

**IN THE JUSTICE OF THE PEACE COURT
OF THE STATE OF DELAWARE IN AND FOR KENT COUNTY
COURT NO. 16
480 Bank Lane
Dover, DE 19904**

Owner's Management Company,	:	
	:	
Plaintiff-Appellee,	:	
	:	Case Number
v.	:	JP16-10-005788
	:	
Crystal Cannon,	:	
	:	
Defendant-Appellant.	:	

Jeffrey J. Clark, Esq., on behalf of Owner's Management Company.
Crystal Cannon, *pro se*.

ORDER

Submitted: February 8, 2011

Decided: March 8, 2011

This landlord-tenant action was originally disposed of after trial on December 29, 2010 when the Court entered an order in favor of the plaintiff-landlord, finding "repeated rules violations." The defendant filed a timely appeal of that decision, and the Court convened on February 8, 2011 as a three-judge panel pursuant to 25 *Del. C.* § 5717(a) to hear the case *de novo*.¹ This is the Court's decision after trial.

Facts

Owner's Management Company ("plaintiff" or "landlord") entered into a government-subsidized rental agreement ("HUD") with defendant Crystal Cannon on July 6, 2010 for a term to end on July 31, 2011 for Unit No. 6 of Silver Lake Estates, an apartment complex in Milford, Delaware. Ms. Cannon's unit is located in a "family" building with eight separate rental units. The landlord alleges Ms. Cannon violated material terms of the lease. The lease, admitted without objection,² contains a number of relevant provisions, paraphrased and grouped here by category:

(a) No Unauthorized Pets or Animals: The lease prohibits the tenant from having pets or animals "of any kind" without express permission from the landlord. The "Subsidized Rules and Regulations," an addendum to the lease signed by Ms. Cannon,

¹ A trial *de novo* is a new trial, when the case is heard anew "as if it had not been heard before and as if no decision had been previously rendered." Black's Law Dictionary 300 (6th Ed. 1991).

² Plaintiff's Exhibit No. 1.

repeats the prohibition against pets and animals without written permission from the landlord.³

(b) Destruction of Property: Ms. Cannon signed the lease acknowledging she will “not destroy, deface, damage or remove any part of the unit, common areas, or project grounds” and that she agrees to pay for “the cost of all repairs” if the unit is damaged by “carelessness, misuse, or neglect on the part of the Tenant, his/her family or visitors.”⁴ The addendum rules also notify the tenant that “damages caused by carelessness, misuse, or neglect on the part of the resident, his/her family or visitors will be billed to the tenant” and that the resident will be charged “for labor and materials for damage to the common areas...and to the apartment...by the resident, resident’s family, friends or guests.”⁵

(c) Unauthorized Residents: The lease mandates that only the tenant and “the individuals listed on the Owner’s Certification of Compliance” may reside in the unit, and that other persons may not reside in the unit without the landlord’s prior written approval.⁶

(d) Unlawful Activity: The lease prohibits the tenant and/or any guests from engaging in any “unlawful activities in the unit, in the common areas or on the project grounds” and from making or permitting “noises or acts that will disturb the rights of comfort of neighbors.”⁷

With regard to the allegations regarding unauthorized pets, Jeff Everett, facilities manager for Silver Lake Estates, testified he saw at least two dogs -- pit bulls -- entering and exiting Ms. Cannon’s rental unit, and he also observed the dogs entering and exiting the unit on footage from security cameras. Tom Litzie, a maintenance technician at Silver Lake Estates, testified to seeing pit bulls being taken out of Ms. Cannon's rental unit to be walked and then re-entering the unit. Mr. Litzie testified that Ms. Cannon told him her mother was unable to care for the dogs and that she was caring for them temporarily. Ms. Cannon testified she had one, not two dogs, in the unit, and she admitted she did not have permission for any dog or dogs to occupy the rental unit.

As to property damage, both Mr. Everett and Mr. Litzie testified to several incidents involving damage inside the rental unit and in the common areas shared by Ms. Cannon's unit and the other building units and to repairs made necessary by the damage, including replacement of an exterior door and the lockset to that new door caused by two separate incidents. Bill Schelts, a private contractor who performs work at Silver Lake Estates, testified he made a “substantial repair” to drywall in the common area adjoining Ms. Cannon's unit. Other testimony described damage to the master bedroom door,

³ Lease, Paragraphs 13(d) and Lease Addendum, Subsidized Rules and Regulations, Paragraph 1.

⁴ Lease, Paragraphs 10(b)(4) and 11.

⁵ Lease Addendum, Subsidized Rules and Regulations, Paragraphs 3(f), 8(a) and 8(b).

⁶ Lease, Paragraph 13.

⁷ Lease, Paragraphs 13(c) and 13(e).

forcible removal of a smoke detector, damaged drywall inside the unit and in the wall next to the exterior door, all to the extent the items had to be replaced or refinished, as well as other incidents. For instance, the smoke detector was "hard-wired" at installation and should be disconnected via the plug, but a guest identified by the tenant as her brother, disabled the smoke detector by pulling it out of the ceiling, leaving the exposed wiring hanging down and leaving the rental unit without a working smoke detector. The smoke detector itself was not recovered and had to be replaced. Jeff Everett testified the removal of the smoke detector, in his opinion as a residential facilities manager, presented a serious safety hazard to the tenant and other residents of the building and to the landlord's interest in the property itself. Mr. Everett and Mr. Litzie also testified they were called to the unit by Ms. Cannon to repair kitchen cabinets, closet doors, and other items that were damaged after Ms. Cannon began her tenancy in the unit.

The landlord's witnesses provided convincing evidence that the tenant's (ex)boyfriend committed the damage to the front door, its new lockset, and the drywall in acts of intentional or reckless criminal mischief by kicking the door, punching and kicking the drywall, and forcing the lockset open on at least two separate occasions. Ms. Cannon testified her then-boyfriend caused this damage "when he came home late one night" upset over a personal matter and "could not get in -- the door jammed." She testified she was aware management has a 24-hour maintenance hotline, but that she did not have a telephone to call the number to facilitate entry. During at least one of these incidents, Ms. Cannon contacted the police, who responded to her report of a fight with her boyfriend. She testified the boyfriend's actions were overheard by other residents of her eight-unit building and that one of her neighbors inquired about Ms. Cannon's own safety and well-being after one of these incidents.

Ms. Cannon also testified that some of the damage was due to the quality of the materials used in the unit and/or that many of the damaged items were in poor condition when she took possession of the unit. However, Mr. Everett testified that Ms. Cannon executed an "inspection report" after a move-in walk-through of the unit. The inspection report indicates she inspected the apartment and "found (the) unit to be in decent, safe, and sanitary condition" with minor damage (cigarette burns) to carpeting. Notably, Ms. Cannon marked "approved" as to the condition of the "doors and locks...closets...cabinets...electric fixtures...(and) walls..."⁸ Ms. Cannon signed the lease, acknowledging the unit was "safe, clean and in good condition" and that "all Appliances and equipment in the unit (were) in good working order..."⁹ Mr. Everett also testified at trial that the kitchen cabinet doors and other doors throughout the unit were in good working condition at the time of the walk-through.

As to the landlord's allegations that unauthorized persons resided in the unit with Ms. Cannon, the landlord's evidence and the defendant's own statements indicate her then-boyfriend resided in the unit without the landlord's permission. The landlord testified that video recordings routinely made for security purposes showed the boyfriend

⁸ Plaintiff's Exhibit No. 3, "Unit Inspection Report (Subsidized Move In)."

⁹ Lease, Paragraph 6.

entering and exiting the rental unit at "all hours of the day and night." As iterated above, Ms. Cannon testified at lease twice that her boyfriend committed some of the acts of criminal mischief after "coming home" at the end of the day, clearly implying she permitted this person to treat the unit as his residence. In addition, Ms. Cannon testified that her brother disabled the smoke detector while in the home during the middle of the night when it went off and disturbed Ms. Cannon's child **and** "the other people sleeping in the unit." She did not explain these people's presence or her brother's presence in the unit at night, asleep as if they were in fact residing in the unit in violation of the lease.

The landlord's evidence included written violation notices to Ms. Cannon dated September 7, September 9, September 13, September 14, September 16, September 23, and October 17, 2010, which gave Ms. Cannon time to cure the violations. Ms. Cannon testified she received the notices. The evidence, including Ms. Cannon's own statements and corroborating repair invoices, shows Ms. Cannon failed to correct the violations. Finally, on October 28, 2010, the plaintiff notified Ms. Cannon it was terminating her lease and would bring suit for summary possession if she did not vacate the unit within seven days. Ms. Cannon did not cure the violations within the time allotted; she testified she understood that violations of the lease would subject her lease to termination by the landlord.

Discussion

The lease and addenda provide that the lease may be terminated by the landlord if the tenant violates the terms of the lease, including (1) material noncompliance with the lease terms and (2) criminal activity by the tenant, other residents of the unit, or her guests if the criminal activity "threatens the health, safety, or right to peaceful enjoyment of the premises by other residents," or for "other good cause."¹⁰ In fact, the lease permits the landlord to terminate the lease:

(i) if the landlord determines that the tenant, any member of the tenant's household, a guest or another person under the tenant's control has engaged in the criminal activity, **regardless** of whether the tenant, any member of the tenant's household, a guest or another person under the tenant's control has been arrested or convicted for such activity.

Lease, Paragraph 23(c)(10) (emphasis added). This provision mirrors federal law.¹¹ Evidence presented by the landlord and corroborated to some extent by the defendant herself convincingly supports a conclusion that criminal activity was engaged in by the defendant's then-boyfriend when he kicked in the front exterior door, punched and kicked in drywall, and forced an exterior lockset open, at a minimum. The damage caused repair and replacement expense of approximately \$354.48, according to testimony and invoices presented by the landlord. In addition, the defendant's brother engaged in similar if slightly less culpable behavior when he forced the smoke detector from its wiring in the ceiling, causing the landlord to incur expense for repair and replacement.

¹⁰ Lease, Paragraphs 23(c)(1), (c)(2), (c)(6), (c)(10), and (d)(1) and (2).

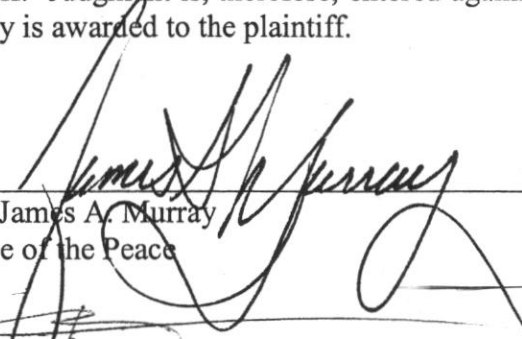
¹¹ 24 *CFR* § 966.4 (l)(5)(iii).

Under Delaware law, such behavior amounts to the crime of criminal mischief in violation of 11 *Del. C.* § 811.¹²


The Court shall utilize a standard of proof "by a preponderance of the evidence," in other words, the less strict burden of proof used in a civil proceeding, to determine whether the alleged criminal activity took place.¹³ This Court finds, on the basis of the evidence described within this order that the landlord has carried its burden of proof by a preponderance of the evidence that the behavior engaged in by the defendant's then-boyfriend and her brother was criminal activity.

Finally, the Court finds the landlord has also proved by a preponderance of the evidence that Ms. Cannon failed to comply with material terms of her lease when she permitted dogs to reside on the premises, permitted her (ex)boyfriend and brother to reside in the unit, and when she and/or these persons caused numerous incidents of physical damage to the rental unit, at least one of which (the smoke detector damage) threatened the health, safety, and right to peaceful enjoyment of the premises by other residents. Separately and together, these violations constitute material noncompliance with the lease in that each violation breached an essential condition of the lease contract. A tenant in possession of a landlord's property has a basic obligation to preserve the property. Failure to do so "defeats the essential purpose of the (lease) contract."¹⁴

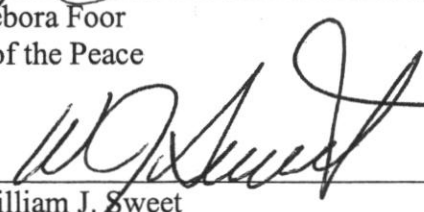
NOW, THEREFORE, IT IS ORDERED, this 8th day of March, 2011, the Court finds by a preponderance of the evidence that defendant Crystal Cannon has violated material terms of her lease with the plaintiff. Judgment is, therefore, entered against the defendant. Possession of the rental property is awarded to the plaintiff.



Hon. James A. Murray
Justice of the Peace



Hon. Debora Foor
Justice of the Peace



Hon. William J. Sweet
Justice of the Peace

¹² 11 *Del. C.* § 811 states in pertinent part: "A person is guilty of criminal mischief when the person intentionally or recklessly damages tangible property of another person."

¹³ Justice of the Peace Court Legal Memorandum 97-222 (rev. 4/3/2002), *Eviction of Public Housing Tenants as a Result of the Drug-Related Activities of Others* and *Department of Housing and Urban Development v. Rucker*, 535 U.S. 125 (2002).

¹⁴ 23 Williston on Contracts § 63:3 (4th ed.).