IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

KATHRYN M. KRAJEWSKI and JAMES M. KRAJEWSKI,	)	
Defendants Below-Appellants,	)	
vs.	)	C.A. No.: 2004-11-619
VICTOR B. FOOKS and TAWANA ARWINE-FOOKS,	)	
Plaintiffs Below-Appellees.	)	

Submitted: January 12, 2006
Decided: February 2, 2006

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DECISION AFTER TRIAL

This is a *de novo* appeal from the Justice of the Peace Court which arises out of a dispute involving a landlord-tenant relationship. Defendants below-appellants, James and Kathryn Krajewski (hereinafter "Krajewski") appeal from a judgment in favor of plaintiffs below-appellees, Victor B. Fooks and Tamara L. Arnwine-Fooks (hereinafter "Fooks"). The Fooks are former tenants of Krajewski's having rented property at 7 Hayden Avenue in Wilmington Delaware for a term of one-year which began on June 1, 2003.

Fooks seek return of their security deposit in the amount of $950.00; an amount equal to the security deposit of $950.00 for failure of the landlord to comply with the provisions of 25 *Del C.* § 5514(e) in returning the security deposit at the end of the lease term; damages for personal property wrongfully held and destroyed, and cost of these proceedings. Krajewski denies liability alleging Fooks breached the lease term by vacating the property two (2) months early; forfeited their security deposit to cover a sub-lease tenant; there was compliance with 25 *Del. C.* § 5514(e) in that a list of damages was provided; and the property claimed was abandoned. Krajewski also set forth five affirmative defenses.

FACTS

The facts at trial indicate that the parties entered into a lease for a term of one year commencing on June 1, 2003 and ending on June 1, 2004.[1] Pursuant to the lease, Fooks paid a security deposit equivalent to one month's rent to Krajewski in the amount of $950.00. In addition, because of a credit issue, Fooks was required to pay five months rental in advance. Neither party disputes that these amounts were timely paid in full to Krajewski. Krajewski provided Fooks with a property condition and repair addendum[2] (hereinafter "Addendum") to the lease dated June 29, 2003. The document states that it is an addendum to the lease created for the purposes of describing the then-present condition of the premises and also as a request for repairs.[3] Along with the thirteen items

[1] Joint Exhibit 1
[2] Joint Exhibit 3
[3] The Addendum indicates, "The repairs requiring immediate attention will be indicated by an asterisk (*)":

> "1. The front window in the upstairs bedroom is broken (mentioned during initial walk through). The window also will not lock. *
> 2. Heater does not work. * (Requesting summer/ early fall repair to ensure it will work properly during the winter.)

contained in the addendum, Fooks added a paragraph addressing flooding in their basement and asked for Krajewski's immediate attention to this matter. At trial, Wanda Fooks testified that during an initial walk-through with James Krajewski before the parties signed the lease, she indicated to him that the upstairs hardwood flooring was in poor condition, to which he responded that although he did not intend to replace it, they would not be liable for any existing floor damage. Fooks also provided the Court with pictures of the premises' exterior.[4]

Fooks wrote a letter to Krajewski dated March 2, 2004 giving notice that they intended to vacate the property on March 31, 2004.[5] At trial Fooks testified that their reason for vacating the rental unit early was because they obtained jobs and were relocating to the Baltimore, Maryland area. In Fooks' letter, they indicated they had gotten a person whose name was Curtis "that is willing to complete our lease as well as sign an additional year at the same rent" if Krajewski accepted Curtis as a tenant, "This would enable you to receive rent uninterrupted through May 31 2004." Fooks promised to "clean and prepare the property for the change over" and that they would obtain their

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3. Upstairs bathroom toilet runs constantly after flushing. This wastes water and potentially increases the water bill.*
4. Roof is leaking into the back bedroom after it rains. * (We acknowledge that you have already obtained estimates and intend to have this repaired ASAP)
5. Radiator heater covers are needed for the bathroom and the second bathroom. (This is needed by the time the heater will be used to ensure that no one will be injured as the heater is very close to the toilet.)
6. Window screens are missing from 2 side windows in the living room and the upstairs bathroom windows. *
7. Cracked glass in the basement window front side.
8. Chimney needs to be cleaned. (Prior to fall)
9. The kitchen has numerous cuts on the counters was very dirty under the sink.
10. The oven was dirty and is in poor repair. It is rusted and the side metal piece keeps falling off.
11. The ceiling fan in the kitchen does not work. *
12. Garage doors to be replaced. * (Acknowledging that you have had the estimate completed)
13. Painting to outside of the house. * (Acknowledging your intention to complete in the coming weeks.)

[4] Plaintiffs Exhibits 2A and 3A

[5] Joint Exhibit 5

security deposit from Curtis after he vacates the property. Fooks stated that they would give Krajewski written authorization to release their deposit to Curtis." Shortly thereafter, Fooks arranged for Krajewski to meet Curtis, and Krajewski permitted Curtis to assume the remainder of Fooks' lease term. On March 23, 2004, Fooks signed a lease in Baltimore, Maryland and April 2004, they vacated the property.

Krajewski never signed a lease agreement with Curtis. At trial, conflicting testimony was presented as to whether or not Krajewski subsequently contacted Fooks and informed them that Curtis was late on his rental payments for the months of April and May, 2004. Curtis moved out of the unit at the end of May, 2004. Conflicting testimony was also presented as to whether or not his decision to vacate was voluntary. James Krajewski testified he withheld appellees' security deposit (that had previously been rolled-over and applied to Curtis to fund his security deposit) to pay for damage to the rental unit he discovered after Curtis moved out.

Krajewski sent a letter dated June 17, 2004 to Fooks itemizing the damages which included repainting, removal of shelves, old furniture and "rubbish" to be removed, mowing the lawn, removal of a satellite dish, and moving and cleaning of a refrigerator. The letter states that the security deposit will be applied to pay for these costs, and then it further lists seven additional items[6] and concludes, "We will keep you informed if the

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[6] See Joint Exhibit 5:

> "-No cleaning was done to prepare the house for your exit evaluation. Kitchen and bathrooms are dirty, carpet heavily spotted and unvacuumed. Walls and cabinets are dirty.
> -Kitchen window glass broken
> -3 blinds are broken
> -Basement outside door and back storm door were forced and handles/locks are broken.
> -Front storm door lock is broken
> -Hardwood floor board in upstairs bedroom was broken.
> -House keys were not returned and no key to the garage door lock was provided
> -Property was vacated one

damages exceed your security deposit." On June 18, 2004, Fooks met with James Krajewski at the rental unit. Fooks claimed they met for the purpose of recovering their personal items, and conflicting testimony was presented regarding what transpired at this meeting. Fooks testified James Krajewski did not permit them to take their personal items from the property, including a bike purchased for $400.00, an abdominal exercise machine valued at $199.00, and a ping pong table valued at $158.00. Neither party disputes that a disagreement took place at the rental unit. Fooks claimed James Krajewski ordered them to leave the premises after becoming angry regarding damage to the unit, which Fooks denied responsibility. Fooks further testified James Krajewski did not permit them to remove their personal items from the premises and demanded that they leave immediately. Appellant James Krajewski testified that such an altercation never took place.

Fooks deny causing damage to the unit during their occupancy and further argue that the photographs of the premises that Krajewski presented were taken after both they and Curtis had already moved out, and such photo failed to reflect the condition of the property when they vacated. Krajewski presented a second list containing many of the above-mentioned items (See Joint Exhibit 5, n. 6 *supra*) and in addition, lists the costs appellant paid to have the damages repaired, plus "rent for extra day, 6/1/04 (Defendant Ex. #2). The total damages claimed were $2,685.00, which includes $40.00 per month storage fee, for five months, for "storage items left in house and garage, which included furniture, fixtures, recreational and exercise equipment.

ANALYSIS

The facts establish that there was a valid lease agreement executed by the parties, therefore, their legal duties, rights, obligations, and remedies are governed by the provisions of the Landlord-Tenant Code set forth in Title 25 of the Delaware Code. The provisions of 11 *Del. C.* § 5514 provide that where the lease term pertaining to a residential property is for a term of one (1) year or more, the landlord may require a security deposit not in excess of one (1) month's rent. The code goes on to set forth the specific purpose for which such security deposit may be used.

The code provides in Section 5501 that the rent shall be payable at the time and place agreed by both parties. Therefore, the advance payment by the Fooks is permissible since both parties agreed to payment. The Krajewski argue that the lease was improperly terminated by Fooks because they vacated the property two months prior to the expiration of the lease term. However, the provisions of 25 *Del. C.* § 5508 provide that unless agreed in writing, the tenant may sublet the premises or assign the rental agreement to another. The lease agreement in question here provides at paragraph #7 that "the tenant shall not assign or sublet the premises without first obtaining written consent thereof from the landlord."

The facts developed at trial clearly indicate that prior to Fooks vacating the property, they contacted Krajewski by letter dated March 7, 2004 indicating their intention to sublease the property because Mr. Fooks had gotten a job in Baltimore. They offered a sub-tenant to rent the property for the balance of the lease term. Prior to Fooks vacating the property, all parties met to discuss the new tenant. At that meeting, the new sub-tenant was given a rental application. Fooks testified Krajewski agreed to the sub-

lease arrangement. Krajewski does not dispute they met with Curtis and the Fooks, discussed subletting, but disagree regarding whether there was an agreement to such arrangement. However, Krajewski testified they accepted rent from the sub-tenant for the remaining two months of the lease term and he was usually late with payments.

These facts indicate that the parties agreed to the sub-lease arrangement, notwithstanding the term in the original lease agreement. Therefore, as of end April 2004, Fooks were no longer responsible for the rent or any other obligation for the rental unit.

Krajewski argues at trial and post-trial submission that a sub-lease agreement does not relieve the original tenant of the duty to pay rent. However, there is no Delaware authority cited for this position. Moreover, such argument appears to be contrary to the language of 25 *Del. C.* § 5508, which provides for a sub-lease and requires that the landlord consent to such sub-lease shall not be unreasonably withheld. Therefore, I conclude that where the landlord and tenant agreed to a sub-lease, under the statutory provisions, the tenant is discharged from further rental obligation, unless there is an express agreement to the contrary. Hence, the tenant was entitled to disposition of the security deposit under the terms of the Landlord-Tenant Code. Krajewski relies on an inspection list dated June 17, 2004[7] as a basis to retain the security deposit. He claims amounts for painting, removal of rubbish, mowing the lawn, damage to the roof, a cleaning fee, and replacing the carpet.

The law in this jurisdiction is that a landlord may not collect from the security deposit for normal wear and tear. *Stoltz Management v. Consumer Affairs Boar*, (Del. Supr. 616 A.2d 1205 (1992). Therefore, the amount claimed, I conclude Krajewski is

[7] Joint Exhibit #5; and Defendant's Exhibit #2.

entitled to partial payment for the carpet and cleaning out the premises. I award the sum of $400.00.

Fooks claim damages for lost of property in the amount of $757.00 on the basis that when they arrived to retrieve their property, they were excluded from the property by the actions of Krajewski. While Krajewski denies he ordered the Fooks from the property, I find there is credible evidence to the contrary. I find that Krajewski's action directly prevented the Fooks from recovering their property and he subsequently discarded such property in the trash. I find that the record establishes appellees' value of $657.00 and they are entitled to recover such amounts.

Krajewski set forth five affirmative defenses in these proceedings. First, that appellees' complaint fails to state a claim upon which relief can be granted. Second, they argue Fooks waived any claim against Krajewski for damage to or loss of property left in the care of Curtis. Third, the complaint is void for failure of consideration. Fourth, Fooks abandoned their personal property, and no bailment was established. Fifth, Krajewski are entitled to an off-set of damages claimed by Fooks against damages caused to the rental property during appellees' occupancy and during the occupancy of the property by their sub-tenant Curtis.

When considering a motion for failure to state a claim upon which relief can be granted pursuant to Civil Rule 12(b)(6) all allegations in appellee's complaint must be accepted as true. Pursuant to Rule 12(b)(6), appellees' complaint will not be dismissed unless the party would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof. Fooks' complaint may not be dismissed unless it is clearly without merit, which may be a matter of law or fact. *Rogers v. Erickson*, 740

A.2d 508, 510 (Del.Super. 1999). It is clear from the facts that Fooks' complaint puts forth a valid claim in these proceedings, therefore, this motion must fail.

Krajewski's second affirmative defense of waiver has been defined by our Supreme Court as, "the voluntary relinquishment of a known right or conduct such as to warrant an inference to that effect. *Nathan Miller, Inc. v. Northern Ins. Co. of New York,* 3 Terry 523, 39 A.2d 23, 25; *Hanson v. Fidelity Mut. Ben. Corp.*, 1 Terry 467, 13 A.2d 456, 459. It implies knowledge of all material facts and of one's rights, together with a willingness to refrain from enforcing those rights. *Hanson v. Fidelity Mut. Ben. Corp.*, supra." *Klein v. American Luggage Works, Inc.*, 158 A.2d 814 (Del. Supr. 1960). I find no basis that Fooks waived any claim in these proceedings. The fact that they indicated we will get our deposit from a sub-tenant does not relieve the landlord of its duties under 25 *Del. C.* § 5514.

Third, Krajewski argues the complaint is void for failure of consideration. This is a landlord-tenant action and there was a valid lease executed by both parties, rent was paid, and possession was delivered. Therefore, I find no basis for this claim.

Fourth, Krajewski argues that no bailment was established between the parties with regards to their personal property. This Court in *Cuthbertson v. The Wilmington Medical Center, Inc.* 1973 WL 138159 (Del.Com.Pl., J. DiSabatino) relying upon 8 Am. Jur. 2d, Bailments, § 52 the Court held, "When possession of personal property of another is acquired and held under circumstances where the recipient, upon principles of justice, ought to keep it safely and restore or deliver it to the owner, as, for example, where possession had been acquired accidentally, gratuitously, through mistake, or by agreement, since terminated for some other purpose other than bailment, the law,

irrespective of any actual meeting of the minds, any voluntary undertaking, or any reasonable basis for implying mutual benefit, imposes upon the recipient the duties and obligations of a bailee. Such bailments are known as constructive and involuntary bailments, and ordinarily the party in possession of the property is regarded as gratuitous bailee . . ." I therefore find no merit to this argument.

Fifth, Krajewski argues they are entitled to an off-set of damages to compensate them for damages caused to the rental unit during Fooks occupancy and during the occupancy of Curtis. This argument was taken into consideration when damages were calculated.

For the above stated reasons, this Court finds that Fooks are entitled to recover their $950.00 security deposit, plus $400.00 for the cost of the bike, $199 for the abdominal exercise machine, $158.57 for the cost of the ping-pong table. I award thee sum of $1,707.53. That amount is reduced by the sum of $400.00, which I award to Krajewski for the cost of replacing the carpet. Therefore, Fooks is awarded the adjusted amount of $1,307.50, plus costs and post-judgment interest at 8% until the award is paid in full.

SO ORDERED this 2nd day of February, 2006

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Alex J. Smalls
Chief Judge

Fooks-OP Jan 06