

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

TAMMY BOYER and)
JASON BOYER,)
Plaintiffs Below/Appellants,)
)
v.)
)
DOLORES SYLVESTER,)
Defendant Below/Appellee.)

C.A. No.: CPU4-10-003496

Date Submitted: May 5, 2011
Date Decided: July 1, 2011

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DECISION AFTER TRIAL

Plaintiffs Below/Appellants, Tammy and Jason Boyer bring this *de novo appeal* against Defendant Below/Appellee Dolores Sylvester for unlawful ouster and replevin. Plaintiffs Below/Appellants allege that: (1) Defendant Below/Appellee unlawfully ousted them from the premises by failing to provide proper notice of the termination of an oral month-to-month lease; and (2) Defendant Below/Appellee retained many items of Plaintiffs Below/Appellants' furniture and other personal property, and, therefore, Plaintiffs Below/Appellants are entitled to damages incurred to obtain substitute housing in addition to treble damages pursuant to 25 *Del. C.* § 5313 as well as damages for items of furniture and other personal property that was damaged, destroyed or discarded by Defendant Below/Appellant.

Defendant Below/Appellant denies Plaintiffs Below/Appellants' allegations and brings a counterclaim against Plaintiffs Below/Appellants for breach of an agreement to contribute to monthly expenses for maintenance of the property as well as for conversion of personal property belonging to the Defendant Below/Appellee. Trial in this matter was held on April 4, 2011. At the conclusion of trial and after submission of all evidence, the Court reserved decision and ordered the parties to provide briefing on certain issues. This is the Court's Final Decision.

FACTS

Defendant Below/Appellee Dolores Sylvester (hereinafter "Sylvester" or "Defendant") purchased the property at 136 Olga Road, Wilmington, Delaware in 1961 and resided therein until June of 2007. In 2006, Sylvester's husband had passed away and in 2007 she decided to visit her daughter in North Carolina for a period of one (1) year. Sylvester's son resided in the home with her at that time. Sylvester testified that while she was visiting with her daughter, her son intended to purchase the home and share the residence with Plaintiffs Below/Appellants Jason and Tammy Boyer (hereinafter "the Boyers" or "Plaintiffs").

In June of 2007, when she decided to visit her daughter in North Carolina for a period of one (1) year, the parties orally agreed that the Boyers would reside in Sylvester's home during her absence from the residence. Sylvester met the Boyers one (1) week prior to the Boyers moving into Sylvester's residence.

Sylvester sought to make the "friendly", oral agreement between the parties "legal". Sylvester provided the Boyers with a written lease agreement¹; however, the Boyers never signed the agreement. The Boyers were not satisfied with the written agreement produced by Sylvester because, as Sylvester described, the Boyers felt the agreement was "too legal". Sylvester testified that because the parties were good friends the Boyers felt that they did not need to sign

¹ See Joint Exhibit # 1.

the agreement. According to Sylvester, the lessors of the agreement were to be herself and her sister and the three (3) individuals to be the lessees were her son and the Boyers.

The parties discussed a financial arrangement where the Boyers and Sylvester's son paid \$1,000.00 per month in rent. Sylvester paid the mortgage payment and utility bills for the residence as well as the costs for the maintenance of the property. Sylvester's son collected the rent on her behalf in her absence from the home and took care of the home. However, no decision regarding the property was to be made without her consent. Sylvester stated that she objected to the removal of her washer and dryer from the home but that she did not know if her son objected to the removal because she was not present at that time. Sylvester testified that her son would have been her representative for the property, as well as a tenant had the parties executed the lease agreement.

The amicable arrangement and oral agreement between the parties came to an end around June of 2008 when Sylvester decided to return to Delaware. Prior to her return to Delaware in June of 2008, Sylvester contacted the Boyers via telephone, "asking permission to share the home." The Boyers agreed to Sylvester's request so long as Sylvester did not object to the Boyers' having five (5) dogs. Sylvester agreed to allow the Boyers to continue to reside in the home.

Initially, when Sylvester moved back into the home in June of 2008, the living arrangements were friendly but well-delineated within the home. The occupancy of the rooms of the home were specific, with Sylvester occupying one room within the home. The parties each maintained their own utensils for eating purposes. The Boyers' furniture occupied the living room and upstairs of the home. Sylvester's son occupied two (2) rooms of the home, one room

upstairs and one room downstairs. However, all the occupants of the home had free access within the home and shared the common areas of the home.

At some point, Sylvester began to experience verbal and mental abuse from Jason Boyer and decided that the living arrangement was not working out between the parties. According to Sylvester, Jason Boyer would agitate her and was rude when she required assistance. Specifically, when Sylvester called for her son to assist her, Jason Boyer would mock her. Sylvester recalled a physical altercation with Jason Boyer after which she called the police. Sylvester approached Tammy Boyer several times regarding Jason Boyer's conduct but Tammy Boyer informed Sylvester that her allegations were untrue and that she believed her husband.

In June of 2008, Sylvester was prescribed one (1) liter of oxygen per day and used a nebulizer four (4) times per day. However, by November of 2008, her health had declined to the point where she was prescribed five (5) liters of oxygen continuously around the clock as well as constant use of the nebulizer. Sylvester informed Tammy Boyer of her condition of chronic obstructive pulmonary disease.

Sylvester described the living conditions of the home. She stated that the Boyers had five (5) dogs, her son also had a dog, and it was "hell" to live there. The Boyers had complete access to the home without restriction and possessed keys to the residence.

Sylvester was never compensated for the amenities that she provided for the home such as toilet paper, light bulbs and paper towels or as she termed "the basics". Sylvester rarely ate any of the Boyers' food unless invited. Sylvester testified that she paid for almost everything for the home and that the portion of rent that the Boyers paid did not even cover the cost for half of the expenses for the home.

Sylvester indicated that the Boyers ceased paying rent in September of 2008 and that they owe her for three (3) months of unpaid rent.² Sylvester sent notice to the Boyers through her son that the rent was unpaid. The Boyers refused to pay the rent to Sylvester because Sylvester was “being unlawful.” Sylvester recalled an incident in September of 2008 where Tammy Boyer gave her \$250.00 toward the rent payment and informed her that the remaining \$250.00 of the rent payment was in Jason Boyer’s pants pocket and that if she wanted the rent payment, she would have to retrieve it from Jason Boyer’s pocket.

At that point, Sylvester testified that she no longer wished for the Boyers to continue residing in the home. She sent a notice to vacate to the Boyers through her son that indicated that the living arrangement was no longer working out. Sylvester spoke with Tammy Boyer and informed Tammy that she could remain residing in the home with the dogs but that Jason Boyer must leave. According to Sylvester, Tammy Boyer informed her that she needed to go with her husband.

Sylvester testified that she went online and discovered that the state of Delaware has landlord-tenant rules to follow. She had provided verbal notice to vacate to the Boyers but to no avail.³

Therefore, she wrote a notice to vacate with the intention to make the notice “legal”. Sylvester sent the letter certified, receipt requested as well as registered.⁴ Sylvester viewed the confirmation of delivery of the notice to the Boyers online and indicated that it was received on September 26, 2008 at 9:29 AM. Sylvester testified that she personally observed Jason Boyer receive the letter when it arrived. Sylvester indicated that she never went to the Justice of the Peace Court to pursue legal action in order to evict the Boyers.

² See Defendant’s Exhibit # 1 (Ledger of Payments/Schedule of Rent Received by Defendant).

³ See Joint Exhibit # 3.

⁴ See Defendant’s Exhibits # 4 and # 5.

In the notice to vacate, Sylvester instructed the Boyers to vacate the property by October 30, 2008. However, the Boyers did not move out on that date or even discuss vacating the premises with Sylvester. Sylvester indicated that she chose to provide thirty (30) days notice to the Boyers because she thought it was “reasonable”.

The Boyers vacated the home on November 4, 2008. Sylvester indicated that she contacted the police for their assistance to ensure that her personal property remained in the home. On that day, there was a truck parked in front of the home and Jason Boyer removed items belonging to Sylvester from the home. Sylvester went to the shed while Jason Boyer and his father removed items from the home. Sylvester testified that she had no idea that the Boyers would remove her personal property.

Sylvester testified as to which items were missing from her home and explained that she went onto eBay to determine the values of the property. She then explained that she reduced the value of the property by one-half or one-quarter to reflect the age and value of the property.⁵ Sylvester indicated that she did not authorize the Boyers to remove her washer, dryer and refrigerator from the property and that the Boyers removed their own personal washer, dryer and refrigerator that they had placed in the home. Sylvester stated that she verbally objected to the removal of her washer and dryer from the home but that she did not know if her son objected to the removal because she was not present at that time. Sylvester stated that her dryer was located in the shed but that her washer and refrigerator had been disposed of. The dryer remains with Sylvester.

Regarding the Boyers’ personal property that remained in the home, Sylvester testified that she packed it up and stored it in the back of her living room. She never denied the Boyers from retrieving their property. Sylvester did not expect the Boyers to return for their property.

⁵ See Defendant’s Exhibit # 6.

Further, she expected to receive verbal or written notice if the Boyers wished to return for their property. Sylvester admitted that she had seen the Boyers at the next door neighbors' home after they had vacated the home. Eventually, Sylvester disposed of the Boyers' property, in June or July of 2009.

Tammy Boyer testified to a different version of the events that unfolded between the parties. She testified that she and her husband, Jason, rented the property from Sylvester in June of 2007, more specifically, that they rented the entire home. At that time Sylvester was residing in North Carolina with her daughter. Prior to moving into Sylvester's home the Boyers had been staying with Sylvester's son at a different location. However, the Boyers had never spoken with Sylvester regarding the fact that they resided with Sylvester's son at another property that Sylvester owned.

Tammy Boyer indicated that Sylvester provided her and her husband with a written lease agreement but that they never signed the agreement because they believed the terms of the lease agreement to be harsh. The Boyers inquired of Sylvester as to the possibility of revising the lease agreement. The Boyers expressed their dissatisfaction and concern with the proposed lease agreement to Sylvester but did not submit a proposed revision to her. According to Tammy Boyer, Sylvester indicated that there was no need to revise the lease agreement because she felt friendly with the Boyers. The Boyers agreed to have no lease and moved into the home.

The monthly rental payment of \$1,000.00 was shared by the Boyers and Sylvester's son. The Boyers spoke with Sylvester regarding the rental payment agreement and the parties agreed that the Boyers would each individually contribute \$250.00 per month toward the rent. The Boyers provided the rent payment in cash to Sylvester's son, who received the payments for his

mother, and would deposit the Boyers' portion of the rent into Sylvester's account. The Boyers understood Sylvester's son to be Sylvester's agent for the property in her absence.

After Sylvester's son had deposited the Boyers' portion of the rent into Sylvester's account, he gave the deposit slip to the Boyers as a receipt.⁶ Tammy Boyer denied that they did not pay rent for the last three (3) months that they occupied the home prior to vacating. She indicated that the last receipt that they received from Sylvester was in August of 2008 because Sylvester ceased providing them with receipts. According to Tammy Boyer, when Sylvester moved back into the home, the Boyers paid Sylvester directly.

Tammy Boyer testified that, Sylvester had left the refrigerator and the washer and dryer in the home. Sylvester's washer and dryer did not work so the Boyers brought in their washer and dryer and stored Sylvester's washer and dryer in the shed. The proposed Lease Agreement⁷ provided that no alterations to the property were to be made, but Tammy Boyer stated that they had never signed the agreement. According to Tammy Boyer, Sylvester's son disposed of Sylvester's washer and dryer sometime between May of 2008 and June of 2008. Further, Sylvester's son had stored Sylvester's refrigerator in the shed and subsequently disposed of it as well. The Boyers never spoke with Sylvester regarding the disposal of her appliances nor asked her permission prior to their removal. They believed that Sylvester's son was acting on behalf of Sylvester.

According to Tammy Boyer, Sylvester did not inform them directly, regarding her return to the home. She stated that it was Sylvester's son who informed them that Sylvester would be returning to reside in the home.

⁶ See Plaintiffs' Exhibit # 2 (Copy of deposit slips and a rent received summary).

⁷ See Joint Exhibit # 1.

Following Sylvester's return to the residence in June of 2008, Sylvester began to express complaints regarding Jason Boyer and, according to Tammy Boyer, Sylvester expressed anger toward Jason Boyer.

However, Tammy Boyer expressed issues that she had regarding the living situation as follows: (1) the Boyers expressed displeasure with Sylvester's sister as a lessor on the lease agreement because they had never dealt with her; (2) the Boyers were concerned with the situation of the presence of the dogs in the home, specifically the delineation of which dog belonged to whom; (3) the Boyers felt that the rent amount was too high because Jason Boyer had lost his job and their home had been foreclosed upon; and (4) the Boyers were unhappy with the date on which the rent was due and owing because it did not coincide with Tammy Boyer's pay schedule. Further, Tammy Boyer testified that Sylvester was notified of the damage to the property as well as to the alterations that the Boyers made to the property.

The Boyers received a notice to vacate the premises from Sylvester on September 26, 2008, informing them that they must vacate the property by October 30, 2008.⁸ The Boyers, prior to June in 2008, had not received any notice for renewal nor any notice to vacate the premises. The Boyers vacated the home on October 31, 2008 or November 1, 2008 and obtained new housing. Tammy Boyer denied that they took any of Sylvester's personal property with them when they vacated the property.

The Boyers located new housing from November 2, 2008 through April 1, 2009 at a hotel, where they paid rent in the amount of \$350.00 per week.⁹ Tammy Boyer stated that they had been actively looking for permanent housing during that time period but that it was difficult to obtain because they owned two (2) dogs. Tammy Boyer clarified that of the five (5) dogs

⁸ See Plaintiffs' Exhibit # 3.

⁹ See Plaintiffs' Exhibit # 4.

residing in the home, the Boyers only owned two (2) while the remaining three (3) dogs were owned by Sylvester's son.

The Boyers were unable to remove their personal property from the home but their inability to remove their personal property was not a problem to Sylvester. According to Tammy Boyer, Sylvester had abruptly kicked them out so that, they removed what personal property that they could, only what would fit into their vehicle. Jason Boyer returned to the property two (2) days after vacating the home; however, at that time, they were unable to retrieve their personal property. On that day, the police were present but Sylvester was not. Tammy Boyer indicated that there was no pending action in the Justice of the Peace Court to evict them at that time. The value of the Boyers' personal property remaining at the property was \$1,860.00, which included a bed, two (2) dressers, an entertainment center, a recliner, a bookshelf, a coffee table and an air conditioner.¹⁰ Tammy Boyer stated that she arrived at the total of the value of their property through a calculation of prices for similar items for sale at garage sales.

The Boyers did not provide Sylvester, verbally or in writing, with any notice of a forwarding address because according to Tammy Boyer, Sylvester refused to speak with them. The mailing address for the Boyers at that time was the neighbors' address and Tammy Boyer indicated that Sylvester's son knew how to contact them because the Boyers had contacted Sylvester's son and provided him with their forwarding address. Further, the Boyers visited Sylvester's neighbor after they had vacated the property in November of 2008 but they never attempted to retrieve their personal property or attempted to speak with Sylvester.

¹⁰ See Plaintiffs' Exhibit # 5 (List of the Boyers' personal property); Plaintiffs' Exhibit # 6 (Photographs of the Boyers' personal property).

DISCUSSION

The matter pending before the Court raises a multitude of issues which the Court will now address.

As a threshold matter, the instant action is a civil action. As such, Plaintiffs have the burden of proving the underlying actions by a preponderance of the evidence.¹¹

A. Sylvester's Primary Residence

The first issue pending before the Court is whether the residence involved in the instant dispute, i.e., 136 Olga Court, Wilmington, Delaware, was Defendant's primary residence at all times.

It is the Plaintiffs' position that Defendant was not a primary resident of the rental property at any time relevant to the transaction. Conversely, it is the Defendant's position that the property was her permanent home and therefore, her principal residence at all times.

There is no specific definition for the term "principal residence" in the Landlord Tenant Code. However, the Court finds instruction in the definition of the term "domicile." In *Williamson v. Standard Fire Ins. Co.*,¹² the Court stated that "in Delaware, the term 'resident' is often equated with the legal term of 'domicile'."¹³

Further, "[d]omicile is said to require bodily presence plus the intent to make the place one's home."¹⁴ The Court held that the plain meaning of residence to be "the combination of a temporary or permanent presence on the property, with the intent to make the property's one

¹¹ *Flores v. Santiago*, 2009 WL 2859049, 1, 2 (Del. C.P. Welch, J.) citing *See e.g. Orsini Topsoil v. Carter*, 2004 Del. C.P. LEXIS 17, May 18, 2004 (Welch, J.); *Mantyla v. Wilson*, 2004 Del. C.P. LEXIS 44, February 4, 2004 (Welch, J.); and *Wirt v. Matthews*, 2002 Del. C.P. LEXIS 17, January 11, 2002 (Welch, J.).

¹² *Williamson v. Standard Fire Ins. Co.*, 2005 WL 6318348 (Del. Super. Ct. Aug. 19, 2005).

¹³ *Id.* at *5.

¹⁴ *Williamson*, 2005 WL 6318348 at *4.

home.”¹⁵ Further, the Court stated that the plain meaning of residence is well understood in the common vocabulary and described residence as “the act or fact of abiding or dwelling in a place for some time; an act of making one’s home in a place.”¹⁶ The Court, continuing, declared that residence is “a temporary or permanent dwelling place, abode or habitation to which one intends to return as distinguished from a place or temporary sojourn or transient visit.”¹⁷ Finally, the Court noted that the definition of reside states: “reside, despite the fact that it is somewhat formal, may be the preferred term for expressing the idea that a person keeps or returns to a particular dwelling place as his fixed, settled or legal abode.”¹⁸

Similarly, in *Fritz v. Fritz*,¹⁹ the Court stated that “domicile is defined as a dwelling place with the intention to make that place the resident’s permanent home. It requires a concurrence of the fact of living at a particular place with the necessary intention of making that the permanent home.”²⁰

The record in this matter indicates that Defendant treated the property as her permanent home, Defendant was the sole owner of record of the property, Defendant paid all the bills, such as the utilities and mortgage, for the property and all bills for the property were in her name. Defendant paid all bills prior to, throughout and after the Plaintiffs’ residence in the property. Defendant always intended the property to be her permanent home. Further, prior to her absence from the home, Defendant resided in the property for approximately fifty (50) years. Defendant was absent from the residence for approximately one (1) year while she stayed with her daughter in another state. During that time Defendant did not take any affirmative steps to make any other

¹⁵ *Id.* at *5.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Fritz v. Fritz*, 187 A.2d 348 (Del. 1962).

²⁰ *Id.* at 349.

location her domicile. Defendant maintained her Delaware driver's license and testified that she always considered returning to Delaware. Defendant further testified that when she returned in Delaware in June of 2008 she intended to reside in Delaware in the property permanently.

Plaintiffs argue that homeowners who rent their properties to tenants do not continue to be primary residents of the rental property simply because the homeowners remain the owners of the property. This argument may be true in some instances but not in this matter. Defendant did much more than simply own the property.

Plaintiffs further argue that the fact that Defendant maintained her Delaware driver's license does not establish that the property continued to be her primary residence.

Finally, Plaintiffs argue that the property was not Defendant's primary residence because Defendant had to request permission from Plaintiffs prior to her return to Delaware in order to resume residence in the home. Defendant did not dispute that she rented the property to Plaintiffs during her absence.

The Court concludes that Defendant's request to return was reasonable given the informal nature of the rental agreement and the friendly relationship between the parties. Defendant "asked" if Plaintiffs were amenable to her residing in the home with them. Defendant's friendly request does not serve to prove that the property was no longer her primary residence. It appears to this Court that Defendant's request to Plaintiffs was merely a mannerly request given the parties' friendly relationship.

Plaintiffs next argue that Defendant abandoned her intent that the property be her permanent home because her presence in the residence was not without constraint, being subject to Plaintiffs' consent. However, the Court does not agree with this argument advanced by

Plaintiffs. There is no evidence to suggest that Defendant was subject to the consent of Plaintiffs while she resided in the home.

The Court concludes, based upon the testimony and evidence in the record that the property at 136 Olga Court, Wilmington, Delaware was at all times the primary residence of Defendant.

B. Applicable Notice to Terminate

The second issue pending before the Court is the amount of notice that Defendant was required to provide to Plaintiffs for termination of Plaintiffs' tenancy.

Plaintiffs argue that the applicable provisions for notice in this matter is set forth by 25 *Del. C.* §5106 while Defendant argues that applicable provision for notice to be provided to Plaintiffs is 25 *Del. C.* § 5512.

25 *Del. C.* §5106 provides:

(a) No rental agreement, unless in writing, shall be effective for a longer term than 1 year. (b) Where no term is expressly provided, a rental agreement for premises shall be deemed and construed to be for a month-to-month term. (c) The landlord may terminate any rental agreement, other than month-to-month agreements, by giving a minimum of 60 days' written notice to the tenant prior to the expiration of the term of the rental agreement. The notice shall indicate that the agreement shall terminate upon its expiration date. A tenant may terminate a rental agreement by giving a minimum of 60 days' written notice prior to the expiration of the term of the rental agreement that the agreement shall terminate upon its expiration date. (d) Where the term of the rental agreement is month-to-month, the landlord or tenant may terminate the rental agreement by giving the other party a minimum of 60 days' written notice, which 60-day period shall begin on the first day of the month following the day of actual notice. (e) With regard to a tenant occupying a federally-subsidized housing unit, in the event of any conflict between the terms of this Code and the terms of any

federal law, regulations or guidelines, the terms of the federal law, regulations or guidelines shall control.²¹

25 *Del. C.* §5512 provides:

Any provision of the Landlord-Tenant Code to the contrary notwithstanding, all rental agreements for the rental of single rooms in certain buildings may be terminated immediately upon notice to the tenant for a tenant's material violation of a regulation which has been given to a tenant at the time of contract or lease, and the landlord shall be entitled to bring a proceeding for possession where: (1) The building is the primary residence of the landlord; and (2) No more than 3 rooms in the building are rented to tenants; and (3) No more than 3 tenants occupy such building.²²

As the Court previously determined that the property was Defendant's primary residence, analysis under 25 *Del. C.* § 5512 is warranted. 25 *Del. C.* §5512 provides for immediate termination of a lease for a tenant's material violation of a regulation contained within the lease agreement if three (3) conditions are met, namely: (1) where the building is the primary residence of the landlord; and (2) no more than three (3) rooms in the building are rented to tenants; and (3) no more than three (3) tenants occupy the building.

This Court has concluded that the property was the primary residence of Defendant. Further, the Court concludes that Plaintiffs and Sylvester's son were tenants of the property. Additionally, Defendant's notice of termination to Plaintiffs included that the lease was terminated due to Plaintiffs' failure to pay rent.

²¹ 25 *Del. C.* §5106.

²² 25 *Del. C.* §5512.

However, the difficulty arises as to whether Plaintiffs rented the entire property. The testimony is conflicting in that Defendant stated that she rented a room to Plaintiffs while Tammy Boyer stated that the Plaintiffs rented the entire property.

However, both parties testified that except for each party's respective bedrooms, all parties had free access to all other portions of the home. Plaintiffs' furniture was located in several rooms of the home. Therefore, *25 Del. C. §5512* is not applicable to the case at bar.

Discussion of *25 Del. C. §5106* is therefore appropriate at this juncture. *25 Del. C. §5106* provides that where no term of rental is expressly provided, a rental agreement for the premises is deemed to be for a month-to-month term. Further, *25 Del. C. §5106* states that where the term is month-to-month at the time of notice, a party may terminate the rental agreement by giving the other party a minimum of sixty (60) days written notice, to begin on the first day of the month following the day of actual notice.

Therefore, Defendant was required to provide Plaintiffs with sixty (60) days notice of termination. Actual notice of termination was provided to Plaintiffs on September 26, 2008. Under the statute, the Plaintiffs then had until November 30, 2008 to vacate the property. Defendant requested that the Plaintiffs vacate the property by October 30, 2008. Plaintiffs subsequently vacated the property on November 4, 2008.

Defendant's attempt to give Plaintiffs thirty (30) days written notice of termination was in violation of *25 Del. C. §5106*.

C. Unlawful Ouster

The third issue pending before the Court is whether Defendant's actions constituted an unlawful ouster under 25 *Del. C.* §5313.

Plaintiffs seek treble damages for three times the per diem rent for the portion of November of 2008 when they were allegedly ousted by Defendant.

25 *Del. C.* §5313 provides:

If removed from the premises or excluded therefrom by the landlord or the landlord's agent, except under color of 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 or 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.²³

As the Court has concluded that Defendant was to provide sixty (60) days notice of termination to Plaintiffs pursuant to 25 *Del. C.* §5106, Plaintiffs' tenancy lasted until November 30, 2008.

The potential damage amount recoverable by Plaintiffs as a result of an unlawful ouster would depend upon when the Plaintiffs were actually excluded from possession of the rental unit. Testimony showed that Plaintiffs voluntarily left the rental unit on November 4, 2008 after receipt of Defendant's notice of termination. Defendant neither removed nor excluded Plaintiffs from the property. Defendant provided Plaintiffs with a notice of termination and Plaintiffs subsequently voluntarily vacated the home. Plaintiffs were not removed from the property by police nor were the locks changed to the home. Plaintiffs were not precluded from entering the

²³ 25 *Del. C.* § 5313.

home. Defendant provided Plaintiffs an opportunity to remove their personal property from the home. Defendant requested the assistance of the police, not to remove Plaintiffs from the home, but to prevent the removal of her personal property from the home. Defendant requested the courtesy from Plaintiffs of knowing when Plaintiffs would be entering her home.

While the notice to vacate was improper, Defendant took no action to amount to an exclusion or removal of the Plaintiffs from accessing the property.²⁴ Thus, the Court concludes that Plaintiffs were not unlawfully ousted by Defendant and are not entitled to recover statutory damages pursuant to 25 *Del. C.* §5313.

D. Agency Relationship

The fourth issue pending before the Court is whether Defendant's son was her agent for the purposes of the rental agreement.

Plaintiffs contend that Defendant's son acted in a representative capacity on her behalf and that he possessed apparent authority to act on her behalf. Defendant contends that her son never acted as her agent and therefore could not make decisions on her behalf regarding the property.

In *Lighthouse Village Condominiums Association, Inc. v. Cummins Electric, LLC*,²⁵ the Superior Court stated:

[t]he concept of apparent agency and authority focuses not upon the actual relation of the principal and agent, but the apparent relationship. Manifestations by the alleged principal which create a reasonable belief in a third party that the alleged agent is authorized to bind the principal create an apparent agency from

²⁴ See *Federico v. Tambascio*, 2003 WL 2311288 (Del. Com. Pl. May 12, 2003).

²⁵ *Lighthouse Village Condominiums Association, Inc. v. Cummins Electric, LLC*, 2010 WL 5307259 (Del. Super. Ct. Dec. 8, 2010).

which spring the same legal consequences as those which result from an actual agency.²⁶

It is undisputed that Defendant's son collected the rent from Plaintiffs and deposited such into Defendant's bank account. However, Defendant's son was a tenant according to the unexecuted lease agreement and as confirmed by Defendant's testimony. Plaintiffs were aware that Defendant was the owner of the property and their landlord. The unexecuted lease agreement provided that Defendant's property could not be removed without her specific authorization.

Plaintiffs discussed the removal of Defendant's washer and dryer from the home with Defendant's son. Further, there is no evidence to establish that Defendant's son's authority to act on behalf of Defendant was limited.

Defendant indicated that she never gave her son actual authority to act on her behalf regarding the removal of her property from the home; however, the conduct of the parties demonstrates that Defendant's son possessed apparent authority to act on Defendant's behalf when viewed through the eyes of Plaintiffs. In matters of apparent authority, it is the belief of the third party that is given consideration. Though Defendant only authorized her son to collect the full amount of rent, Plaintiffs believed that Defendant's son to be her agent in regard to the removal and disposal of her property from the home. Plaintiffs discussed removal of Defendant's property from the home with Defendant's son and where granted permission by him to do.

The Court finds that Defendant's son was authorized to act on her behalf, thus her agent in regard to the removal and disposal of her washer, thus Plaintiffs are not liable to Defendant for

²⁶ *Id.* at *2.

the value of Defendant's personal property that was removed from home and subsequently disposed of.

Plaintiffs further request that the Court award them the amount of \$1,860.00 representing the fair market value of the items of furniture and other personal property that were allegedly damaged, destroyed or discarded by Defendant.

Plaintiffs vacated the residence in early November of 2008. Defendant then packed Plaintiffs' personal property and stored it in her living room until June or July of 2009 at which time she disposed of the property. Defendant held Plaintiffs' personal property for approximately six (6) months in order for Plaintiffs to retrieve such property.

Plaintiffs failed to retrieve their property within a reasonable amount of time and further, they failed to make any attempt to retrieve the property. As such, the Court concludes that Defendant retained Plaintiffs' personal property for a reasonable amount of time prior to disposal of such. Further, when Plaintiffs failed to retrieve their personal property within a reasonable amount of time, Defendant disposed of such property. The Court concludes that Defendant is not liable to Plaintiffs for the value of the property.

Defendant, in her Counterclaim, seeks the amount of \$3,350.00 for unpaid costs of maintenance for the property. However, there is no evidence or testimony in the record to support the claim. Defendant testified that she paid all of the bills for the property including the mortgage and utilities; however, there is nothing in the record to establish that Plaintiffs were responsible for sharing those payments with Defendant.

Further, Defendant also seeks the amount of \$3,290.00 for the value of personal property that was converted by the Plaintiffs. However, the Court does not find by a preponderance of the evidence that Defendant established that Plaintiffs converted her personal property.

In sum, for the reasons set forth in this Opinion, the Court finds, by a preponderance of the evidence that: (1) Defendant is not liable to Plaintiffs for the cost of substitute housing in the amount of \$6,210.00; (2) Defendant is not liable to Plaintiffs for treble damages pursuant to 25 Del. C. §5313; (3) Defendant is not liable to Plaintiffs for the value of Plaintiffs' personal property in the amount of \$1,860.00; (4) Plaintiffs are not liable to Defendant for unpaid costs for maintenance of the property in the amount of \$3,350.00; and (5) Plaintiffs are not liable to Defendant for the value of Defendant's personal property in the amount of \$3,290.00.

The Court finds in favor of the Defendant as to the Complaint. The Court finds in favor of the Plaintiff as to Defendant's Counterclaim. Each party shall bear its own costs.

IT IS SO ORDERED.

Joseph F. Flickinger, III
Judge

cc: Tamu White, Supervisor, Civil Department