

IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
COURT NO. 13

COURT ADDRESS:
1010 CONCORD AVE
WILMINGTON DE 19802

CIVIL ACTION NO: JP13-13-011590

A JAY POKORNY VS TRACY ROBINSON ET AL

A JAY POKORNY

VS

TRACY ROBINSON
DWIGHT ANDENOUS

TRIAL DE NOVO ORDER

March 12, 2014

The Court went forth in the above-referenced matter heard on appeal *de novo*, the panel consisting of Judges Lee, McCormick, and Roberts. Plaintiff sought back rent due and owing at the rate of \$475 per month from August 2013 through November 2013 and then at the rate of \$575 per month from December 2013 to date as well as possession of the unit. Defendant claimed no rent was due as a result of conditions within the unit; accordingly she wished to retain possession and claimed that no rent should be due until such time that the conditions in question are rectified.

Testimony revealed that the parties had entered into a lease agreement in July 2012 for the unit in question. Rent had originally been set at \$575 per month, however after the first month of the tenancy, a leak developed in the living room ceiling. The parties re-negotiated the rental amount to \$475 per month to account for the aggravation the leak caused, with the promise that it would be repaired as time allowed. No attempts at repair were made prior to mid-August 2013.

On August 13, 2013 a torrential downpour occurred. On this date, the leak was such that the drywall ceiling became saturated and fell down on Defendant's head, causing her injury. Emergency and fire personnel responded, who in turn contacted the city's Department of Licensing and Inspection. Inspector Bloomquist of the Department responded to the scene and condemned the unit as unfit for human habitation. Despite the condemnation, Defendant remained in the unit. Work to make repairs began 2 days later, and continued for several months. Inspector Bloomquist testified that he was at the unit responding to an unrelated matter sometime in the late-fall or early-winter of 2013 when Plaintiff asked him to inspect the work done to repair the leak. The inspector did so, and advised the Court that, upon inspection, he deemed the work done as sufficient and verbally lifted the condemnation at that time. The inspector was unable to supply a date certain of when this occurred, advising that the notes he had taken are missing from the building file. Other than recalling the time of season, the best date the inspector was able to provide was "after the last time we were in court on this matter." It should be noted that this matter was heard by the Court below on October 17, 2013. Plaintiff testified that the condemnation was lifted by his recollection in mid-to-late November. Plaintiff argued that, since Defendant chose to remain in the unit despite the order condemning the unit she should have to pay rent in some form. Further, Plaintiff argued that


since the condemnation had been lifted in late November, rent should resume on December 1, 2013 at the originally agreed-upon rate of \$575. Lastly, Plaintiff argued that, since Defendant has paid no rent, possession should be awarded to Plaintiff.

In response, Defendant argued that she should have to pay no rent during the time the unit was condemned, and since she had never been advised that the order of condemnation had been lifted, she believed the unit condemned to this day. She argued that the leak still exists in some form and has never been adequately repaired. Lastly, she argued that rent should be abated due to this ongoing condition that has existed in some form since August 2013.

The Court held that no rent should be abated prior to August 2013. The parties had renegotiated the rent when the leak first occurred, and the parties were obviously satisfied with the bargain they had made. Clearly rent should be abated for the time when the unit was condemned. 25 Del. Code § 5309(2) allows that rent may be reduced in proportion to the diminution of the fair market rental value at times when the unit is damaged by fire or other casualty to such an extent that enjoyment or use of the property (or a portion thereof) is substantially impaired. Accordingly, the Court abated the rent by 75% (to \$118.75 per month) for the months the unit was condemned. Since the Court is unaware of a date-certain upon which the order of condemnation was lifted, the Court erred on the side of caution and held that the order was lifted in December 2013 (this, based upon the inspector's testimony that the order was lifted "sometime in the late-fall or early-winter of 2013.") The Court advised that, since the order had been lifted no later than December 2013, rent should have commenced at the negotiated rate of \$475 effective January 1, 2014. Back rent due and owing from August 2013 through March 2014 thusly would equal \$2,019.50.

Judgment therefore given in favor of Plaintiff in the amount of \$2,019.50. Because no evidence of notice of demand was evidenced, possession of the unit to remain with the Defendant. Lastly the parties were advised that, should rent in the amount of \$475 not be paid April 1, 2014, then upon proper demand, such non-payment could become grounds for further litigation involving possession.


IT IS SO ORDERED this 27 day of March



Bonita N. Lee
Deputy Chief Magistrate



Sean P. McCormick
Justice of the Peace



Nancy C. Roberts
Justice of the Peace

