March 2, 2005

Ms. Lisa Blades
P.O. Box 375
Delaware City, DE 19706
Pro-se

Ms. Laura D. Owens and
Mr. Lounton C. Owens, Jr.
7 North Wynwyd Drive
Newark, DE 19711
Pro-Se

Re: ***Lisa Blades v. Laurie Owens and Lounton Owens***
Civil Action No.: 2004-02-534

Date Submitted: February 28, 2005
Date Decided: March 2, 2005

LETTER OPINION

Dear Ms. Blades and Mr. & Mrs. Owens:

Trial in the above captioned matter took place on Monday, February 28, 2005 in the Court of Common Pleas, New Castle County, State of Delaware. Following the receipt of evidence and testimony the Court reserved decision. This is the Court's final decision and order.

THE FACTS

This is an appeal *de novo* brought pursuant to 10 *Del. C.* §9570 *et seq.* In the Complaint Lisa Blades ("Blades") alleges in paragraph 3 that on November 10, 2003 "notice was given to vacate the property of 833 Sabina Circle". Paragraph 3 of the instant Complaint by Blades alleges *inter alia*, that "The defendants had until January 31st to vacate" and that "as of January 31, 2004 Defendants owed $1,572.00 in back rent." Plaintiff Blades alleges the defendants did not pay the back rent.

In the Answer to the Complaint on appeal in this Court, Laura Owens ("Laura") and Lounton Owens ("Lounton") in paragraph 3 allege the lease of the subject property was for $650.00 per month and rent not paid to the plaintiff was owed to the defendants and therefore was not paid.

In paragraph 6 of their Answer to the Complaint on appeal co-defendants have asserted a counter-claim for $6,296.00.

Lisa Blades ("Blades") presented sworn testimony at trial. Blades presented an abbreviated set of facts for the Court to decide her claims. The subject property is located at 833 Sabina Circle, Bear, DE 19711 (the "townhouse"). She claims in her appeal *de novo* that the defendants were in arrears on rent and were not owed any deposit money. She seeks $1,572.00 as judgment for back rent.

On cross-examination Blades testified that the co-defendants rented the townhouse with an option to purchase and signed a lease. She agreed she wrote a letter to a mortgage company indicating the co-defendants were timely in paying their rent and that the co-defendants also paid for an appraisal of her property in anticipation of the purchase of the same. She also confirms there was an oral agreement to sell the townhouse to the co-defendants for $10,000 below the market value. Blades also agrees that the defendants installed a new refrigerator/freezer in the subject townhouse and it was co-defendants' property. She also testified the defendants were never sent her forwarding address and phone number in order to contact her after the lease expired in order to obtain a refund of their security deposit.

Blades also agreed that she called the police because she was told that the co-defendants were destroying the property but she was removed herself from the subject property by New

Castle County Police because the co-defendants still had a valid lease. She testified that she never sold the subject property to co-defendants. Blades rested.[1]

The defendants presented their case-in-chief.[2] Lounton C. Owens, Jr. presented testimony. His testimony is as follows: In September 1995 Blades approached co-defendants about renting and purchasing her townhouse as the subject property which is in dispute in this court. Co-defendants moved in to the townhouse in October 1995 and signed a lease. In October 1996 there was leak in the living room coming down and they contacted Blades to repair the same. Although the ceiling was fixed, no plumbing was ever repaired and water continued to

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1 Plaintiff moved into evidence without objection by Defendant certain exhibits. Plaintiff's Exhibit "1" was a Wilmington Medical Center birth record for Jessica Hollie Blades; Plaintiff's Exhibit "2" was a Notice of Motion to Revoke Child Support with Lisa Blades as respondent; Plaintiff's Exhibit "3" was a Chase Manhattan statement; Plaintiff's Exhibit "4" was also a second Chase Manhattan statement; Plaintiff's Exhibit "5" was a letter from co-defendants to Ms. Blades detailing that the November 10, 2003 letter was not in compliance with the Landlord-Tenant Code because a 60 day notice began December 1, 2003 and was deficient. Plaintiff's Exhibit "5" also details certain monies co-defendants were deducting, including the $300 owed as an appraisal fee, deductions for the bath that was not working for seven years at $20 a month and $100 for food because the refrigerator failed. The total deductions according to co-defendants were $2080 and two months rent of $1578 leaving a balance of $608.00. Plaintiff's Exhibit "6" was a letter to co-defendants from Ms. Blades as a second eviction letter informing defendants the $300 for the appraisal would be reimbursed as long as payment is made for the rent and to advise the co-defendants that the property should be clean and debris removed and that the washer/dryer are to remain as part of the property. Finally, Plaintiff's Exhibit "7" was a letter to JP Court 12 from the Owens indicating they were asserting a counter-claim in the action below in the amount of $6,296.00 which include the $4,216.00 payment as money forwarded to the plaintiff in $1,680.00 for failure to provide the townhouse as it was represented; $100.00 for lost food; and $300.00 for an appraisal fee.

2 Defendants moved in certain exhibits at trial by stipulation with no objection by the Plaintiff; Defendants' Exhibit "1" was an itemized statement of the monies asserted in their counter-claim which include $136.00 for 32 months or $4,352.00 as earnest money for the down payment of the property which was not reimbursed by plaintiff; $300.00 was for the appraisal fee; $100.00 for lost food due to the refrigerator failure; $16.00 for 97 months or $1,552.00 for an unusable shower for a total counterclaim of $6,296.00; Defendants' Exhibit "2" was the residential lease in question; Defendants' Exhibit "3" is a letter to "Lou" dated November 15, 2002 signed by Lisa Blades indicating the co-defendants have been very dependable tenants and have never been late with their rent payments; Defendants' Exhibit "4" was a $275.00 check 0901 for the Wilmington Mortgage Services for an appraisal fee; Defendants' Exhibit "5" was the appraisal report for the instant property; Defendants' Exhibit "6" was letter to Wilmington Mortgage Services for the FAH appraisal of $300.00; Defendants' Exhibit "7" was a letter by e-mail to Myrna Hoffman; Defendants' Exhibit "8" was an invoice for $537.00 for Lowes for a new refrigerator by co-defendants; Defendants' Exhibit "9" was a letter to co-defendants from Lisa Blades indicating the $300 appraisal fee will be reimbursed. Defendants' Exhibit "10" was a letter to the Owenses from Blades indicating the payment has not been received as of 12/11/03 for the property with a late payment fee; Defendants' Exhibit "11" was a similar letter introduced by plaintiff to Ms. Blades from L.C. and Laura Owens; Defendants' Exhibit "12" was copies of pleadings from Ct. 12 below; Defendants' Exhibit 13 was a copy of Magistrate Tull's Order dated February 6, 2004; Defendants' Exhibit "14" was an Answer to Complaint on Appeal; Defendants' Exhibit "15" was a bill for $7.55 to Wilmington's Main Window; Defendants' Exhibit "16" was $600.00 and $550.00 deposits to Lisa Blades and finally, Defendants' Exhibit "17-A" was copies of rent payment and checks dealing the original lease amount of $650.00 as well subsequent checks by co-defendants for $786.00.

leak from the shower into the living room which made the shower unusable. Blades informed them to not use the shower until it was fixed. In April 2000 Blades approached co-defendants about applying rent over and above the $650.00, namely $136.00 as credit towards a down payment for the purchase price of the townhouse. Co-defendants made $136.00 payments for 32 months. The lease was not increased during that time and there was subject payments to Blades for a 32 month period with no formal amendment to the lease.

In November 2002 co-defendants applied for a mortgage. In April 2003 co-defendants paid for an appraisal for the subject townhouse. They faxed the appraisal report to Blades at Happy Harry's where Blades was employed. Their last contact with Blades was not until October 2003. On July 26, 2003 the refrigerator in the townhouse stopped working and co-defendants lost all their food. They tried to contact Blades for two days at her place of employment, Happy Harry's and phone calls to Blades' cell phone but was also unsuccessful. Co-defendants went ahead and purchased a refrigerator which Blades claimed was to be left in the townhouse as a fixture when the lease expired. They continued without success to continue Blades at her place of employment and cell phone. In November 2003 co-defendants received an eviction letter from Blades. It was not in accordance with the Landlord-Tenant Code because of the necessary "60 day" period. They again received a new written letter requesting they depart the premises because of the deficient first letter. The new letter was received December 10, 2003 and was considered a second eviction letter.

On January 29, 2004 Blades' daughter Hollie came to the townhouse and requested keys to the subject premises. According to Lounton, Hollie was verbally abusive. Blades and the County Police appeared at the subject property but co-defendants informed the Police they were

still under a valid lease. See, Defendants' Exhibit "2". The County Police removed Blades from the premises.

On cross-examination Lounton concedes that he did not request a formal accounting of the monies over and above the lease for payments of $136.00 per month for 32 months. Lounton testified he trusted Blades and did not believe that she would not credit co-defendants for the monies as down payment. Lounton also testified the lease was never amended to reflect lease increases of $136.00 over the original $650.00 rent but these monies were down payment monies for the townhouse.

THE LAW

Both the plaintiff in her *prima facia* complaint on appeal and co-defendants' counter-claim have a burden of proving the instant cases by a preponderance of the evidence. *Asset Recovery Services, Inc. LLC v. Process Systems Integration*, Court of Common Pleas, Welch, J. 2002 Del. C.P. LEXIS 55 (February 6, 2002); *Wirt v. Matthews*, Court of Common Pleas, Welch, J. 2002 Del. C.P. LEXIS 17 (February 7, 2002).

The essential elements to a contract are as follows:

> (1) a promise on the part of one party to act or refrain from acting in the giving away; (2) offer to another, in a manner in which a reasonable observer would conclude the first party intended to be bound by the acceptance, in exchange for ; (3) some consideration flowing to the first party to another; (4) which is unconditionally accepted by the second party in the terms of the offer, which may include (a) a verbal act of acceptance; and (b) performance of the sought-after act. *Hunter v. Diocese of Wilmington*, Del. Ch., C.A. No. 961, Allen, C., mem. Op. at 11-12 (Aug. 4, 1987).

OPINION AND ORDER

It is clear from the testimony of trial that the Plaintiff has proven her case by a preponderance of the evidence and the Court awards judgment in the amount of the withheld rent

of $1,572.00 and as will be detailed below, however, this judgment amount shall be offset by the amount of $4,352.00 entered on co-defendants' counterclaim which the Court has determined was proven in the trial record by a preponderance of evidence. The basis of the award to plaintiff is the trial testimony and specifically plaintiff's Exhibit "5". Co-defendants have provided no statutory authority once they executed the lease to withhold $1,680.00 or $20.00 monthly for a leaky bathroom. See, Defendants' Exhibit "2". No legal authority was presented at trial or asserted in the pleadings under a contract theory or the Landlord-Tenant Code to withhold these monies by co-defendants. *See e.g.,* 25 *Del. C.* Chapter 51 *et seq.* Nor was there authority to withhold $300.00 for the appraisal fee or rent. Co-defendants therefore withheld a total of $2,080.00. However, plaintiff seeks in her prayer for relief in her complaint on appeal only $1,572.00 which the Court finds should be entered as a judgment by a preponderance of evidence.

The Court awards judgment following trial in co-defendants' favor for the $136.00 payments for 32 months as down payments for the purchase of plaintiff's townhouse in the amount of $4,352.00. The Court finds these monies were paid by co-defendants at plaintiff's request as earnest money for the purchase and down payment for the townhouse. These monies were also paid to plaintiff at her request because she was losing court ordered child support payments and could not meet the total mortgage payments. *See, e.g.* plaintiff's Exhibit "2". The fact that plaintiff never placed monies into a separate account for escrow is irrelevant to the fact the monies were paid and proven by a preponderance at trial. The Court declines to award any monies for the $300.00 appraisal or $100.00 for food or $1,552 for the broken shower as detailed above. Co-defendants' appliances were taken by them when they vacated the leased premises.

The basis for the Court's findings are that these claims were not proven by a preponderance of the evidence and are the responsibility of the co-defendants.

Judgment is therefore entered in defendants' counter-claim in the amount of $4,352.00 with the offset of $1,572.00 or total judgment in co-defendants' favor of $2,780.00 plus post judgment interest at the legal rate, 6 *Del. C.* §2301 *et seq*.

IT IS SO ORDERED this 2nd day of March, 2005.

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John K. Welch
Associate Judge

/jb
Cc: Ms. Barbara Dooley
Civil Case Manager