



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

TELEPHONE: (302) 577-2550

PLAINTIFF

YMCA CENTRAL BRANCH RESIDENCE
c/o Michael P. Morton, Esq.
1203 North Orange Street
Wilmington, De. 19801

VS.

CIVIL ACTION: JP13-10-006344

DEFENDANT

Mr. Timothy L. Davis
501 West 11th Street, Room 616
Central YMCA Residences
Wilmington, DE 19801

ORDER

This is a de novo appeal to a three-judge panel from a decision dated June 20, 2010. The panel held trial on the matter on August 25, 2010. Plaintiff YMCA Central Branch Residence (hereinafter YMCA) was represented by Michael P. Morton, Esq. Defendant Timothy Davis was self-represented.

Plaintiff brought this action seeking possession based on a material non-compliance with the lease, causing irreparable harm to fellow residents, management and residence facility. Plaintiff argues that the defendant's conduct is not only a breach of the rental agreement, but also violated the rules and regulations of the facility and the Landlord-Tenant Code. The action was filed May 14, 2010. The original trial was held June 30, 2010.

At trial the panel heard testimonial evidence from Dara Wright, property manager for the YMCA, Yvonne Davis, City of Wilmington code enforcement officer, Melvin Leynes, YMCA assistant property manager; the Defendant, Timothy Davis and Frederick Purnell, WHA director. The Plaintiff further introduced documentary evidence as follows: the lease between the parties; the lease addendum; the termination notice dated May 12, 2010 and May 5, 2010 incident report.

The Court adjourned in order to secure equipment to view videotaped (formatted DVD) evidence from Defendant Davis. However, because of the format in which the evidence was recorded, the Panel was unable to review it.

FACTS

Defendant lives at the YMCA. He has lived at the facility since March 2007. Defendant's signature appears on the lease and the other addenda introduced at trial. However, Davis denies that the signature acknowledging receipt of the Landlord-Tenant Code is his.

On May 5, 2010, Davis went to City of Wilmington Licenses and Inspections (L & I) to file a complaint concerning bedbug infestation at the YMCA. Because he had brought what was purported to be a bag containing bedbugs to the office, he was asked to leave. Yvonne Davis from L&I met Timothy Davis at the YMCA later that morning. As a result of her interaction with the Defendant at the L&I office, Ms. Davis requested Wilmington Police be on standby in the area.

During the course of the conversation, Defendant Davis became argumentative and presented what Ms. Yvonne Davis considered contradictory statements concerning the bedbug situation. He complained about being bitten by bedbugs from a mattress he was provided by YMCA management and asked if Ms. Davis wanted to see his penis where he had been bitten. Yvonne Davis was offended at the inappropriate comment. She also felt threatened by his movement toward her, while he was arguing loudly about the bed bug situation. Because of the perceived threat, she asked to be removed from the case. According to Ms. Davis' testimony, the YMCA was not cited for bed bugs after the complaint made by the Defendant. Although she instructed the YMCA to spray the defendant's room and replace his mattress, the Defendant declined.

Mr. Leynes was also present when Yvonne Davis arrived at the YMCA on May 5, 2010 to discuss Mr. Davis' concerns. He testified that Davis became agitated during the discussion. He also felt threatened by the physical closeness of Mr. Davis as he became argumentative. Leynes was likewise offended by the penis comment. Both Wright and Leynes testified concerning a document received from Mr. Davis that included a statement about a gun. Leynes was particularly disturbed by the statement after researching the type of gun mentioned in the letter and found that this weapon had been used in a war to kill Filipinos, which is his nationality. He was further concerned because he knew the defendant had been arrested before on a weapons charge.

Dara Wright, YMCA property manager since August, 2008 testified that she had received letters, both faxed and handwritten regarding bedbugs and the Defendant's demand that his laptop computer be replaced by the YMCA. These letters she found to be harassing.

Mr. Davis generally denied the witnesses' contention that his actions were argumentative, physically threatening and inappropriate on May 5th. He argues that Plaintiff's actions to evict him are retaliatory in nature and prohibited by 25 Del. C. §5513(b). He believes the landlord's immediate notice and filing for summary possession within 90 days of his complaint to L&I are legally prohibited.

LEGAL POSITIONS

Plaintiff filed for possession on several grounds. Plaintiff first argues tenant's conduct on May 5, 2010 indicate material noncompliance with Paragraph 14 of the lease, concerning tenants obligation

to comply with Rules and Regulations of the facility. Second, it claims the tenant's conduct violates Paragraphs 1, 2 & 4 of the Crime and Drug Free Lease Addendum, which respectively prohibit a tenant from engaging in unlawful activity on or near the premises, prohibit tenant from engaging in an activity that constitutes a threat to people or property on or near the premises and requires residents to conduct themselves in a manner that will not disturb the neighbors of their full use and enjoyment of the premises. Third, Plaintiff asserts that tenant failed to comply with the Rules and Regulations to refrain from making noises that would disturb, bother and prohibit illegal activities on the premises.

Finally, the landlord invokes provision 25 Del. C. §5511(b) which requires tenants to conduct themselves in a manner that does not unreasonably interfere with the other tenants peaceful enjoyment of the premises and 25 Del. C. §5513(b) which allows the landlord to terminate a lease, upon immediate notice, if a tenant causes or threatens to cause irreparable harm to person or property.

Defendant relies on 25 Del. C. §5516 (b)(1) and (2) which respectively prohibit a landlord from attempting or pursuing an action for summary possession against a tenant who has complained in good faith of a condition affecting the rental unit which constitutes a violation or a state or local government has filed a complaint of such violation of a building, housing, sanitary or other code or ordinance.

In defense to the claim of retaliatory eviction, Plaintiff relies on 25 Del. C. §5516 (d)(1) which allows a landlord to terminate early under a section of this part of the Code, as long as proper notice is given. As a further defense to the claim of retaliatory eviction, Plaintiff relies on §5516(d)(6) which states that it cannot be considered a retaliatory act, if on the date the tenant filed a complaint the rental premise was in full compliance with all codes, statutes and ordinances.

Discussion

The witnesses' testimony describing the Defendant's conduct on May 5, 2010 is sufficient for the Court to find the tenant in violation of the lease agreement, the Crime and Drug Free Lease Addendum and the Rules and Regulation of the facility. Specifically, the Defendant was argumentative and intimidating, causing the witnesses concern for their safety, making it necessary for them to take measures to put more physical space between them and the Defendant. Davis' comment concerning his penis was inappropriate and offensive to the parties present. The Court further finds that all the previously described behavior is in violation of the Landlord-Tenant Code and grounds for termination of the lease.

Concerning the Defendant's claim of retaliatory eviction, the Court finds that the landlord acted within the law when it sent the notice of termination and subsequently filed an action for summary possession on May 14, 2010. The Defendant complained to L&I, but the YMCA was not cited for any violations based on the defendant's complaints. Therefore, it is a valid defense to the retaliatory eviction claim, that the residential facility was not in violation of any governmental code, statute or ordinance when the Defendant complained to L&I. Additionally, the landlord provided proper notice of

termination pursuant to 25 Del. C. § 5513(b) , as a result of the Defendant's material non-compliance with 25 Del. C. § 5511(b).

The preponderance of evidence supports the landlord's claim for possession. Plaintiff withdrew its claim for unpaid rent.


CONCLUSION

The Court awards judgment in favor of Plaintiff YMCA Central Branch Residence and against Defendant Timothy Davis for possession and \$40.00 court costs.

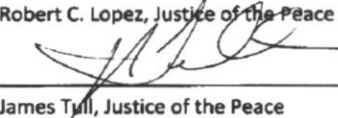
IT IS SO ORDERED this 20th day of September, 2010.



Bonita N. Lee, Deputy Chief Magistrate



Robert C. Lopez, Justice of the Peace



James Tull, Justice of the Peace