

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

COURT ADDRESS:
23730 SHORTLY ROAD
GEORGETOWN DE 19947

CIVIL ACTION NO: JP17-12-004579

ALBERTA ROBINSON BESSICKS ET AL VS MARSHALL WYNNE

SYSTEM ID: @2518909
PRESTON P BESSICKS
418 E POPLAR ST APT. A
SEAFORD DE 19973

Submitted: October 8, 2012
Decided: October 11, 2012

Appearances:

Alberta Robinson Bessicks and Preston P. Bessicks *pro se*
Marshall Wynne *pro se*

Before:

Blakely, DCM; Comly JP and Sipple JP

Comly for the Court

NOTICE OF JUDGMENT/ORDER

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

PROCEDURAL HISTORY

Alberta Robinson Bessicks and Preston P. Bessicks are tenants for a rental unit known as 418 A East Poplar Street, Seaford, Delaware. Marshall Wynne is their landlord. On August 27, 2012 the tenants filed a summary possession action and requested a forthwith summons pursuant to 25 *Del. C.* § 5115. A summons was issued and served that same day. An initial hearing was scheduled for August 28, 2012. That hearing was continued to September 13, 2012 to allow the parties time to obtain counsel. At the conclusion of the September 13, 2012 hearing the Court ordered the landlord to restore electricity to the rental unit on or before September 18, 2012. The landlord filed an appeal pursuant to 25 *Del. C.* § 5717(a). The de novo trial was held on October 8, 2012. This is the Courts decision following that trial.

FINDING OF FACTS

On June 6, 2012 the City of Seaford sent Alberta Robinson-Bessicks a notice that the electric service at her rental unit had been terminated for none payment. At the time she owed \$288.64. The following day she went to pay the electric bill and have the electric service restored. She was told by a City of Seaford employee that even if she paid the electric bill the electric service would not be restored because her landlord owed the City of Seaford money for water and sewer bills at 418 East Poplar Street and water, sewer and electric bills at 332 East Poplar Street. The landlord has not paid or caused these bills to be paid. As a result the electric service at the rental unit has not been restored. As of the day of trial the bill for 418 East Poplar Street was \$322.01 and the bill for 332 East Poplar Street was \$337.58. Even if the bills were paid by the landlord, the tenants would still have to pay a \$200.00 meter deposit before the electric service could be restored. The tenants have been unable to live at the rental unit because there is no electricity.

DISCUSSION

Pursuant to 25 *Del. C.* § 5305(a)(2) a landlord is required to “[P]rovide a rental unit which shall not endanger the health, welfare or safety of the tenants or occupants and which shall be fit for the purpose for which is expressly rented”. In addition, pursuant to 25 *Del. C.* § 5305(b)(2), the landlord must “[S]upply or cause to be supplied, water, hot water, heat and electricity to the rental unit.” A rental unit that does not have electricity is a danger to the health of the tenants and therefore the landlord is in violation of his statutory obligation under section 5305(a)(2). By not bringing his account with the City of Seaford current, the landlord has breached his duty to supply or cause to be supplied electricity to the rental unit. It is not the tenants’ responsibility to pay the debts of the landlord. The landlord must pay all his outstanding City of Seaford bills before the tenants can get the electric service restored.

By not paying the outstanding City of Seaford bills, the landlord has prevented the tenants from restoring the electric service. By not allowing the tenants to restore the electric service, the landlord has constructively ousted or excluded the tenants. As a result, the tenants are not obligated to pay rent from June 7, 2012 until such time as the electric service is restored. As of the date of the trial the rental agreement had not been terminated.

ORDER

Since the landlord has a continuing duty to supply or cause to be supplied electricity to the rental unit, the landlord, Marshall Wynne, has ten(10) days from the date of this order to pay all his outstanding obligations to the City of Seaford. The landlord must submit proof of the payments to the Court and also notify the tenants that the bills have been paid. As of the day of trial the outstanding balance was \$659.59. Failure to comply with this order may result in a finding of contempt, under 10 *Del. C.* § 9506, which is punishable by fine and/or a jail sentence of up to 170 days.

Once the outstanding bills have been paid, the tenants will be required to pay the City of Seaford a \$200.00 meter deposit. The tenants will have twenty (20) days from the day the bills are paid to make the meter deposit payment. If the tenants fail to make the meter deposit within the twenty (20) days, the Court will consider the rental agreement terminated.

The Court has some concerns as to the legality of the City of Seaford's ordinance that requires a landlord's entire obligation to the City of Seaford be paid before a tenant can reestablish electric service that the tenant had contracted with the City of Seaford to supply. Because of these concerns, the Court will be forwarding a copy of this order to both the City of Seaford and the Delaware Department of Justice.



IT IS SO ORDERED this 11th day of October, 2012


Justice of the Peace/Court Official

(SEAL)

NOTICE OF APPEAL RIGHTS

Any party has 15 days starting the day after the judgment is signed by the judge to appeal the judgment of the Justice of the Peace Court to the Court of Common Pleas of the above county. If the judgment involves an action for summary possession in a landlord/tenant case, then either party has 5 business days, starting the day after the judgment is signed by the judge, to appeal the judgment to a three judge panel at the Justice of the Peace Court where the judgment was ordered. You must complete all of the appeal requirements within those periods. To prevent dismissal, the appeal must name all of the parties as they were originally named in the Justice of the Peace Court action. (This applies even if the action was dismissed in the Justice of the Peace Court against one or more of the parties.) Additional information on appeal procedures is found in the attached sheet entitled "Justice of the Peace Courts Civil Post-Judgment Procedures". (J.P. Civ. Form No. 14A) If no appeal is filed, parties may remove all exhibits from the Court no sooner than 16 days and no later than 30 days, from the date of this judgment. If not removed, the Court may dispose of the exhibits without further notice to the parties.