME TEAM REALTY LLC VS TAYLOR BONNEVILLE ET AL

ORDER ON TRIAL DE NOVO

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

ORDER

Plaintiff filed this action to recover unpaid rent and possession of the property located at 24337 Fernwood Drive, Seaford, DE on July 11, 2019. The defendants filed a counterclaim on July 19, 2019 seeking a two-thirds rent abatement since December 2018 (the inception of the lease), plus three times the current rent of the premises for a retaliatory act pursuant to 25 Del. Code, Sec. 5516. Trial was held on August 12, 2019 and a judgment was entered in favor of the defendants on August 15, 2019.

On August 22, 2019, the plaintiff filed a timely appeal of this judgment. This is the decision of the Three Judge Panel hearing the claim and counterclaim as a trial de novo on October 14, 2019. Final briefs were submitted to the Court on November 22, 2019.

FACTS

Defendants signed a one year lease and moved into the premises with their two children on or about November 18, 2018. The monthly rent was \$1200. The plaintiff's representative Frank Parks (hereinafter "Parks") testified that the defendants were told before they moved in that there was a problem with the septic system and that they were in the process of correcting the problem. Parks also informed them that the old system had failed and the owner of the property was saving his money to put in a new septic system. Defendant Taylor Bonneville (hereinafter "Bonneville") testified that they moved in at night and saw a big covered hole that smelled of sewage that was near the playhouse in the backyard. Parks testified that he warned the defendants about the hole and told them that he had the sewer pumped out in October 2018. Bonneville testified that each time she paid her rent, she asked when it would be fixed.

On March 10, 2019, Kyle Trice (hereinafter "Trice") contacted DNREC (the Delaware Department of Natural Resources and Environmental Control) and reported what he believed to be unlawful pumping of raw sewage from their septic system into the Nanticoke River by agents of the plaintiff. A DNREC officer arrived and arrested the two workers he found, who had run a garden hose from the defendants' septic system to a point near the river and were discharging sewage there. Bonneville testified that earlier, a Home Team Realty truck had dropped off pipes and that she was told by the workers that they were there to fix the sewer. When she asked if they were licensed she was told that "it would be okay." Later Parks arrived on the scene and was upset that Trice had called DNREC. There

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was an argument between Parks and Trice and Parks told the defendants he would not be renewing their lease.

On June 2, 2019, raw sewage backed up into the defendants' toilet, shower and bathtub. Bonneville testified that she tried to call McMullen Septic Service, Inc., a company that the plaintiff had used in the past, but they were unavailable. She then tried calling Parks, but because of the prior argument, she was told not to come to the office, but to put any complaints in writing. Defendants then got an emergency pump out themselves for \$320, which was later reimbursed to them by the plaintiff.

On June 12, 2019 the defendants gave written notice to Parks that pursuant to 25 Del. Code, Sec. 5308 they would be withholding two-thirds of the rent until "the septic system is repaired and up to legal standards." Two-thirds of the rent was then withheld for the months of July, August, September and October.

When the July rent was not paid on the first of that month, on July 2, 2019 the plaintiff sent the defendants a five day notice letter demanding payment of the rent then due or the plaintiff would file for eviction and possession of the rental property. When the full rent was not paid, this action was filed.

Around this same timeframe, work was being done, by the owner, to replace the septic system. This included design work and a cost and site evaluation. On July 1, 2019 an application was filed to obtain a permit for a new wastewater system and on July 12, 2019 the permit was approved by DNREC. The work was completed in mid October, 2019 at an approximate cost to the owner of \$24,500 which included tree removal. In the meantime, the defendants' septic was pumped out on a monthly schedule to avoid any back up problems and this service was paid for by the plaintiff.

DISCUSSION

There are several questions before the Court. The first questions is whether the defendants were entitled to withhold two-thirds of the rent pursuant to 25 Del. Code, Sec. 5308. It is clear that the plaintiff had an obligation to provide a rental unit that would not endanger the health and safety of the tenants and that complies with all applicable provisions of the landlord tenant code and all other applicable regulations and/or statutes. The fact that the tenants were made aware of the septic problem prior to moving in, does not relieve the landlord of any of its duties under the law.

Little was done to correct the septic problem, except for an attempt an install an illegal septic system, until the defendants became aware of their legal rights under the law and sent their notice letter of June 12, 2019. The Court wonders if the problem would still exist if they had not threatened and continued to withhold two-thirds of the rent. Because of the long delay in the actual start of the project, the Court will allow the two-thirds rent abatement from July 1, 2019 until the project was completed on or about October 6, 2019.

The second question before the Court is whether the defendants are entitled to treble damages because the plaintiff engaged in a retaliatory act. Plaintiffs allege that this retaliatory act was the sending of the nonpayment of rent letter on July 2, 2019, when their common practice had been to pay their rent between the 1st and 5th of the month. The Court does not find that this notice rises to the level of a retaliatory act. Under 25 Del. Code, Sec. 5502, the landlord may demand payment of rent any

time after the rent is due, including the time period between the date rent is due and the date when late fees may be imposed.

Once the landlord was threatened with two thirds of the rent being withheld, the evidence indicates that the plaintiff began moving full speed ahead to get this work completed. The intention of the plaintiff may have been that because of that fact, the plaintiff wanted to put the tenants on notice that they expected the full payment of their rent and not a reduced amount. The court will therefore not award treble damages.

DECISION

Judgment therefore is in favor of the defendants on the issue of possession. As for the counterclaim, the Court rules in favor of the plaintiff on the issue of retaliatory eviction and in favor of the defendants that they are entitled to keep the two-thirds amount which they already deducted from the rent from July 1, 2019 through October 6, 2019.

IT IS SO ORDERED 12th day of December, 2019



(SEAL)

Hon. Sheila G. Blakely
By a Majority Vote of 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).