

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

**CHARLES W. WELCH, III
JUDGE**

July 29, 2011

Ms. Nikki Crandle
P O Box 1623
Dover, DE 19903

Mr. Benjamin Wilson
109 First Avenue
Smyrna, DE 19977

Ms. Tracey Iosbaker
109 First Avenue
Smyrna, DE 19977

RE: Nikki Crandle v. Benjamin Wilson and Tracey Iosbaker
C.A.No.: CPU5-10-002748

Decision After Trial

Dear Ms. Crandle, Mr. Wilson and Ms. Iosbaker:

Appellant, Plaintiff-Below, Nikki Crandle (“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.* Section 9571. The plaintiff contends that she is entitled to an award of damages from Appellees, Defendants-Below, Benjamin Wilson and Tracey Iosbaker (“defendants”), as a result of their breach of a lease they had with her. The defendants have brought a counterclaim against the plaintiff and seek double the security deposit paid at the commencement of the lease on the grounds that the plaintiff has wrongfully withheld it and did not disclose to them the account number for the account in which their security deposit was held and when it was opened and closed. They maintain that such information concerns the location of the account and its disclosure is required

by Delaware law. In addition, the defendants contend that they are entitled to an award of damages from the plaintiff because she negligently failed to maintain and make necessary repairs to the leased property. Following trial on this matter, the Court enters judgment for the plaintiff and awards damages in the amount of \$980.00, plus pre and post judgment interest at the legal rate and court costs.

FACTS

At trial, the following facts were established by a preponderance of the evidence:

In November of 2008, the defendants entered into a month-to-month lease agreement (“the lease”) with the plaintiff to rent a residence located in Dover, Delaware (“the residence”). The monthly rental amount was \$900.00 and the defendants were required to give the plaintiff a security deposit of \$900.00. Pursuant to the lease, a late fee of \$40.00 was to be assessed for any late rental payments. In late February 2010, Mr. Wilson left the plaintiff a voicemail message indicating that he and Ms. Iosbaker were moving out of the residence. In addition, the plaintiff’s fiancé was verbally informed by Mr. Wilson in late February 2010 that the defendants planned to vacate the residence. However, at no time did the defendants provide the plaintiff with written notice that they were leaving the residence. They moved out of the residence on March 1, 2010, and failed to pay that month’s rent. As a result, the plaintiff did not return the security deposit to the defendants. The plaintiff sent the defendants a letter on March 6, 2010, stating that she was keeping the security deposit to cover unpaid rent for March 2010.

Plaintiff testified that she gave the defendants a copy of the Delaware Landlord-Tenant Code at the beginning of the tenancy and disclosed to them the bank in which the security deposit was located. She also admitted that “work had to be done” to the

residence. The plaintiff acknowledged that there were holes in the walls and issues with the carpets and inside doors. She stated that some of these repairs were made.

Ms. Iosbaker testified that the defendants did not receive a copy of the Delaware Landlord-Tenant Code from the plaintiff at the beginning of the tenancy and information associated with the account in which the security deposit was held was not provided to her, including the account number and when the account was opened and closed.¹ She also noted that there were additional problems with the residence when she moved in that the plaintiff failed to mention during her testimony. In addition to the problems noted by the plaintiff during her testimony, Ms. Iosbaker stated that electrical sockets throughout the residence were missing covers and one of the shower heads was faulty and flew off. She also testified that both the kitchen sink and upstairs shower leaked. The defendants made many repairs to the residence, such as repairing most of the holes, the shower head and the sink. A repairman came to the residence to fix the leaking shower. Ms. Iosbaker testified that she gave a list of items in need of repair to the plaintiff's fiancé after she moved out. However, she did not notify the plaintiff in writing, during the tenancy, that repairs to the residence were needed. Finally, Ms. Iosbaker stated that there were no issues with essential services for the residence, such as electricity.

Mr. Wilson also testified at trial. He reiterated that repairs to the residence were needed when he moved in. He also stated that he dropped off the keys to the residence to the plaintiff in early March 2010.

Plaintiff contends that she is entitled to unpaid rent in the amount of \$900.00 per month for March 2010 and April 2010, plus late fees, court costs and interest as a result

¹ The defendants contend that the plaintiff was required to disclose to them the account number and when the account was opened and closed.

of the defendants' breach of the lease, less the amount of the security deposit.² In response, the defendants contend that they gave the plaintiff adequate notice of their intention to leave the residence. They also maintain that they were not aware of their legal obligations and rights as tenants since the plaintiff never gave them a copy of the Delaware Landlord-Tenant Code at the inception of the lease. The defendants have counterclaimed against the plaintiff and seek an award in the amount of \$1,800.00, which is double the security deposit. They contend that the plaintiff wrongfully withheld the security deposit and did not disclose necessary information to them regarding the bank account in which the security deposit was held, including the account number and when the account was opened and closed. Furthermore, the defendants contend that they are entitled to an additional award of damages in the amount of \$1,500.00, plus court costs and incurred fees, because the plaintiff negligently failed to maintain and make necessary repairs to the leased property.

DISCUSSION

A. Plaintiff's Breach of Lease Claim

Defendants breached the month-to-month lease when they failed to give the plaintiff adequate notice that they were vacating the residence and did not pay rent for March and April of 2010. The defendants' defense that they provided the plaintiff adequate notice of their intent to leave the residence is not valid. Section 5106 of Title 25 of the Delaware Code ("Section 5106") provides the proper procedure for terminating a month-to-month lease agreement. Paragraph (d) of Section 5106 states "[w]here the term of the rental agreement is month-to-month, the landlord or tenant may terminate the

² The plaintiff is also seeking reimbursement for postage fees as she sent all correspondence to the defendants by certified mail. The fees are not recoverable since it was her choice to send the correspondence by certified mail. Such notice is not required by the Delaware Code. *See 25 Del. C. Section 5514(h)*.

rental agreement by giving the other party a minimum of 60 days' written notice” Furthermore, Section 21 of the lease reiterates the proper termination procedure outlined in Section 5106. The Court finds that the defendants failed to comply with paragraph (d) of Section 5106. The record reflects that in late February 2010 the defendants verbally informed the plaintiff and her fiancé of their intention to vacate the residence. No written notice was given. In addition, the defendants failed to give the plaintiff 60 days' notice of their intention to leave before March 2010. Thus, the defendants failed to comply with paragraph (d) of Section 5106 and Section 21 of their lease.

Furthermore, the defendants' defense that they never received the Delaware Landlord-Tenant Code from the plaintiff at the beginning of the tenancy is unavailing.

25 Del. C. § 5118 states:

[a] summary of the Landlord-Tenant Code, as prepared by the Consumer Protection Unit of the Attorney General's Office or its successor agency, shall be given to the new tenant at the beginning of the rental term. If the landlord fails to provide the summary, the tenant may plead ignorance of the law as a defense.

The Court finds that the plaintiff did provide the defendants with a copy of the Landlord-Tenant Code at the beginning of the rental term. In addition, even if the plaintiff failed to provide the Code to the defendants, Section 21 of the lease agreement clearly articulates the proper termination procedure set forth by it. The lease afforded the defendants notice of the proper termination procedure found in the Code. A defense of ignorance of the law would be unsuccessful in this case. Thus, the plaintiff is entitled to unpaid rent of \$900.00 per month for March 2010 and April 2010, plus late fees of \$40.00 per month, court costs and interest. *See 25 Del. C. § 5507(d)*.³ This amount must be reduced by the \$900.00 security deposit that the plaintiff retained.

³ *25 Del. C.* Section 5507 sets forth landlord remedies when a tenant wrongfully quits a rental unit. Section 5507(d) states:

B. Defendants' Counterclaims

1. Plaintiff's Failure to Return Security Deposit and Disclose Information Regarding the Account in Which It Was Held

Defendants are not entitled to an award of damages as a result of the plaintiff withholding the security deposit. A landlord may require the payment of a security deposit pursuant to 25 *Del. C.* Section 5514(a)(1). A landlord is permitted to retain the security deposit “[t]o pay the landlord for all rental arrearage due under the rental agreement, including late charges and rental due for premature termination or abandonment of the rental agreement by the tenant” *Id.* § 5514(c)(2). The defendants contend that the plaintiff was not entitled to retain the security deposit and, as a result, they are entitled to double the amount wrongfully withheld. They cite 25 *Del. C.* Section 5514(e) which states “[i]f the landlord is not entitled to all or any portion of the security deposit, the landlord shall remit the security deposit within 20 days of expiration or termination of the rental agreement.” The defendants also cite 25 *Del. C.* Section 5514(g)(1) which states that the “[landlord’s] failure to remit the security deposit . . . within 20 days from the expiration or termination of the rental agreement shall entitle the tenant to double the amount wrongfully withheld.”

Defendants’ contentions lack merit. As discussed above, the defendants breached the lease agreement between the parties. As a result, the plaintiff is entitled to retain the

[i]f the tenant wrongfully quits the rental unit and unequivocally indicates by words or deeds the tenant’s intention not to resume tenancy, such action by the tenant shall entitle the landlord to proceed as specified elsewhere in this chapter and the tenant shall be liable for the lesser of the following for such abandonment:

- (1) The entire rent due for the remainder of the term and expenses for actual damages caused by the tenant (other than normal wear and tear) which are incurred in preparing the rental unit for a new tenant; or
- (2) All rent accrued during the period reasonably necessary to re-rent the premises at a fair rental; plus the difference between such fair rental and the rent agreed to in the prior rental agreement; plus expenses incurred to re-rent; repair damage caused by the tenant (beyond normal wear and tear); plus a reasonable commission, if incurred by the landlord for the re-renting of the premises. In any event, the landlord has a duty to mitigate damages.

security deposit and apply it to the defendants' past due rent pursuant to Section 5514. Therefore, the plaintiff did not wrongfully withhold the security deposit when she applied it to the March 2010 past due rent.

Additionally, the defendants are not entitled to an award of damages as a result of the plaintiff's alleged failure to disclose the account number for the account in which the security deposit was held and the dates that the account was opened and closed. Section 5514(b) of Title 25 of the Delaware Code states, in pertinent part, that "[t]he landlord shall disclose to the tenant the location of the security deposit account." In this case, the Court finds that the plaintiff provided all the information necessary pursuant to Section 5514(b) when she disclosed the location of the security deposit to the defendants at the commencement of the lease. The Code does not entitle the defendants to additional information regarding the account in which the security deposit was held, such as the account number and the dates that the account was opened and closed.

2. Plaintiff's Failure to Maintain and Make Repairs to the Residence

Defendants are not entitled to an award of damages as a result of the plaintiff's alleged negligence in failing to maintain and make necessary repairs to the residence. Sections 5306 through 5308 of Title 25 of the Delaware Code govern tenants' remedies for landlords' failures to maintain and/or make repairs to a rental unit.⁴ These sections state that a tenant must notify a landlord in writing of issues with the rental unit to be entitled to relief. In this case, the defendants failed to notify the plaintiff in writing of needed repairs to be made to the residence during the tenancy. Thus, the defendants are not entitled to an award of damages under Sections 5306 through 5308.

⁴ The defendants cited 25 *Del. C.* Section 5302 in their counterclaim. However, Section 5302 is not applicable in this case. Therefore, the Court analyzes the counterclaim under Sections 5306 through 5308, the applicable sections of the Landlord-Tenant Code.

CONCLUSION

As a result of the Court's finding of fact, which is based upon the entire record, including all direct and circumstantial evidence, and all the references therefrom, and the Court's above-referenced conclusions of law, the Court enters judgment for the plaintiff in the amount of \$980.00⁵, plus pre and post judgment interest at the legal rate of 5.75 percent⁶ from March 1, 2010,⁷ and court costs.

IT IS SO ORDERED.

Sincerely,



Charles W. Welch, III

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⁵ The \$980.00 is calculated as \$1,880.00 for the March and April 2010 rental amounts plus late fees, less the \$900.00 security deposit.

⁶ 6 *Del. C.* Section 2301(a) establishes the legal rate of interest as the Federal Reserve discount rate plus five percent.

⁷ March 1, 2010, was the date of the defendants' breach of the lease agreement.