

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
KENT COUNTY COURTHOUSE
DOVER, DELAWARE 19901
PHONE: (302) 739-4618**

**CHARLES W. WELCH, III
JUDGE**

April 27, 2011

Mr. Gregory Strong
Ms. Lillie Brown
P O Box 471
Smyrna, DE 19977

Carolyn H. deBernard, Esq.
Bonnie M. Benson, P.A.
306 E. Camden-Wyoming Ave.
Camden, DE 19934

RE: J&K&K&B, LLC v. Gregory Strong and Lillie Brown
C.A.No.: CPU5-10-000695

Decision After Trial

Dear Mr. Strong, Ms. Brown and Ms. deBernard:

This case is a civil appeal from the Justice of the Peace Court for a trial *de novo* pursuant to 10 *Del. C.* Section 9571. It involves an action for delinquent rent, late fees and an unpaid utility bill. Appellant, Plaintiff-Below, J&K&K&B, LLC ("Plaintiff"), contends that it is entitled to delinquent rent and late fees in the amount of \$5,300.00, plus \$80.20 for a past due sewer bill, court costs and interest on the outstanding balance owed by Appellees, Defendants-Below, Mr. Gregory Strong and Ms. Lillie Brown ("Defendants"). The defendants contend that they do not owe anything to the plaintiff since the plaintiff breached the lease when it did not adequately repair the rental unit's air conditioner. In the alternative, the defendants contend that they are entitled to reductions in rent owed pursuant to 25 *Del. C.* Section 5304 for the plaintiff's failure to timely supply possession of the rental unit and 25 *Del. C.* Section 5308 for the plaintiff's failure to provide essential services for the rental unit. Furthermore, the defendants argue that

the plaintiff must apply a \$1,300.00 security deposit to past due rent. The court held a trial for this matter and reserved decision. This correspondence constitutes the court's decision. The court enters judgment for the plaintiff in the amount of \$4,376.74 plus interest at the legal rate from March 1, 2010, and court costs.

FACTS

Appellant, Plaintiff-Below, J&K&K&B, LLC ("Plaintiff"), entered into a lease agreement with Appellees, Defendants-Below, Gregory Strong and Lillie Brown ("Defendants"), for the defendants to rent a residence ("the residence") located in Smyrna, Kent County, Delaware, at a monthly rate of \$1,400.00. The lease commenced on March 1, 2009, with a termination date of February 28, 2010. The lease contained a provision stating that if rent was not paid by the fifth of each month, a five percent late fee of the delinquent amount would be assessed against the defendants. In addition, the lease provided that the defendants had to pay for utilities and services. Defendants paid the plaintiff a \$1,300.00 security deposit. On or about March 20, 2009, the defendants received the keys to the residence from the plaintiff and moved in.

The defendants timely paid rent and all utility and service charges from March 2009 through August 2009. However, they notified the plaintiff in writing that they were withholding \$750.00 of the September 2009 rent due to a problem with the residence's air conditioning unit. The defendants stated that the air conditioning unit was not functioning properly when they moved into the residence. The plaintiff sent a repairman to the residence at least three times to fix the problem with the air conditioning unit and believed the issue was remedied.

In addition, the defendants did not pay the December 2009 through February 2010 rent or pay the February 2010 sewer bill in the amount of \$80.20. They left the residence in February 2010 after verbally informing the plaintiff that they were leaving. The plaintiff conducted an inspection of the residence on February 28, 2010, after the defendants had left it. Damage was found to the residence in excess of \$1,300.00. The plaintiff sent the defendants a letter detailing the damage to the residence and advising that it was using the security deposit to apply to the damage.

The plaintiff seeks to recover damages from the defendants for delinquent rent, including late fees, the past due sewer bill, court costs and interest. The defendants respond that the plaintiff did not adequately repair the air conditioning unit.¹ Therefore, they do not owe the plaintiff anything as it breached the lease when it did not provide an essential service to the residence pursuant to 25 *Del. C.* Section 5308. Additionally, to the extent that the plaintiff is entitled to recovery, they contend that they are entitled to an offset against amounts owed to the plaintiff for their security deposit and for the period of time in March 2009 that they did not possess the residence.

DISCUSSION

The defendants breached the lease when they failed to make the required payments thereunder for rent and the February 2010 sewer bill. The defendants' defense that they should not pay anything for the delinquent rent and sewer bill because it was the plaintiff that breached the lease when the air conditioning for the residence was not properly repaired is not valid. The defendants attempt to define air conditioning as an "essential service" for the purposes of 25 *Del. C.* Section 5308 when asserting this

¹ At trial, the defendants attempted to define the air condition problem as an electrical problem in an attempt to declare it an essential service for purposes of 25 *Del. C.* Section 5308. But, it was clearly an air conditioning problem that was described by them at trial.

defense. However, air conditioning does not constitute an essential service under that section of the Delaware Code. Additionally, no remedy listed under Section 5308 of Title 25 permits the tenant to remain in a rental unit totally rent free. Therefore, the plaintiff is entitled to back rent for September 2009 and the months of December 2009 to February 2010, subject to certain offsets. The plaintiff is also entitled to recovery from the defendants for the unpaid February 2010 sewer bill.

A. Damages

The plaintiff is entitled to unpaid rent from the defendants in the amount of \$1,400.00 per month from December 2009 through February 2010. The record reflects that the defendants did not pay any rent during this three month period of the lease. Additionally, the plaintiff is entitled to recover the \$750.00 amount that the defendants withheld from the September 2009 rent. Their claim that they should have been permitted to withhold the \$750.00 amount pursuant to 25 *Del. C.* Section 5308 due to the fact that the air conditioning problem they experienced deprived them of an essential service under the lease must fail. As explained earlier, the air conditioning problem that they described for the unit did not constitute an essential service pursuant to 25 *Del. C.* Section 5308.²

The plaintiff is also entitled to the reimbursement of the \$80.20 past due sewer bill from February 2010 that the defendants never paid. The lease clearly states that the

² If the defendants were experiencing a problem with the air conditioning unit for the residence, they should have availed themselves of the remedies provided to tenants under 25 *Del. C.* Section 5307. Section 5307 provides an avenue for tenants to have repairs made to rental units when the landlord fails to complete the repairs within a specified period. However, the tenant must have the repairs completed under this section of the Delaware Code. A tenant cannot just sit idly by without paying any rent and continue to complain of the repairs that need to be made.

defendants were responsible for utility bills. Therefore, they must reimburse the plaintiff for this charge.

B. Offsets

1. Delayed possession.

The defendants are entitled to an offset of \$858.06 as a credit to their rent for March 2009. The lease agreement the parties executed states that rent was due by the first of the month in the amount of \$1,400.00. The facts indicate that although the lease was supposed to begin on March 1, 2009, the defendants could not move into the residence until approximately March 20, 2009, because the plaintiff failed to provide them the keys to it. Section 5303 of Title 25 of the Delaware Code provides that a “landlord shall supply the rental unit bargained for at the beginning of the term and shall put the tenant into full possession.” In addition, 25 *Del. C.* § 5304(a) states that “[i]f the landlord fails to put the tenant into full possession of the rental unit at the beginning of the agreed term, the rent shall abate during any period the tenant is unable to enter . . .” The defendants paid the plaintiff \$1,400.00 in rent for March 2009. However, they were not put into full possession of the residence until approximately March 20, 2009, when they received the keys from the plaintiff. The defendants were only required to pay rent for the period in March 2009 that they fully possessed the residence. Because the defendants fully possessed the residence for approximately twelve out of the thirty-one days in March 2009, they were only required to pay \$541.94 in rent. Thus, they are entitled to an offset of \$858.06 as a credit to their March 2009 rent.

2. Security deposit.

The defendants are not entitled to an offset for the security deposit paid to the plaintiff. Section 5514(a)(1) of Title 25 of the Delaware Code provides that a landlord may require the payment of a security deposit for its tenants. Furthermore, *25 Del. C.* Section 5514(c)(1) permits a landlord to retain a portion or all of the security deposit to compensate it for actual damages caused to the premises by the tenant which exceed normal wear and tear, or which cannot be corrected by painting and ordinary cleaning. To retain a security deposit, a landlord must also comply with *25 Del. C.* Section 5514(f), which states that “[w]ithin 20 days after the termination or expiration of any rental agreement, the landlord shall provide the tenant with an itemized list of damages to the premises and the estimated costs of repair for each . . .” The court is convinced by the evidence presented at trial that the defendants caused damage to the residence in excess of \$1,300.00, and that the plaintiff adequately complied with *25 Del. C.* Section 5514(f). Therefore, the defendants are not entitled to an offset for the security deposit.

C. Total Award

The court has determined that the plaintiff is entitled to recover back rent of \$1,400.00 per month for the three months of December 2009 through February 2010, totaling \$4,200.00, plus the \$750.00 amount that the defendants withheld from the September 2009 rent. Thus, the plaintiff is entitled to total back rent of \$4,950.00. As the court has also determined, the defendants are entitled to \$858.06 as an offset to this amount for their delayed possession of the residence in March 2009. Therefore, the plaintiff is entitled to a total of \$4,091.94 for back rent that the defendants never paid. In addition to this amount, the plaintiff is entitled to recover a 5% late fee for rent that was

never paid, which totals \$204.60, and \$80.20 for the February 2010 past due sewer bill for the residence. Adding all of these amounts together, the plaintiff is entitled to a total recovery of \$4,376.74, plus interest at the legal rate from March 1, 2010, and the cost of these proceedings. Judgment for the plaintiff and against the defendants is so entered.

IT IS SO ORDERED.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Welch, III". The signature is written in a cursive, flowing style with a large initial "C".

Charles W. Welch, III

CWW:mek