

PLAINTIFF

Property Advisory Group t/a Lexington Green Advisory Group
C/o Deborah J. Galonsky, Esquire
Elzufon Austin Reardon Tarlov & Mondell, P.A.
2961 Centerville Road
Wilmington, DE 19808

v.

CIVIL ACTION: JP13-09-017471

DEFENDANT

Jacquieta R. Pope
C/o Community Legal Aid
100 W.10th Street, Suite 801
Wilmington, De. 19801

ORDER

This is a trial de novo appeal to a three-judge panel from a decision dated December 10, 2009. The panel held trial on the matter on March 25, 2010. Plaintiff was represented by Deborah J. Galonsky, Esq. Defendant was represented by Christopher W. White, Esq.

Plaintiff brought this action seeking possession based on rules violations related to allowing unauthorized and/or prohibited individual to reside and/or visit the property, as well as maintaining a dog in the unit. As an additional basis for bringing this action, Plaintiff cites the Defendant with non-payment of rent.

At trial before the panel, the Plaintiff presented testimonies from Sheila Hill, regional manager, Danielle Daring, regional advisor, Dennis Madarang, U.S. Dept. of HUD Inspector General, Officers Thomas Bruhn and Peter J. Stewart, New Castle County Police Department (NCCPD). At the conclusion of the Plaintiff's case-in-chief Defendant moved for dismissal due to insufficiency of the required notices setting forth the grounds for termination of a lease.

FACTS

Defendant lives in a subsidized housing unit in 905 Ingleside Building, Lexington Green Apartments in Newark, Delaware. With the federal rent subsidy, tenant's monthly rent was \$58.00 as stated in the lease agreement beginning December 1, 2008. During

the course of her tenancy, Defendant became delinquent in her rent payments. A five-day letter was sent to the Defendant dated February 6, 2009 demanding unpaid rent in the amount of \$270.00. The letter stated that if rent was not paid with five business days from the mailing or

hand delivery of the notice the rental agreement would be terminated. The letter also informed the tenant that if she failed to pay all rent due within the five-day period, she would be considered a holdover tenant and responsible for double rent for every day she remained in the unit. A subsequent five-day letter dated June 5, 2009 was sent to the tenant demanding rent for May and 5 days of June at rent of \$40.23 per day. The letter also stated the tenant's HUD assistance was terminated effective April 5, 2009.

After the initial February demand letter, but before the June demand letter, Defendant was sent a notice of terminating her lease on the grounds that she engaged in criminal activity and allowed unauthorized individuals to live in her unit without permission. The February 27, 2009 letter did not specify the criminal activity or identify the unauthorized persons living in her unit. An additional five-day letter was sent on August 6, 2009 demanding \$4,854.00 in unpaid rent. Plaintiff also submitted a notice dated August 11, 2009 that was distributed to all residents listing individuals that were banned from the apartment complex. A violation notice dated October 19, 2009 was sent informing the Defendant that on October 8, 2009 an individual named Sandy Golden, who was on August 11, 2009 Banned List, was seen in her unit. The letter also mentioned that there was a dog on the premises in violation of the no pet policy. This notice gave the Defendant seven days to correct the violation pursuant to 10 Del. C. § 5513. Plaintiff also introduced a notice dated August 3, 2009 that was sent to the tenant concerning a dog in her apartment in violation of the lease.

Witnesses Hill and Darring testified concerning the records kept by records by Lexington and the delinquent nature of the Defendant's account. Witness Darring also testified that after the February 27, 2009 raid on Pope's apartment, HUD began an investigation.

Witness Madarang, an investigation special agent for U.S. Department of HUD worked with the police to conduct a fraud investigation of the Defendant. As part of the investigation process, Sandy Golden was interviewed at the prison where he was being detained. As a result of the interview with Golden and review of internal records a recommendation was made to terminate Ms. Pope's subsidy.

Witnesses Bruhn and Stewart of NCCPD, testified concerning Golden's presence in the Defendant's apartment and his subsequent arrest for criminal trespassing. A total of four searches of Pope's apartment were conducted between May 14, 2008 and October 8, 2009. Both witness testified to the fact that a pit bull was in the residence on both February 23, 2009 and October 8, 2009. Sandy Golden was present during the latter search.

During cross examination of Plaintiff's witnesses the defense presented the following documents 1) May 4, 2009 notice of holdover 2) February 27, 2009 notice of lease termination 3) July 16, 2009 notice of subsidy termination and 4) certified Superior Court Docket for Juquieta R. Pope.

At the conclusion of Plaintiff's case-in-chief, Defendant moved to dismiss on the grounds that Plaintiff failed to prove right to possession on any grounds listed in the complaint. Defendant argues that the February 27th notice of lease termination was insufficient to terminate the tenancy because it did not list the specific conduct that violated the lease. The notice alleges that they had been provided with proof that Pope engaged in criminal activity, but did not specify the activity. The notice also mentioned unauthorized individuals living in the unit, but did not name the individuals. The Defendant argues that specificity is required in the notice so that the tenant has enough information to prepare a defense. The Defendant further argues that the February 27th notice cannot be relied upon for immediate termination since the language in the letter gives the tenant seven days to correct the violation.

DISCUSSION

The three-judge panel finds that Plaintiff's claim for possession due non-payment of rent fails. The February 26th five-day letter demanded past due rent of \$270.00. No action was taken to terminate the lease after the five day period expired. The next five-day letter was sent June 5th, demanding rent in the amount of \$1,408.15 for May 2009 and five days of June. While Ms. Darring, who took over as regional manger in December 2009, testified that no rental payments were made, however, the Court was not presented with a ledger and no action for possession was filed until October 29, 2009.

Also included in the June 5th letter was a statement to the tenant that her rental assistance was terminated by HUD on April 30, 2009. There was no testimony from the HUD official or Property Advisory Group's management concerning notice being given to the tenant prior to the April 30th termination of assistance. According to the HUD handbook there are very specific requirements for terminating assistance.¹ HUD requires notice to the tenant of the increase to market rent based on the termination of assistance.² Chapter 8-6 A2 and Chapter 8-6 A3 of the HUD handbook lists the statements that must be included in notices terminating assistance.³ The Court does not believe that the Plaintiff complied with HUD requirements for notification to the tenant. Due to the lack of proper notice to the tenant of the termination of subsidy and increase in monthly rent, we believe all notices demanding the higher market rent are defective. Therefore, possession cannot be awarded on this basis. The Court notes that the July 16, 2009 letter to Frank Aiello of U.S. Dept. of Urban Development referenced termination of Ms. Pope's Section 8 subsidy effective May 1, 2009, two months prior. There is no indication that this letter was copied to the tenant.

The three-judge panel finds Plaintiff's claim for possession on the grounds that tenant violated the terms of her lease also fails. The termination notice signed by

¹ 8-4 F reads: "*REMINDER: Actions to terminate assistance must be based only on a change in tenant's eligibility for assistance or a tenant's failure to fulfill responsibilities under program requirements. Owner must not take action to terminate assistance based on other factors.*"

² 8-6 A2 When terminating assistance, an owner must provide proper notice to the tenant of the increase in the tenet's rent.

³ 8-6 A3 Written notice must include: a. The specific date the assistance will terminate; b. The reason(s) for terminating assistance; c. The amount of rent the tenant will be required to pay; and d) Notification that if the tenant fails to pay the increased rent the owner may terminate tenancy and seek to enforce the termination in court.

Danielle Darring, dated February 27, 2009 references a raid conducted as a result of a federal investigation and states that that they had been provided with proof that she engaged in criminal activity, in addition to having unauthorized persons living in her unit without permission. The notice neglected to specify the criminal activity or the unauthorized persons living in the unit. Without this information, the notices sent to the tenant fail to comply with HUD guidelines⁴ governing termination of tenancy. By conspicuous language on the page 2 of the letter, the February 27th notice was intended to be a sixty day notice of lease termination pursuant to 25 Del C. §5106(2).⁵ The lease term began December 1, 2008 and was due to end November 30, 2009.

Another lease termination notice dated February 27, 2009 signed by Dollicia L. Cooper, Site Manager was sent to Ms. Pope terminating her lease effective April 30, 2009. The letter gave seven days to correct the violation and further stated, "All unauthorized activity occurring outside must stop immediately or your lease May Be Terminated."

On May 4, 2009, Ms. Cooper sent the Defendant a Notice of Holdover. This notice referenced the February 27th letter terminating the lease as of April 30, 2009. The letter informed the tenant that the landlord would seek holdover rent in double the per diem amount. No specific amount was stated. The letter also stated that the landlord further relied on 25 Del. C. § 5513 (b) to terminate the lease.⁶ It did not, however, specify the tenant's conduct that caused or threatened to cause irreparable harm. The letter also indicated that a money order tendered by the tenant (\$400) to pay her rent was being returned.

A July 16, 2009 letter to Frank Aeillo from Danielle Darring stated the tenant's subsidy was terminated effective May 1, 2009, two months prior. She further states the termination was a result of a HUD OIG Investigation and a Material Lease Violation. It does not appear that the tenant was copied on this letter. The final exhibit presented by

the Defendant was a copy of a Superior Court Criminal Docket that indicates Jacquieta Pope was found not guilty of felony theft, July 10, 2009. It was represented to the court that this charge resulted from the HUD investigation.

⁴HUD Handbook Section 3B2 Termination Notice C. When an owner terminates tenancy, written notice must be provided to the tenant and must: (1) State the specific date the tenancy will be terminated; (2) State the reasons for the action with enough detail to enable the tenant to prepare a defense; (3) Advise the tenant that remaining in the unit on the termination date specified in the notice may result in the owner seeking to enforce the termination in court, at which time the tenant may present a defense (4) Advise the tenant that he/she has 10 days within which to discuss termination of tenancy with the owner. The 10-day period begins on the day that the notice is deemed effective...

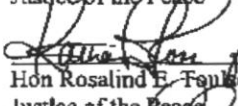
⁵5106(2) refers to the Summary of the Delaware Residential Landlord Tenant Code, not the Delaware Code itself. The summary reads, (2) Notice of Termination (§ 5106) The landlord or the tenant must give a minimum of sixty (60) days written notice to the other party if either intends to terminate an existing rental agreement.

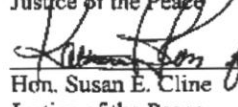
A subsequent violation notice dated August 3, 2009 was sent concerning a report of a dog inside the tenant's apartment. The landlord referenced 25 Del. C. § 5513, giving the tenant seven days to correct the problem. A final violation notice dated October 19, 2009 was sent to the tenant. This notice informed Ms. Pope that Sandy Golden, who was previously banned from the property, was seen in her apartment. The notice gave the tenant seven days to correct the violation pursuant to § 5513. The letter also included a statement that the notice of violation is effective for a period of one year. There was no testimony that the violation(s) continued after the seven-day period to correct.

The Court concludes that the facts and evidence presented in this case do not support a finding in favor of the Plaintiff for possession due to material non-compliance with the lease or non-payment of rent. Therefore, Defendant's Motion to Dismiss is granted.

IT IS SO ORDERED this 24th day of May, 2010.


Hon. Bonita N. Lee
Justice of the Peace


Hon. Rosalind E. Faulkner
Justice of the Peace


Hon. Susan E. Cline
Justice of the Peace



⁶§5513 (b) When a breach by a tenant causes or threatens to cause irreparable harm to any person or property, or the tenant is convicted of a class A misdemeanor or felony during the term of the tenancy which cause or threatened to cause irreparable harm to any person or property, the landlord may, without notice, remedy the breach and bill the tenant as provide in subsection (s) of this section; immediately terminate the rental agreement upon notice to the tenant and bring an action for summary possession; or do both