

**IN THE JUSTICE OF THE PEACE COURT NO. 16
OF THE STATE OF DELAWARE IN AND
FOR KENT COUNTY**

MARY BEASLEY,

Defendant Below,
Appellant,

v.

CLEARFIELD APARTMENTS, LP,

Plaintiff Below,
Appellee.

C.A. No. JP16-20-003282

TRIAL DE NOVO

Submitted: January 28, 2021

Decided: February 24, 2021

Mary Beasley, Defendant/Appellant, appeared represented by Anthony M. Siezega, Esquire, Community Legal Aid Society, Inc.

Clearfield Apartments, LP, Plaintiff/Appellee, appeared represented by David C. Zerbato, Esquire, Morton Valihura & Zerbato, LLC.

ORDER

Murray, J.
Sherlock, J.
Wilson, J.

On January 28, 2021 this Court, consisting of the Honorable James A. Murray, the Honorable Michael P. Sherlock and the Honorable Kevin L. Wilson, acting as a special court pursuant to 25 *Del. C.* § 5717(a) convened a trial *de novo* via *Zoom* in reference to a Landlord/Tenant Summary Possession petition filed by Clearfield Apartments, LP, (hereinafter referred to as “Clearfield”), against Mary Beasley (hereinafter referred to as “Beasley”). For the reasons below, the Court enters ***JUDGMENT for CLEARFIELD.***

FACTUAL AND PROCEDURE BACKGROUND

Clearfield filed a Landlord/Tenant Summary Possession petition with Justice of the Peace Court No. 16 seeking possession, court costs, accrued rent and post-judgment interest at the current legal rate. This action is based on Beasley’s failure to complete her recertification, repeated failure to timely pay rent and failure to relinquish possession after receiving a 60-day non-renewal notice. Trial was held on January 6, 2021 and judgment was entered in favor of Clearfield. Thereafter, Beasley filed a timely appeal of the Court’s Order pursuant to 25 *Del. C.* § 5717(a). Consequently, trial *de novo* was scheduled and convened for trial.

PRE-TRIAL

Counsel for Clearfield advised while their petition indicated they were seeking monetary claims, breach of rules and failure to comply with a 60 day non-

renewal notice, they are waiving any monetary claims plead against Beasley, they elect to proceed forward on their claim for possession only.

TESTIMONY AND EVIDENCE

Clearfield presented only one witness, Tomelya Watson (Watson) who is the Property Manager for Clearfield Apartments. She avers Clearfield Apartments is an affordable housing tax credit community. Tenants pay a lower rent amount as their rent is offset under a tax credit which is received by the landlord. The program has a minimum low-income level requirement as well as a maximum income level requirement. Perspective tenants must fall within those ranges to qualify to reside within the community. After receiving approval to reside in the community, tenants must participate in a recertification process annually. The first five (5) years of recertification is little more than contacting management and verbally going through a review process over the phone. Every sixth-year tenants are required to provide written documentation proving their income. Under the rules of the program if one tenant is in the violation of the recertification rules, then the entire building is considered in violation.

Watson further testified; Beasley has resided in the community since January 10, 2002. Beasley failed to complete the recertification process for 2019 & 2020. Watson states she made numerous attempts to get Beasley to participate in the

recertification process. On September 1, 2019¹, October 1, 2019², and November 1, 2019³ notices were posted on Beasley's door notifying her it was time to recertify her income. Watson states Beasley was non-responsive to all three notices. Based on Beasley's non-responsiveness, on November 12, 2019, Watson mailed Beasley a seven (7) day demand notice to cure a breach of the lease agreement.⁴

Watson states Beasley breached paragraph 33 of the lease agreement which is caption "Regularly Scheduled Recertification."⁵ The final sentence in paragraph 33 states, "If Tenant fails to provide the requested information, Tenant shall be deemed to have breached this Lease which is grounds for eviction." In addition to not completing the recertification process, Beasley paid her rent late eleven (11) of twelve (12) months in 2019, however, her rent is current at the present time. Watson provided an accounting ledger providing a history of Beasley's payments.⁶ Rent is due on the first day of the month and is deemed late when paid after the fifth day of the month.

¹ Plaintiff's exhibit #2. First Recertification Notice.

² Plaintiff's exhibit #3. Second Recertification Notice.

³ Plaintiff's exhibit #4. Notice to Vacate Failure to Recertify.

⁴ Plaintiff's exhibit #5. Seven (7) day Demand Notice and Proof of Mailing.

⁵ Plaintiff's exhibit #1. Lease Agreement.

⁶ Plaintiff's exhibit #6. Accounting Ledger.

Finally, Watson testified Beasley was sent a “Notice Of Non Renewal Of Lease” on February 28, 2020.⁷ This notice advises Beasley she has sixty (60) days to vacate the rental unit. As of today, Beasley remains in possession of the rental unit.

Beasley was the only witness for the defense. She testified she has been a resident for twenty (20) years. Her only source of income is Social Security Income (SSI) and she receives her SSI check about the third week of the month. She asserts she did not receive Clearfield’s notices to recertify.

Under cross-examination, Beasley admitted she never informed Clearfield she received SSI or that she was employed in 2019 and 2020, “working part-time a few days a week.”⁸

STANDARD OF PROOF

In civil actions, the burden of proof is by a preponderance of the evidence.⁹ “... evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it.”¹⁰ It is the duty of the Court to weigh the evidence that is presented. In a non-jury trial, the judge, acting as the sole trier of fact, determines

⁷ Plaintiff’s exhibit #7. Non Renewal of Lease and Proof of Mailing.

⁸ “A judicial admission is a formal statement by a party in the course of judicial proceedings, which removes an admitted fact from the field of controversy.” *Pesta v. Warren*, 2004 WL 1172996, at *1 (Del. Super.).

⁹ See *Gregory v. Frazer*, 2010 WL 4262030, at *1 (Del. Com. Pl, Oct. 8, 2010).

¹⁰ Black’s Law Dictionary 1182 (6th ed. 1990).

the credibility of witnesses and resolves conflicting testimony.¹¹ Assessing the credibility of witnesses is a matter of judicial discretion, and this Court does not abuse that discretion by choosing to give greater weight to the testimony of one witness over the opposing witness.¹²

DISCUSSION

The Court finds Clearfield's exhibits credible and reliable as all exhibits were accepted without objection. Based on the lease agreement¹³ and testimony, the Court is convinced that a landlord/tenant relationship exist between the Parties. Pursuant to the lease agreement specifically paragraph 33 which states:

Every year on or about 120 days prior to the end of the current Lease, Landlord will request from Tenant information regarding all of the Tenant's household composition and income. Tenant agrees to provide all the requested information within 10 days of Landlord's request and Tenant shall supply Landlord will [sic] all true and accurate information. If Tenant fails to provide the requested information, Tenant shall be deemed to have breached this Lease which is grounds for eviction.

Beasley had the obligation to recertify her lease annually under the terms of the lease agreement. In fact, it is a process she had completed many times as a tenant in the community over twenty (20) years. The purpose for recertification is to determine the composition and income of the tenant. Here, Beasley admitted to having two

¹¹ *Dahlink Financial Corp. v Rachele*, 2012 WL 3798678, at *1 (Del. Com. PL, July 26, 2012) citing *Jamison v. State*, 1995 WL 716806, at *2 (Del. Super.).

¹² *Dahlink Financial Corp. v Rachele*, 2012 WL 3798678, at *1 (Del. Com. PL, July 26, 2012) citing *Roman v. State Farm Mut. Auto Ins. Co.*, 1999 WL 1427801, at *2-3 (Del. Super.).

¹³ Plaintiff's exhibit #1. Lease Agreement.

sources of income in 2019 & 2020, one being SSI and the other a part-time job, but she failed to disclose those income sources to Clearfield as required under the terms of the lease agreement.

Beasley asserts Clearfield failed to provide notice of the recertification process to her. We disagree. Clearfield posted three (#3) notices upon her door and mailed her another. She chose to ignore each notice, and as a result, was non-responsive to Clearfield's contact attempts to complete the recertification process, thereby committing a material breach of the lease agreement pursuant to paragraph 33. That breach continued beyond the time to cure period lapsed as provided in Clearfield's demand notice dated November 12, 2019.¹⁴ As of trial, Beasley remains in breach of paragraph 33 of the lease agreement. Thereafter, on February 28, 2020 Clearfield mailed Beasley a 60-day "Notice of Non Renewal of Lease" as well as posting it to Beasley's door. Contained within the Non Renewal Notice is Clearfield's Reservation of Rights.

We find Clearfield has provided Beasley with a proper demand notice which complies the notice and mailing requirements of the Landlord/Tenant Code. Beasley committed a material breach of the lease agreement and failed to cure same after proper notice. Additionally, Clearfield provided Beasley with a properly served 60-day demand notice to relinquish possession as Clearfield was declining to renew Beasley's lease.

¹⁴ Plaintiff's exhibit #5. Seven (7) day Demand Notice and Proof of Mailing.

CONCLUSION

Based on the Court's fact-finding inquiry, the Court's above-referenced conclusions of law and by a preponderance of evidence, the Court by unanimous verdict enters ***JUDGMENT for CLEARFIELD.***

The Court hereby enters ***JUDGMENT*** as follows:

Judgment amount: ***\$0.0.***

Possession of rental unit @ ***110 Haman Drive, Unit 301, Dover, DE 19904.***

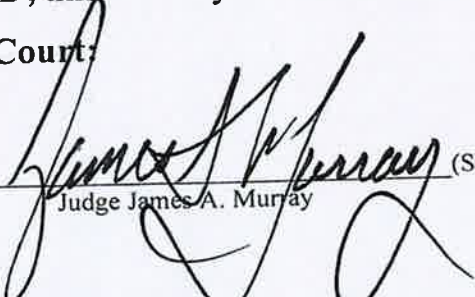
Court costs: ***\$58.75.***

Whereas the Court entered judgment in favor of Clearfield, which includes an award of possession, pursuant to Administrative Order 2020-1, the Court will conduct a hearing to determine if it is in the *interest of justice* to allow the eviction of Beasley to proceed forward at the present time.¹⁵

The Court will provide a supplemental Order with additional information as to the scheduling date and time of said hearing.¹⁶

IT IS SO ORDERED, this 24th day of February, 2021.

For the Court:



Judge James A. Murray (SEAL)

VIEW YOUR CASE ONLINE: <https://courtconnect.courts.delaware.gov>

¹⁵ Admin. Order 2020-1, J.P. Court, Davis, C.M. (Sept. 11, 2020) at 10.

¹⁶ The hearing will be conducted via *Zoom*.