

**IN THE JUSTICE OF THE PEACE COURT OF
THE STATE OF DELAWARE, IN AND FOR NEW CASTLE COUNTY
COURT NO. 13**

**COURT ADDRESS:
1010 CONCORD AVE
WILMINGTON DE 19802**

CIVIL ACTION NO: JP13-08-006340

KORMAN RESIDENTIAL AT BRANDYWINE HUNDRED VS MILLAR

**SYSTEM ID: @845035
BRANDYWINE HUNDRED APARTMENTS
C/O MICHAEL P MORTON ESQUIRE
1203 NORTH ORANGE STREET
WILMINGTON DE 19801**

VS

**SYSTEM ID: @845036
MILLARD K HANDELMAN
400 FOULK ROAD #3B2
WILMINGTON DE 19803**

ORDER ON TRIAL DE NOVO

January 8, 2009. Both parties present for Trial De Novo. The 3-judge panel consisted of: Bonita N. Lee, Katharine B. Ross, and Marilyn Letts. Plaintiff Korman Residential at Brandywine Hundred, who is the landlord, was represented by Michael P. Morton, Esq. Defendant Millard K. Handelman, who is the tenant, was pro se.

Plaintiff filed suit for back rent, late fees, possession and rent that has accrued since the 5-day letter. Plaintiff's position is that the tenant has wilfully withheld \$50.00 a month of the rent since June 2008. Once the 5-day letter was sent on June 25, 2008, the tenant did not make timely payment, therefore the lease was terminated and suit filed.

Defendant's position is that once new management took over, the free washer and dryers, which had previously been provided by the landlord, was changed to coin operated machines. Defendant believes this action was material to the lease and caused his rent to be increased by \$50.00 a month. He avers this material provision was known by the landlord and information withheld from him when he signed the lease on February 28, 2008, to take effect on March 1, 2008.

At the trial below, the Court agreed with Defendant's position and dismissed Plaintiff's case. Plaintiff appeals the decision. An updated worksheet includes eight months of rent (\$50.00 each) and late fees (\$45.75 each) or \$766.00 plus \$40.00 court costs and possession of the rental unit.

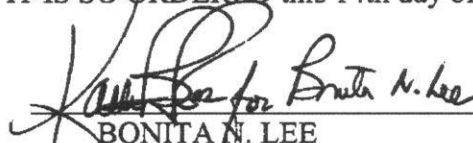
DISCUSSION

Defendant Handelman has cited several sections of the landlord-tenant code he believes establish grounds for withholding rent. He first argues that by installing coin-operated washers and dryers the landlord effectively increased the rent in violation of 25 Del. C. §5109(a). A material promise was changed without notice to the tenants. He further argues §§5302(b) (c) and 5308(a) were violated because he no longer receives the same benefit of the bargain that he had received prior to the takeover of new management. He considers free washers and dryers as essential services that are no longer being provided.

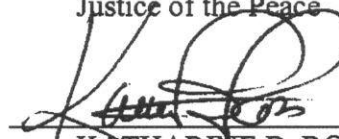
The Court finds the Defendant's argument misplaced on all grounds. The lease agreement has no provision with regard to washers and dryers, so they cannot be considered a material provision of the lease. The services and utilities provided by the landlord and listed on the lease are: water and sewer service, natural gas and fuel oil. Paragraph 24 of the lease states, "this agreement contains all the terms and conditions agreed to by the parties hereto and shall not be amended or modified in anyway including but not limited to: course of conduct, or by non-enforcement of any provision; except by means of a written instrument executed by the parties hereto." Paragraph 31 states, "Tenant has read and understood this agreement, and is competent to understand and enter into this agreement. Tenant has not relied upon any oral representations, provisions or warranties made by the landlord or its agent in renting the premises." Both parties are bound by the terms of this lease. Additionally, the Court does not consider free washers and dryers essential services as contemplated by 25 Del. C. §5308. The installation of coin-operated washers and dryers does not constitute a failure by the landlord to conform to the rental agreement as required in §5302, when in fact the lease is silent about this service. Although tenant could argue having free washers and dryers added to the benefit and enjoyment of life at the rental community, this does not constitute a condition, subject to rights and remedies under §5306 or § 5307.

After considering the testimony and evidence provided by all parties, the Court finds Plaintiff Korman Residential at Brandywine Hundred has established by a preponderance of evidence a right to judgment against Defendant Millard K. Handelman for rent in the amount of \$400, possession and \$40.00 court cost. The Court does not find that either party acted in bad faith, but believes the default arose from a good faith dispute. Therefore, pursuant to 25 Del. C. §5716, if the tenant pays judgment and costs in the amount of \$440.00 within 10 days of the date of this Order, possession will remain with the tenant. If monies due and owing are not paid within the time specified, possession will go to the landlord. In accordance with finding of a good faith dispute, requested late fees are not awarded.


IT IS SO ORDERED this 14th day of January, 2009



BONITA N. LEE (SEAL)
Justice of the Peace



KATHARINE B. ROSS (SEAL)
Justice of the Peace



MARILYN LETTS (SEAL)
Justice of the Peace