

**IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY
COURT NO. 17**

**COURT ADDRESS:
23730 SHORTLY ROAD
GEORGETOWN DE 19947**

CIVIL ACTION NO: JP17-11-004993

PINE ACRES INC VS DEBRA PHILLIPS

**SYSTEM ID: 002492
MICHAEL P MORTON PA.
1203 NORTH ORANGE STREET
WILMINGTON DE 19801**

**Heard: January 9, 2012
Decided: February 2, 2012**

**Trial *De Novo*
Before a Three Judge Panel**

**Sitting: Honorable Sheila G. Blakely
Honorable John C. Martin
Honorable William P. Wood**

**Appearances: Michael Morton, Esq. for plaintiff.
Defendant appeared *pro se*.**

Wood for the Court.

ORDER

Before a three judge panel, on January 9, 2012, was a *de novo* trial regarding a landlord tenant matter in a manufactured home community. The action was initially filed by Plaintiff, Pine Acres Inc. dba Leisure Point Resort (hereinafter "Leisure Point") pursuant to 25 *Del. C.* §7010A(b)(2). The complaint avers that the tenant, Debra Phillips (hereinafter "Phillips") "has allowed un-permitted occupants to live in her home on the rental lot. Allowing an unauthorized guest or un-permitted occupant to live in the unit is a breach of the rental agreement." Specifically, Phillips has allowed her daughter, Leslie Stump, to reside in her home without permission. Phillips agrees that Leisure Point has not accepted her daughter as an occupant because she did not pass a credit check. This denial, she argues, is without merit because her daughter would simply be an occupant of the home and not a party who was financially responsible for the lease.

FACTS

Sometime around March 18, 2011 Leisure Point became aware that Phillips' daughter and four children were living in her home. Leisure Point contacted Phillips whereupon she asked for temporary permission for her daughter to reside in the unit and she promised to have Ms. Stump appear at the office to fill out an application. Ms. Stump did fill out the application on March 21, 2011. Phillips was later informed that Ms. Stump's application was rejected because "her credit check was not sufficient to allow her to be approved as a regular tenant in the community."¹

¹ Plaintiff's exhibit marked P4, the July 20, 2011 notice from Leisure Point to Phillips 6CF14J (Rev. 9/15/04)

While it is not clear when Phillips was informed of the rejection of the application, evidently Stump was given “temporary permission” to continue to reside in the home. Around June 16, 2011 Leisure Point became aware that Ms. Stump had a boyfriend living with her. Leisure Point again asked Phillips to have this person submit an application, which he subsequently failed due to his negative criminal back-round check. Leisure Point asked that he be removed and Phillips complied. At trial, Leisure Point asserted that Ms. Stump had two or three more such incidents with boyfriends between June 30 and July 5, 2011, but these assertions were unsubstantiated. These alleged incidents led to Leisure Point notifying Phillips on July 20, 2011 that “the temporary permission you requested to allow your daughter Leslie Stump to occupy your home located on Atlas Street has been terminated effective July 31, 2011.”

Subsequently, Leisure Point sent another notice dated August 22, 2011 informing Phillips that despite receiving the July 20 letter, “your daughter, her children, and at least one of the adult males remains (sic) in your home on the rental lot.” That notice went on to specify that several terms of the rental agreement and rules and regulations had been violated giving Phillips twelve (12) days to remove “any unauthorized guests and un-permitted occupants including but not limited to your daughter, her children and the adult males.”

It is undisputed that Ms. Stump and her children continue to occupy Phillips’s home. Plaintiff did not establish that any other people have occupied the unit other than the aforementioned male who was removed by Phillips.

CONCLUSIONS OF LAW

Based upon the preponderance of evidence submitted at trial, we find as follows:

The paramount issue presented at trial, that Leisure Point rests its case upon, is that Ms. Stump has been deemed an “un-permitted occupant.” This determination was made because “her credit check was not sufficient to allow her to be approved as a regular tenant in the community.” (see P4). We conclude that as this case has been presented, Leisure Point has utilized the terms “occupant” and “tenant” interchangeably. However, the term “tenant” is defined at 25 *Del. C.* §7003(21) as “an owner of a manufactured home who has a tenancy of a lot in a manufactured home community; a lessee.”

There was no evidence presented that Ms. Stump is an owner of the home or that the application she filled out was an application to become a tenant as it has been defined by the code. Rather we conclude that the application was for approval as an occupant or resident. Thus, this situation brings the Court to the question, is it permissible for a landlord to deny occupancy based upon a failed credit check? We find that given this particular set of circumstances, it is not.

The purpose of Chapter 70 of Title 25 is “to clarify and establish the law governing the rental of lots for manufactured homes as well as the rights and obligations of manufactured home community owners (landlords), manufactured homeowners (tenants) and residents of manufactured home communities; and to encourage manufactured home community owners and manufactured home owners and residents to maintain and improve the quality of life in manufactured home communities.”

A landlord may create “...reasonable written rules concerning the occupancy and use of the

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premises and the use of the landlord's property...provided that the rules further any of the following purposes:

- (1) Promoting the health, safety, or welfare of tenant's resident, guests or visitors;
- (2) Promoting the residents quiet enjoyment;
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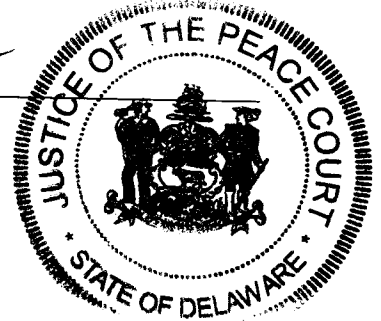
There was no evidence produced regarding Leisure Point's policy on credit checks for occupants of a home or explanation of why a credit check would be necessary where the occupant was not responsible for the payment of rent. We find that the credit check of an occupant (as opposed to a tenant) as a rule or lease term promulgated by the community is unenforceable as it fails to comport with the provisions of 25 *Del. C.* §7001(a),(b), and 7019(a). In other words, the credit worthiness of a non rent paying resident is immaterial to the quality of life in the community, a predicate requirement of any rule or term of a lease agreement. Were we to rule to the contrary, we would be compelled to do likewise in the future even if the tenant's guest or occupant was her newly wed husband, who happened to fail a credit check.

Accordingly, judgment is awarded in favor of the Defendant, Debra Phillips and against the Plaintiff, Pine Acres, Inc. dba Leisure Point. Consequently, possession of the property will remain with Debra Phillips.

IT IS SO ORDERED this 03rd day of February, 2012



Hon. William P. Wood
For the Three Judge Panel



³ 25 *Del. C.* §7019(a)(1)-(5)
6CF14J (Rev. 9/15/04)

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CIVIL ACTION NO: JP17-11-004993

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VS
DEBRA PHILLIPS, DEFENDANT**

Plaintiff Parties:

ATTORNEY FOR PLAINTIFF
SYSTEM ID: 002492
MICHAEL P MORTON PA.
1203 NORTH ORANGE STREET
WILMINGTON, DE 19801

PLAINTIFF

SYSTEM ID: @2419414
PINE ACRES INC DBA LEISURE POINT
RESORT
25491 DOGWOOD LANE
MILLSBORO, DE 19966

ATTORNEY FOR PLAINTIFF

SYSTEM ID: 002638
ROBERT J VALIHURA JR..
LAW OFFICE ROBERT J. VALIHURA
1203 N. ORANGE STREET
WILMINGTON, DE 19801

Defendant Parties:

DEFENDANT
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DEBRA PHILLIPS
1134 HIGHSPIRE ROAD
HARRISBURG, PA 17045

DEFENDANT

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MILLSBORO DE 19966**

**Heard: January 9, 2012
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**Sitting: Honorable Sheila G. Blakely
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Honorable William P. Wood**

**Appearances: Michael Morton, Esq. for plaintiff.
Defendant appeared *pro se*.**

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FACTS

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It is undisputed that Ms. Stump and her children continue to occupy Phillips's home. Plaintiff did not establish that any other people have occupied the unit other than the aforementioned male who was removed by Phillips.

CONCLUSIONS OF LAW

Based upon the preponderance of evidence submitted at trial, we find as follows:

The paramount issue presented at trial, that Leisure Point rests its case upon, is that Ms. Stump has been deemed an "un-permitted occupant." This determination was made because "her credit check was not sufficient to allow her to be approved as a regular tenant in the community." (see P4). We conclude that as this case has been presented, Leisure Point has utilized the terms "occupant" and "tenant" interchangeably. However, the term "tenant" is defined at 25 *Del. C.* §7003(21) as "an owner of a manufactured home who has a tenancy of a lot in a manufactured home community; a lessee."

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The purpose of Chapter 70 of Title 25 is "to clarify and establish the law governing the rental of lots for manufactured homes as well as the rights and obligations of manufactured home community owners (landlords), manufactured homeowners (tenants) and residents of manufactured home communities; and to encourage manufactured home community owners and manufactured home owners and residents to maintain and improve the quality of life in manufactured home communities."

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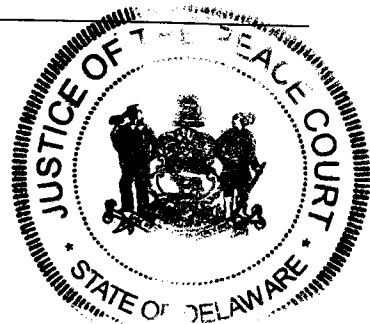
There was no evidence produced regarding Leisure Point's policy on credit checks for occupants of a home or explanation of why a credit check would be necessary where the occupant was not responsible for the payment of rent. We find that the credit check of an occupant (as opposed to a tenant) as a rule or lease term promulgated by the community is unenforceable as it fails to comport with the provisions of 25 *Del. C.* §7001(a),(b), and 7019(a). In other words, the credit worthiness of a non rent paying resident is immaterial to the quality of life in the community, a predicate requirement of any rule or term of a lease agreement. Were we to rule to the contrary, we would be compelled to do likewise in the future even if the tenant's guest or occupant was her newly wed husband, who happened to fail a credit check.

Accordingly, judgment is awarded in favor of the Defendant, Debra Phillips and against the Plaintiff, Pine Acres, Inc. dba Leisure Point. Consequently, possession of the property will remain with Debra Phillips.

IT IS SO ORDERED this 03rd day of February, 2012



Hon. William P. Wood
For the Three Judge Panel



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1203 NORTH ORANGE STREET
WILMINGTON, DE 19801

Defendant Parties:

DEFENDANT
SYSTEM ID: @2419415
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1134 HIGHSPIRE ROAD
HARRISBURG, PA 17045

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25491 DOGWOOD LANE
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FACTS

Sometime around March 18, 2011 Leisure Point became aware that Phillips' daughter and four children were living in her home. Leisure Point contacted Phillips whereupon she asked for temporary permission for her daughter to reside in the unit and she promised to have Ms. Stump appear at the office to fill out an application. Ms. Stump did fill out the application on March 21, 2011. Phillips was later informed that Ms. Stump's application was rejected because "her credit check was not sufficient to allow her to be approved as a regular tenant in the community."¹

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It is undisputed that Ms. Stump and her children continue to occupy Phillips's home. Plaintiff did not establish that any other people have occupied the unit other than the aforementioned male who was removed by Phillips.

CONCLUSIONS OF LAW

Based upon the preponderance of evidence submitted at trial, we find as follows:

The paramount issue presented at trial, that Leisure Point rests its case upon, is that Ms. Stump has been deemed an "un-permitted occupant." This determination was made because "her credit check was not sufficient to allow her to be approved as a regular tenant in the community." (see P4). We conclude that as this case has been presented, Leisure Point has utilized the terms "occupant" and "tenant" interchangeably. However, the term "tenant" is defined at 25 *Del. C.* §7003(21) as "an owner of a manufactured home who has a tenancy of a lot in a manufactured home community; a lessee."

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The purpose of Chapter 70 of Title 25 is "to clarify and establish the law governing the rental of lots for manufactured homes as well as the rights and obligations of manufactured home community owners (landlords), manufactured homeowners (tenants) and residents of manufactured home communities; and to encourage manufactured home community owners and manufactured home owners and residents to maintain and improve the quality of life in manufactured home communities."

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A landlord may create "...reasonable written rules concerning the occupancy and use of the

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premises and the use of the landlord's property...provided that the rules further any of the following purposes:

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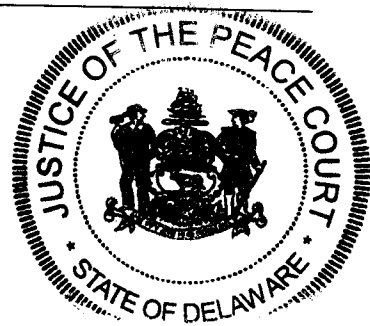
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Accordingly, judgment is awarded in favor of the Defendant, Debra Phillips and against the Plaintiff, Pine Acres, Inc. dba Leisure Point. Consequently, possession of the property will remain with Debra Phillips.

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- (4) Promoting the orderly and efficient operation of the manufactured home community;
- (5) Preserving the tenants' and/or landlords' property from abuse.”³

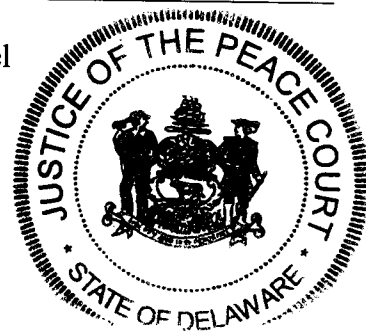
There was no evidence produced regarding Leisure Point's policy on credit checks for occupants of a home or explanation of why a credit check would be necessary where the occupant was not responsible for the payment of rent. We find that the credit check of an occupant (as opposed to a tenant) as a rule or lease term promulgated by the community is unenforceable as it fails to comport with the provisions of 25 *Del. C.* §7001(a),(b), and 7019(a). In other words, the credit worthiness of a non rent paying resident is immaterial to the quality of life in the community, a predicate requirement of any rule or term of a lease agreement. Were we to rule to the contrary, we would be compelled to do likewise in the future even if the tenant's guest or occupant was her newly wed husband, who happened to fail a credit check.

Accordingly, judgment is awarded in favor of the Defendant, Debra Phillips and against the Plaintiff, Pine Acres, Inc. dba Leisure Point. Consequently, possession of the property will remain with Debra Phillips.

IT IS SO ORDERED this 03rd day of February, 2012



Hon. William P. Wood
For the Three Judge Panel



³ 25 *Del. C.* §7019(a)(1)-(5)
6CF14J (Rev. 9/15/04)

**IN THE JUSTICE OF THE PEACE COURT OF
THE STATE OF DELAWARE, IN AND FOR SUSSEX COUNTY
COURT NO. 17**

**COURT ADDRESS:
23730 SHORTLY ROAD
GEORGETOWN DE 19947**

CIVIL ACTION NO: JP17-11-004993

**PINE ACRES INC DBA LEISURE POINT RESORT, PLAINTIFF
VS
DEBRA PHILLIPS, DEFENDANT**

Plaintiff Parties:

ATTORNEY FOR PLAINTIFF
SYSTEM ID: 002492
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1203 NORTH ORANGE STREET
WILMINGTON, DE 19801

PLAINTIFF
SYSTEM ID: @2419414
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