



STATE OF DELAWARE
JUSTICE OF THE PEACE COURT NO. 13
1010 CONCORD AVENUE
CONCORD PROFESSIONAL CENTER
WILMINGTON, DELAWARE 19802

TELEPHONE: (302) 577-2550

PLAINTIFF

Pandre Faulkner
1011 N. Madison Street
Wilmington, DE 19801

v.

CIVIL ACTION: JP13-09-019711

DEFENDANT

Lee Stewart
405 Washington Street
Wilmington, DE 19801

ORDER

This is a de novo appeal to a three-judge panel from a decision dated March 17, 2010. The panel held trial on the matter on April 8, 2009. Both parties were self-represented.

Plaintiff brought this action seeking possession due to non-payment of rent. The action was filed December 22, 2009. Trial was scheduled on January 28, 2010. Defendant Stewart failed to appear and a default judgment was awarded to the Plaintiff. On February 9, 2010, the Court received Defendant's motion to vacate the judgment. At a hearing on March 3, 2010, the motion to vacate was granted and a trial commenced immediately. Defendant asserted a counterclaim alleging he was illegally ousted from the premises by the landlord. The trial court entered a final judgment in favor of the Plaintiff for \$982.50 plus court costs.

At the de novo trial, Plaintiff Faulkner testified that the Defendant was in default of rent for the months of January through present. He introduced documentary evidence of: the lease between the parties, the five-day letter and certificate of mailing.

Defendant Stewart presented testimony that the landlord shut off his services for heat, hot water and electricity. He also testified that the landlord destroyed various items of his personal property by throwing them out onto the deck. Defendant introduced documentary evidence of: list of personal items destroyed by the landlord, inspection report from Department of Licenses and Inspection, motel receipts, electric bill dated

March 10, 2010 and an October 17, 2009 letter about the heating system. He also presented pictures (by cell phone) of what was purported to be his personal items piled on the outside deck by the landlord.

FACTS

Defendant Stewart leased Apartment #3 in a building located at 405 Washington Street in Wilmington. The lease was signed by both parties June 15, 2009. According to the lease rent was to be paid the first day of each month in the amount of \$525.00. The lease also provided for a late payment of \$25.00 if payment was not received by the fifth day of the month and an additional \$25.00 if not paid by the tenth day of the month.¹

Plaintiff Faulkner sent the Defendant a five-day letter dated December 8, 2009 demanding past due rent in the amount of \$ 550.00. Some time during the month of December, he received a partial payment of \$200.00. Since the balance of the rent remained in default after mailing of the letter, the instant action was filed. Plaintiff did not present a ledger to the Court and was unable to state with certainty when the partial payment was received.

On or about he February 17, 2010, Defendant Stewart was forced to move into a motel because he was without heat, electricity and hot water due to the actions of the landlord. On February 23, 2010 City of Wilmington Department of Licenses and Inspections performed an inspection of the rental property and declared Stewart's "unfit for human habitation". They further ordered the landlord to restore the hot water, heat and electricity within three days. There was no testimony that a re-inspection was conducted. However, the tenant states that he has not been staying in the apartment, but still has some belongings in the premises. Defendant also presented testimonial evidence concerning damages for personal property that was removed from the rental unit by the Plaintiff (\$670) and reimbursement for food that spoiled (\$125) while the unit was without electricity. Defendant provided documentary evidence for the various nights spent at a motel between February 14, 2010 and February 28, 2010 (\$517.76.)

Although Plaintiff Faulkner denies disconnecting heat, hot water and electrical services to Stewarts's apartment, he does admit that he illegally ousted the Defendant by changing the locks on March 1, 2010. Possession was restored to Stewart after the court hearing on March 3, 2010.

¹The Court notes that 25 Del. C §5501 (d) states "where the rental agreement provides for a late charge payable to the landlord for rent....such late charge shall not exceed 5 percent of the monthly rent." The Court did not have to make a ruling on the enforceability of the lease term that provided for a late fee in excess of 5 percent.

DISCUSSION

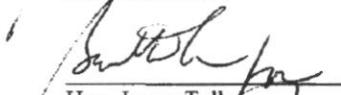
The Court considered the testimony and evidence presented by the parties. We believe the Plaintiff established his right to rent from January to present. However, the preponderant of evidence also established the Defendant's right to damages on the grounds that he was constructively evicted from his apartment by the landlord. Pursuant to 25 Del. C § 5313 the Court awards treble the amount spent for substitute housing at the motel, which totals \$1,553.28.² The Court orders an additional award of \$210.00 because tenant was locked out of the rental property from March 1 through March 3. The final award to the Defendant is in the amount of \$125.00 for spoiled food resulting from lack of electricity. Other damages sought by the Defendant were not proven to the satisfaction of the Court.

The Court awards a judgment for rent in favor of the Plaintiff Pandre Faulkner and against the Defendant Lee A. Stewart in the amount of \$1,715.00. However, on the counterclaim judgment is awarded in favor of Defendant in the amount of \$1,888.28. The resulting net judgment is in favor of the Defendant Lee A. Stewart for \$173.28. Each party will bear its own costs. By agreement of the parties, Defendant will relinquish possession of the leased premises to Plaintiff on or before April 15, 2010.

It is so ordered this 27 day of April, 2010.



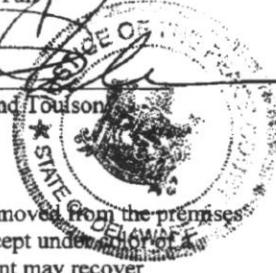
Hon. Bonita Lee



Hon. James Tull



Hon. Rosalind Touison



²25 Del. C. § 5313 Unlawful Ouster or exclusion of tenant. If removed from the premises or excluded therefrom by the landlord or the landlord's agent, except under a valid court order authorizing such removal or exclusion, the tenant may recover possession or terminate the rental agreement. The tenant may also recover treble the damages sustained for an amount equal to 3 times the per diem rent for the period of time the tenant was excluded from the unit, whichever is greater, and the costs of the suit excluding attorneys' fees.