

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

**DEMARTICE KERNEAL and
YALONDA KERNEAL,**

Appellants/Defendants,

v.

NSX LLC,

Appellee/Plaintiff.

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C.A. No. JP16-21-006945

TRIAL DE NOVO

Submitted: May 27, 2022
Decided: June 16, 2022

APPEARANCES:

Nicole Faries, Esquire for NSX, LLC

Demartice Kerneal, *pro se*

Yalonda Kerneal, *pro se*

ORDER

Murray, J
Hicks, J
Smith, J

The above-captioned matter convened for trial before a three-judge panel consisting of the Honorable James A. Murray, the Honorable Jamie L. Hicks and the Honorable Judy Smith on May 27, 2022. At the conclusion of trial, the Court reserved decision; this is the Court's decision.

FACTS

Plaintiff, NSX, LLC, through testimony of the owner of the business, Quentin Holman, stated he entered into a lease agreement with defendants, Demartice Kerneal and Yalonda Kerneal. Plaintiff provided a copy of the signed commercial lease agreement (the lease).¹ A part of the lease obligations is monthly rent in the amount of \$1,200.00 plus quarterly condo association fees to be paid by Defendants. Plaintiff stated defendants are current in the condo association fees, however, they are behind in monthly rent.

Plaintiff testified that on November 24, 2021, his attorney sent defendants a demand to pay rent, giving them 30 days to bring the rent current.² Following the demand for rent, defendants made one rental payment in the amount of \$4,900.00 on March 22, 2022. Currently, defendants owe \$6,636.07 in back rent only as the condo fees are current.

Defendant, Demartice Kerneal, testified the HVAC unit was faulty. He stated he gave plaintiff's agent notice in December at which time he was advised the landlord was aware and quick fixes were being performed in an attempt to repair the unit. Defendant also testified he tried to have the unit repaired but was told authorization from the landlord was needed. The HVAC company (Fletcher's Plumbing and Heating) advised it was an older unit from 1987 and it was difficult to get the part to repair it and the unit really needed to be replaced. Defendant stated he had to shut down their business for a month because the unit was not working.

Defendant stated that in accordance with the lease, the HVAC is a structured issue and plaintiff is required to make all repairs to include replacing the unit if it cannot be repaired. After providing plaintiff notification of the malfunctioning HVAC unit, defendant stated they withheld rent because the HVAC unit was not repaired. Defendants based their decision to withhold two-thirds of their rent until the unit was fixed on 25 *Del. C.* § 5308(a)(2).³ Defendant stated he now realizes that because this is a commercial lease, the portion of the Landlord Tenant Code he relied upon to withhold rent does not apply as it applies to residential landlord tenant matters. He stated he had paid six months' rent in advance last April and the withholding of rent is not due to neglect as they felt they were entitled to withhold in accordance with the Code. The rent was current until they began to withhold rent pursuant to § 5308(a)(2).

Plaintiff provided rebuttal testimony. He stated that in accordance with 4(d) of the lease, the property was accepted "as is". Further plaintiff reiterated he paid for repairs and eventually replacement of the HVAC unit and all work was completed in March 2022. Plaintiff further argues that in accordance with the lease, paragraph 21, all notices are to be in writing and sent via certified

¹ Plaintiff's Exhibit 1 – Lease Agreement signed December 8, 2020.

² Plaintiff's Exhibit 2 – 30 Day Demand Letter dated November 24, 2021.

³ 25 *Del. C.* § 5308(a)(2). Upon written notice to the landlord, keep two-thirds per diem rent accruing during any period when hot water, heat, water, electricity or equivalent substitute housing is not supplied. The landlord may avoid this liability by showing of impossibility of performance.

mail to the landlord or his agent and the notice was sent to the proper address or in writing. Further, plaintiff states that in accordance with “Provision Nine” in the Rules and Regulations of the lease, the tenants cannot withhold rent due to a defect of the HVAC.

DISCUSSION

In a commercial landlord tenant action, the residential Landlord Tenant Code does not apply, and all legal rights, remedies and obligations are governed by general contract principles.⁴ In this case, there is no dispute that a commercial landlord tenant relationship exist between the parties. Both parties testified the lease submitted by plaintiff was the lease they entered into in December 2020. The lease provided did not have a provision for defendants to withhold two-third of their monthly rent due to essential services not being provided. Specifically, Provision Nine of the lease states, “HVAC will be provided by the apparatus in the building...Temporary failure to furnish such HVAC...shall give Tenant no claim for damages against Landlord and shall not justify Tenant in failing to observe and perform any of the obligation under the Lease.”⁵

Plaintiff also maintains that 4(d) of the lease means defendants accepted the rental unit “as is”. Upon examination of that section of the lease, the Court notes that it states the tenant accepts the premises and the building in “as is” condition, however, it also specifically states “...with respect to the quality, nature or adequacy of air or water within the Premises and the Building...” The Court finds that this section does not absolve plaintiff of their responsibility of providing a properly functioning HVAC unit.

Section 5(b)(i) of the lease states as long as the tenant is not in default, the landlord “shall furnish the HVAC system as exists in working order...” Defendants notified plaintiff on more than on occasion that the HVAC unit was not working properly. Repairs to the unit were attempted several times over a significant period of time and were unsuccessful. Eventually the unit was replaced. In fact, over a year passed since the landlord or the landlord’s agent was notified the HVAC was not working properly. During this extended time without a properly functioning HVAC defendants had to shut their business down for a month in the summer because of the lack of air conditioning.

Based on several provisions of the lease, the HVAC system is the responsibility of the landlord. While the lease does not allow the tenant to withhold rent for the landlord’s failure to supply heating and air, it also does not provide the tenant with any course of action or remedy for the landlord’s failure to fix a HVAC unit which is not functioning properly in a timely fashion.

Whereas the lease does not provide defendants with any remedy for plaintiff’s failure to repair the HVAC unit in a timely matter and defendants suffering a temporary shut-down of their business, the Court finds defendants have a good faith dispute.⁶ Defendants withheld rent in good

⁴ 25 Del. C. § 5101(b) **Applicability of Code.** Any rental agreement for a commercial rental unit is excluded from this Code. All legal rights, remedies and obligations under any agreement for the rental of any commercial rental unit shall be governed by general contract principles...

⁵ Plaintiff’s Exhibit 1 – Lease Agreement signed December 8, 2020

⁶ Black’s Law Dictionary 836 (11th ed. 2019). **good faith**, n. A state of mind consisting in (1) honesty in belief or purpose,...(4)absence of intent to defraud or to seek unconscionable advantage.

faith awaiting repair to the HVAC unit. In order for a good faith dispute to exist, there must be some justification for the dispute beyond a mere arbitrary refusal to pay.⁷ It makes no difference whether the dispute involves a question of fact or of law.⁸ In this case, defendant inadvertently confused the residential Landlord Tenant Code with commercial landlord tenant laws and withheld rent because the landlord did not repair the HVAC unit in a reasonable amount of time. Defendants were not simply refusing to pay the rent, they thought they were entitled to do so under the law.

CONCLUSION

Based on the above, by unanimous vote, the Court finds a **GOOD FAITH DISPUTE** exists and judgment is entered in favor of plaintiff NSX, LLC., and against defendants Demartice Kerneal and Yalonda Kerneal in the amount of **\$7,276.07** for rent due through the date of this order. Per-diem rent of **\$40.00** until possession is vacated. Court costs of **\$45.00** and post-judgment interest at the legal rate of **6.0%** per annum. **Possession** to Plaintiff.

Defendants have **thirty (30) days** from the date of this judgment/order to pay the amount owed plaintiff bringing all rent due current as well as any condo fees. Defendants shall provide proof of payment to the Court. If defendants pay the amount in full within thirty (30) days, Defendants **SHALL** retain possession of the rental unit.

If defendants fail to pay the above amount in full within thirty (30) days, plaintiff has the right to immediately request a writ of possession to issue.

IT IS SO ORDERED this 16th day of June, 2022.

For the Court,

 (SEAL)
Judge Jamie L. Hicks

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⁷ *Wilmington Stevedores Inc. v. Steel Suppliers Inc.* Del. Supra., 511 A.2d2 (1986).

⁸ *Modern Dust Bag Co. v. Commercial Trust Co.* Del. Ch., 104 A.2d 378, 380 (1954).