IN THE COURT OF COMMON PLEAS IN THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

LANISHA SOTO,	)	C.A. No. CPU5-09-002101
Appellant, Plaintiff-Below,	)	
v.	)	
JOE BURDEN,	)	
Appellee, Defendant-Below.	)	

September 30, 2010

Ms. Lanisha Soto
420 Northdown Drive
Dover, DE 19904
Pro Se Appellant

Michael G. Rushe, Esq.
225 South State Street
Dover, DE 19901
Attorney for Appellee

DECISION AFTER TRIAL

Appellant, Plaintiff-Below, Lanisha Soto ("Plaintiff"), has filed a civil appeal with this Court for a trial *de novo* from a final order of the Justice of the Peace Court pursuant to 10 *Del. C.* § 9571. Plaintiff contends that she is entitled to the return of a security deposit in the amount of $950.00 that she paid to the defendant to rent a house. She also seeks all remedies available to her pursuant to 25 *Del. C.* § 5514. Appellee,

Defendant-Below, Joe Burden ("Defendant"), contends that the plaintiff is not entitled to the return of the security deposit because she caused damage to the house he rented to her in an amount exceeding her security deposit. Following trial on this matter, the Court enters judgment for the plaintiff in the amount of $1,900.00 plus court costs and post-judgment interest at the legal rate of 5.75%.

FACTS

The plaintiff rented a house as a residential unit from the defendant in June of 2005. The plaintiff remained at the residence until October 22, 2008, when a fire severely damaged the house. The residence was condemned by the City of Dover on October 23, 2008, and the plaintiff and her family had to move to a motel.

On November 3, 2008, the plaintiff advised the defendant that she was vacating the damaged house and terminating her lease with him. She gave the defendant the keys to the house and also provided him with written notification of her forwarding address. On December 6, 2008, the defendant provided the plaintiff with correspondence indicating that the house that she had rented from him was damaged by her family's use of it and that he estimated the cost of repairs to be a total of $1,500.00, well in excess of the security deposit of $950.00. The repairs needed by the house were listed by the defendant. However, he did not provide an itemized cost for each repair. Finally, on December 24, 2008, after urging by the plaintiff, the defendant provided her with a list of needed repairs with an itemized list of the estimated cost for each repair.

DISCUSSION

I. The Rental Agreement Between Plaintiff and Defendant Was Effectively Terminated on November 3, 2008.

Title 25, Section 5309, of the Delaware Code discusses tenant remedies and landlord obligations as a result of fire and casualty damage to rental units. Section 5309 provides, in pertinent part, as follows:

(a) If the rental unit or any other property or appurtenances necessary to the enjoyment thereof are damaged or destroyed by fire or casualty to an extent that enjoyment of the rental unit is substantially impaired, and such fire or other casualty occurs without fault on the part of the tenant, or a member of the tenant's family, or another person on the premises with the tenant's consent, the tenant may:

(1) Immediately quit the premises and promptly notify the landlord, in writing, of the tenant's election to quit within 1 week after vacating, in which case the rental agreement shall terminate as of the date of vacating. If the tenant fails to notify the landlord of the tenant's election to quit, the tenant shall be liable for rent accruing to the date of the landlord's actual knowledge of the tenant's vacating the rental unit or impossibility of further occupancy; or . . .

(b) If the rental agreement is terminated, the landlord shall timely return any security deposit, pet deposit and prepaid rent, except that to which the landlord is entitled to retain pursuant to this Code. Accounting for rent in the event of termination or apportionment shall be made as of the dates of the fire or casualty.

The Court finds that the plaintiff terminated the rental agreement she had with the defendant on November 3, 2008, when she provided him with actual knowledge that she was vacating the rental unit and terminating her lease. The rental unit had been condemned as a result of a fire on October 23, 2008. The fire substantially impaired the plaintiff's enjoyment of the rental unit. She and her family were forced to move from the residence after the fire and could not return to it as a result of the extensive damage to the property. The residence was rendered uninhabitable. Furthermore, the fire occurred without fault on the part of the plaintiff, a member of her family, or any another person on the premises with the plaintiff's consent. Since the plaintiff terminated the rental agreement because of the damage caused by the fire pursuant to Section 5309(a), the defendant, as her landlord, had a duty to timely return her security deposit pursuant to Section 5309(b).

II. Plaintiff is Entitled to Relief Pursuant to Title 25, Section 5514, of the Delaware Code.

Title 25, Section 5514, of the Delaware Code permits a landlord to require the payment of a security deposit by his or her tenant. However, Section 5514(f) states, in pertinent part, as follows:

> Within 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 and shall tender payment for the difference between the security deposit and such costs of repair of damage to the premises. Failure to do so shall constitute an acknowledgment by the landlord that no payment for damages is due.

In addition, Section 5514(g)(1) provides that "[f]ailure to remit the security deposit or the difference between the security deposit and the amount set forth in the list of damages within 20 days from the expiration or termination of the rental agreement shall entitle the tenant to double the amount wrongfully withheld."

The defendant failed to comply with the requirements of Section 5514(f) when he did not send an itemized list of damages, with the estimated cost of each repair, to the plaintiff within twenty days of the termination of the rental agreement she had with him. The rental agreement between the plaintiff and defendant was terminated pursuant to 25 *Del. C.* § 5309(a)(1) on November 3, 2008, when the defendant obtained actual knowledge that the plaintiff was vacating the rental unit and terminating the agreement. However, the defendant did not send an itemized list of damages caused by the plaintiff's use of the rental unit, along with the estimated cost of each repair, until December 24, 2008.[1] Since the defendant did not comply with the notice requirements of 25 *Del. C.* § 5514(f), the plaintiff is entitled to double the amount wrongfully withheld from her pursuant to 25 *Del. C.* § 5514(g)(1). See, e.g., *Mayers v. Rice,* 2001 WL 155649, *1 (Del. Com. Pl.)

[1] Although the record reflects that the plaintiff did receive a list of damages for the rental unit on December 6, 2008, this list did not include the estimated cost for each repair. It just included an overall estimate for the total list of repairs. Such a list does not satisfy the requirements placed on the landlord by 25 *Del. C.* § 5514(f).

CONCLUSION

Based upon the record produced at trial, the plaintiff has proven by a preponderance of the evidence that the defendant failed to comply with the notice provisions of 25 *Del. C.* § 5514(f). Therefore, plaintiff is entitled to judgment for her security deposit plus the penalty provided by 25 *Del. C.* § 5514(g), which is double the amount wrongfully withheld from her. Judgment is entered for the plaintiff against the defendant in the amount of $1,900.00 plus court costs and post-judgment interest at the legal rate of 5.75%.

IT IS SO ORDERED this 30th day of SEPTEMBER, 2010.

CHARLES W. WELCH
JUDGE