IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JACK CHAUFF, Plaintiff below, Appellant, v. FERRIS PROPERTIES, INC., Defendant below, Appellee.	)))))))))	C.A. No.: U408-04-002

Date Submitted: March 3, 2010
Date Decided: March 22, 2010[1]

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DECISION AND ORDER AFTER TRIAL

This is an appeal pursuant to 10 Del. C. §9570 et seq.. Trial was held on September 22, 2009, and decision was reserved. The parties submitted post-trial memoranda. This is the decision and final order of the Court.

[1] This case was tried on September 22, 2009, and was not resolved at the time the trial judge retired. The case is being resolved pursuant to Rule 63 of the Civil Rules of Procedure of this Court. This Judge certifies that he is fully familiar with the record of the case, including oral trial testimony and exhibits and post trial memoranda. The case can be resolved without prejudice to the parties. The parties have been advised of their right to recall witnesses. Both parties have advised (letters dated February 17 and March 3, 2010) that they do not request the recall of any witness.

The Plaintiff below, appellant, (herein Plaintiff or Chauff) filed a claim against the Defendant below, Appellee, (herein Defendant or Ferris) for damages alleging that (a) defendant breached its duty as a landlord in failing to correct problems in a timely manner in leased premises and (b) retaliated against Plaintiff by raising the rent and denying services. Defendant denied all the allegations.

FACTS

In 1994, Chauff began renting apartment 1D located at 2509 Baynard Boulevard, Wilmington, Delaware 19802. On September 1, 2004 Ferris purchased the property. At that time rent for Apartment 1D was $500.00 per month. Chauff signed a one-year lease with Ferris on March 1, 2005 and rent remained at $500.00 per month for the remainder of the lease. (PX 1).[2]

Prior to signing the lease, on January 5, 2005, Chauff sent a maintenance repair request to Ferris listing five items: a ceiling light in the bedroom; the ceiling in the bathroom; the regulator in the bathtub; the drain under the kitchen sink; and the air conditioner. (PX 2). Ferris performed work on January 20, 2005 and addressed all problems in the repair request except for the air conditioner, which was replaced in April, 2005. (DX 9). The work apparently did not completely correct the problems listed in the repair request. Chauff testified that his sink continued to leak until September 2006 and the bathroom was not correctly repaired until July 2006.

Ferris issues written work orders when a repair is to be made to a rental unit. Four work orders were presented to the Court concerning the problems first reported by Chauff in January 2005. (DX 9,10,11,12). The first is dated January 11, 2005 and lists

[2] Reference to exhibits will note for Plaintiff, "PX," and for Defendant, "DX."

repairs to the following items: the pipes under the sink, the bathtub diverter, and the light in the bedroom. Chauff claims that the repairs made in January 2005 only corrected the light in the bedroom; the tub regulator still did not work, the kitchen sink drain still leaked and the ceiling in the bathroom was not finished and painted. The second work order is dated June 7, 2005 and lists repairs made to the ceiling in the bathroom. The work order states that the ceiling was sanded and painted. (DX 10).

Chauff testified that he did not send any more written repair requests to Ferris but that he did tell Michael Ferris, Vice President of Ferris, of the problems on numerous occasions. In May, 2006, Chauff retained an attorney concerning the landlord's failure to complete repairs. The attorney wrote a letter to Ferris on July 17, 2006 requesting that problems in the January 5, 2005 repair request be repaired and that exposed telephone lines be secured. This letter resulted in the issuance of the third work order relating to the original repair request. On July 20, 2006 Ferris finished repairs to the bathroom ceiling, the tub faucet and the diverter valve. (DX 11). The leak under the kitchen sink was also worked on; but according to Chauff the leak was not fixed. Chauff, not satisfied with the repair of the kitchen sink and the exposed telephone lines, contacted the attorney again and another repair request was made in a letter dated August 28, 2006. A fourth work order concerning the January 5, 2005 repair request was issued. (DX 12). The work order, dated August 31, 2006, lists a repair to fix the leak under the kitchen sink. This repair was successful in resolving the leak under the kitchen sink.

The letters sent to Ferris stated Chauff's concern about exposed telephone lines. Chauff said the lines became exposed when Ferris installed a new telephone access system in the building late in 2005. When the system was installed, the junction box in

the common area laundry room was not secured and wires were exposed in the common area hallway. Chauff's phone service did not work after the access system was installed. A Verizon Repair Operations manager, Bernard Walker, responded to a service call at the location in 2005. Chauff complained to Walker about illegal hookups to his phone. Walker repaired Chauff's phone service but Walker did not have authority to secure any of the lines inside of the building. Chauff claims that the junction box and wires were not secured until late 2007. The time sequence on this issue is in dispute since Defendant noted that the telephone access system was installed in April or May, 2007. (DX 14). Both parties agreed that the lines were secured by late 2007.

After the March 2005 lease expired, Ferris raised Chauff's rent. Ferris sent Chauff a letter dated December 22, 2005 offering a renewal of the lease for an additional year. (DX 3). The rental rate for the lease offered was increased to $595 per month. The letter also offered Chauff an option to choose a month-to-month lease at a rate of $645 per month. Chauff did not respond to the letter; and on February 13, 2006, Ferris sent him another letter reminding him of the offer to renew the lease for one-year. (DX 4). In response to the second letter, Chauff called Ferris' office and spoke to a representative. The Ferris representative explained to Chauff that his rent would be $645 per month if he chose to convert into a month-to-month lease. Chauff continued to pay $500 for rent in March and April 2006. Ferris sent Chauff a letter indicating that rent was late and if rent was not paid, he would be considered a holdover tenant. (DX 4). In April 2006, Ferris received $290 from Chauff to pay for the amount of the increase in rent that had not been paid with the March or April rent payments. Chauff subsequently made rent payments of $645 as required with a month-to-month lease.

Ferris charged Chauff ten late fees from March, 2006 through January, 2007, totaling $322.50. (PX 3). The late fees appear to be charged because Ferris received Chauff's rent after the fifth day of the month. Each month Chauff was charged a late fee, he was sent another letter notifying him that a late fee was charged and he could be determined to be a holdover tenant. (PX 4 & 5).

Ferris produced documentation that shows the rent increases charged to Chauff were the same for similar units in the building. (DX 15). At the time Ferris became the owner of the property one tenant was charged less than Chauff, two were charged the same and three were charged more. However, in 2006, all rents were adjusted to $595 per month. When the rental amounts were adjusted all tenants had the option to sign a one-year lease and pay $595 per month or continue as a month-to-month tenant for $645 per month. Similarly, in the following years, rent increases were applied to all tenants equally.

Chauff was not satisfied with Ferris' response to the original repair request and the constant late fee notices. On January 11, 2007, Chauff's attorney wrote another letter to Ferris requesting rent abatement for the previous problems and notifying Ferris that if no agreement was reached a suit would be filed. (PX 9). In February 2007, Ferris credited Chauff's account $322.50 for the late fees previously charged. (PX 3). Ferris did not agree to any rent abatement and a complaint was filed in the Justice of the Peace Court on September 7, 2007. (PX 12).

On November 1, 2007 one of the windows in Chauff's unit was damaged. The window was a double paned window and the exterior pane was smashed. (DX 7). Chauff notified Ferris of the damage and requested that it be repaired. Michael Ferris

went to the unit on November 2, 2007 and personally observed the damage to the window. Since only one pane of the window was broken and the damage was not considered a priority, Ferris did not send a maintenance crew to fix the window until November 7, 2007. The maintenance crew was unable to fix the window because Chauff requested that the window be fixed on the premises, which is more expensive and not common practice for Ferris. On that same day, Chauff's attorney sent another letter to Ferris requesting that the window be repaired. Ferris replaced the window on November 13, 2007 by exchanging the window with an identical window from a vacant unit. (PX 13 & 14). This allowed Ferris to have the damaged window repaired off-site, consistent with its standard practice.

Chauff's attorney's November letter to Ferris stated that the failure to repair the window was a retaliatory act because of the September 2007 lawsuit. Mike Ferris testified that the letter was his first actual notice of the lawsuit. Ferris subsequently filed an answer to the complaint in the Justice of the Peace Court.

Further facts found by the Court will be noted in the discussion and analysis.

DISCUSSION AND OPINION

Plaintiff's claim is twofold. The first seeks damages (rent abatement) because Ferris failed to correct problems in a timely manner.

The problems alleged are listed in the request Chauff submitted on January 5, 2005. (PX 2). The complaint on the air conditioner was resolved, even by Chauff's testimony, in April, 2005, and is not in issue. The other complaints were not resolved completely, according to Chauff, until August, 2006, and one final item in September, 2006. Ferris disputes this conclusion and argues that its records show the complaints

were rectified in 2005. But, Defendant's own exhibits show that in August, 2006, there were problems still unresolved. (See DX 11 & 12).

Plaintiff also alleged a problem with exposed telephone lines. (PX 8 & 9). Ferris installed a telephone access system sometime in April/May, 2007. (DX 14). Chauff believed this could compromise his telephone system in some way. Chauff also testified that in late 2005 he had contacted the telephone line supplier, Verizon, about exposed telephone lines. The Verizon representative, Bernard Walker, testified that he responded to the call. However, Mr. Walker stated that there was nothing unusual in the lines as they existed in the building and that Verizon would not require the owner to take any action concerning the lines. He opined that the condition of the lines in the building was a usual condition of similar lines in similar buildings in Wilmington. Chauff did not offer any specific instances where his telephone service was compromised and agreed that his concern was about what might happen if someone tried to tap into his telephone lines.

There was no evidence to show that Chauff had complained to Ferris about the telephone lines prior to the letter sent to Ferris by his attorney.

Plaintiff has not demonstrated by a preponderance of the evidence that the exposed telephone lines did in fact pose a problem for which he could seek redress from his landlord.

The Court concludes that plaintiff has shown that he was harmed by the landlord's inaction in two ways – failure to correct a leaking faucet or fixture in the bathroom and failure to correct a drain leakage in the kitchen sink. These two problems existed from January, 2005, to August, 2006, and one problem in the kitchen until September, 2006.

Plaintiff argues that his damages can be quantified by abating his rent by 50% for the period of January, 2005, to August, 2006, and by 25% for September, 2006. The issue of damages, in the absence of specific examples of harm caused by the problems (recognizing that Plaintiff's examples of how he had to walk to an access panel to stop the leak in the bathroom and how he had to carry a bucket to empty the leaked waste water from the kitchen) is a finding of how Plaintiff's quality of life or how his enjoyment of the use of his apartment was adversely affected. The Court is hard pressed to find that these two problems were of such dimension that Plaintiff was harmed to the extent that his rent should be reduced by 50% and 25%. Accepting at face value all of Plaintiff's testimony and evidence on these issues, the Court concludes that realistic, fair and generous finding is that Plaintiff was adversely affected to the extent that his damages can be determined by reducing his rent by 10% when two problems were present and 5% when only one problem existed. Factoring the monthly rental and the months elapsed by these bases ($500 × 10% × 14 months; $645 × 10% × 6 months; $645 × 5% × 1 month) the damages awarded to Plaintiff on the claim for failure to correct problems are $1,119.25.

Plaintiff's second claim seeks damages for alleged retaliation by the landlord in the form of (1) increases in the rent and (2) failure to provide or decreasing services. Defendant argues that there is no basis in fact on which a reasonable person could conclude that Ferris retaliated against Chauff.

Plaintiff cannot prevail on this claim for two reasons: (1) the facts do not, by a preponderance of the evidence, show retaliation, and (2) Defendant has demonstrated a defense to the claims under the Landlord Tenant Code.

Plaintiff's claim that Defendant failed to correct his complaints in a timely manner does not amount to retaliation. Defendant did respond to the complaints. All the items were not repaired promptly, but some items were completed when first called to Defendant's attention. On this record one cannot conclude that the incomplete items were not addressed in any manner. Repairs were made, albeit, not completely or exactly to Plaintiff's liking. Contrary to Plaintiff's argument that Defendant did nothing from January, 2005, until Plaintiff's attorney wrote to Defendant in July and August, 2006, Defendant showed that it had replaced the air conditioner in April or May, 2005, and that it responded to requests from Defendant at least in January, 2005 and June, 2006. These facts do not show retaliation.

There was evidence that Defendant sent late payment notices to the Plaintiff when these were not warranted. There was evidence that late charges were assessed when not warranted. But there was a plausible explanation by Defendant for the late payment charge and fee notices. Defendant's office procedures could have been more exacting to prevent the notices being sent. The late charges were cleared from Chauff's account and he never paid any late charges. There was evidence that to some extent Chauff may have caused the assessment of late charges by not responding to Defendant's notices, or he may have made an honest mistake or misunderstood some of the notices. Again, this does not show retaliation. Significantly, Defendant's witnesses classified Plaintiff as an excellent tenant and noted that he was less demanding with repair requests than were other tenants. (DX 16).

Plaintiff argues that Defendant's failure to repair a broken window shows a plan to decrease service in retaliation for the filing of the suit against Defendant. Plaintiff

reads too much into these facts. The window was broken on November 1, 2007 and inspected by Defendant the next day. The window had dual panes, and only the outer pane was broken, and there was no opening to the elements. Defendant's workman was ready to take out the window, board up the opening and have the window repaired at a shop and returned for re-installation in one day. Plaintiff did not agree to this which added to the delay in repairs. Finally, since there was no opening to the outside, the time taken to repair this window was not unduly long. Again, this scenario does not show retaliation.

The second reason why there is no evidence of retaliation is the fact that Defendant demonstrated a defense under the provisions of the Landlord Tenant Code.

In 25 Del. C. § 5516 (d) (12), the Landlord Tenant Code provides that it shall be a defense to a claim of alleged retaliatory acts if:

> The landlord can establish, by competent evidence, that the rent now demanded of the tenant does not exceed the rent charged other tenants of similar rental units in the same complex, or the landlord can establish that the increase in rent is not directed at the particular tenant as a result of any retaliatory acts.

Defendant presented a log of rents charged in all the units in the building with copies of notices sent to the affected tenants. (DX 15). The log demonstrates that Plaintiff's rent was no different than that of tenants in similar units and increases in rent were effected at the same time for tenants in similar units. Chauff did not pay rent any higher than the rent rates reflected in this log. (PX 3).

ORDER

Judgment for damages (rent abatement) will be entered for Plaintiff in the amount of $1,119.25. Judgment for alleged retaliation will be entered for Defendant. No prejudgment interest will be allowed. Statutory post judgment interest will be allowed. The parties shall bear costs equally.

SO ORDERED

Alfred Fraczkowski
Judge[3]

[3] Sitting by appointment pursuant to Del. Const., Art. IV, § 38 and 29 Del. C. § 5610.