JOHN HUGHES, JR., and LISA RODKEY,	:	IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA
Plaintiffs	:	
vs.	:	NO. 03-00,809
DOLORES J. ZIMMERMAN,	:	CIVIL ACTION – LAW
Defendant	:	PRELIMINARY OBJECTIONS

Date: September 11, 2003

OPINION and ORDER

Facts/Procedural Background

The case *sub judice* is an action brought by alleged former tenants against their landlord. In a complaint filed August 18, 2003, Plaintiffs John Hughes, Jr. and Lisa Rodkey have alleged claims for wrongful eviction, illegal distraint upon personal property, and for double the amount of the security deposit against Defendant Dolores J. Zimmerman. Defendant filed Preliminary Objections to the Complaint on August 21, 2003, which are now before the Court for determination. In the Preliminary Objections, Defendant asserts that John Hughes, Jr. lacks the capacity to bring the suit since he was not a tenant of Defendant, that the allegations of damage done to personal property are not sufficiently specific, and that Plaintiffs are not entitled to the security deposit as a matter of law.

Discussion

The Court will address the contentions *seriatim*. Based upon the facts averred in the Complaint and Response to Defendant's Preliminary Objections, the Court holds that John Hughes, Jr. lacks the capacity to bring the suit. A preliminary objection may be brought on the grounds that a party lacks the capacity to sue. Pa.R.C.P. 1028(a)(5). A preliminary objection

brought under Pa.R.C.P. 1028(a)(5) cannot be determined from the facts of record. Note to Pa.R.C.P. 1028(b)(2). In such a case, a response to the preliminary objections will be required, unless the preliminary objections were not endorsed with a notice to plead. Ibid.

The Landlord and Tenant Act of 1951, 68 P.S. §§250.101-.512, governs the relationship between a landlord and a tenant. Only a tenant can enjoy the protections of the Landlord Tenant Act. ***Clarenbach v. Giordano***, 13 Pa. D. & C.3d 195, 198 (Philadelphia Cty. 1978). "A tenant is one who occupies the premises of another in subordination to the other's title and with his assent, express or implied." ***Lasher v. Redevelopment Auth. of Allegheny Cty.***, 236 A.2d 831, 833 (Pa. Super 1967). Often, the agreement that gives rise to the landlord tenant relationship is embodied in a written lease. ***Ibid.***

John Hughes, Jr. was not a tenant of Defendant. He did not sign the lease agreement when it was initially entered into on November 4, 1999. Plaintiff Lisa Rodkey was the only one identified as a tenant who signed the lease on that date. Lisa Rodkey was also the only person identified as a tenant to sign the lease when it was extended on November 17, 2000, October 2, 2001, and November 2, 2002. The lease does not identify John Hughes, Jr., as a tenant. The lease identified as tenants Lisa Rodkey and five children. The lease is devoid of any reference to Hughes.

The mere fact that John Hughes was living at the leased premises with Lisa Rodkey does not establish by implication that he was a tenant of Defendant. ***Clarenbach***, 11 Pa. D. & C. 3d at 197. The landlord-tenant relationship is a legal relationship with certain responsibilities and duties required of both parties. In order to establish this relationship, there needs to be some sort of act that would manifest the intent of both parties to enter into this

relationship and be bound by those responsibilities and duties. The fact that Hughes lived at the leased premises, by itself, does not establish this intent.

In their Response to Defendant's Preliminary Objections, Plaintiffs assert that John Hughes, Jr. resided at the leased property "openly and notoriously for almost four full years with the implied acceptance by Defendant Zimmerman." They contend that this implied acceptance established a lease by implication between John Hughes, Jr. and Defendant. They assert that evidence of Defendant's acceptance of John Hughes, Jr. as a tenant is evidenced by Defendant naming both John Hughes, Jr. and Lisa Rodkey as tenants in a Landlord and Tenant Complaint filed on March 25, 2003. Again, the mere fact that John Hughes, Jr. was living at the leased premises does not create a landlord-tenant relationship between him and Defendant. There is no averment of facts that would demonstrate intent on either party to enter into and be bound by a landlord-tenant relationship. The Court does not regard the naming of Hughes as a tenant in a complaint as evidence of an intent to enter into a landlord-tenant relationship. The naming of John Hughes, Jr. as a tenant in the complaint was probably a tactical legal maneuver to protect Defendant's interests that may have been at issue in the Landlord and Tenant Complaint..

As to the allegations of damage done to personal property, the Court concludes that the allegations are not sufficiently specific. Pennsylvania is a fact pleading state. ***Miketic v. Baron***, 675 A.2d 324, 330 (Pa. Super. 1986). A complaint must set forth the material facts upon which the cause of action is based in a concise and summary form. Pa. R.C.P. 1019(a). The complaint must apprise the defendant of the claim being asserted and summarize the material facts to support that claim. ***Cardenas v. Schober***, 783 A.2d 317, 325 (Pa. Super.

2001). The complaint must also set forth enough material facts to allow the defendant to prepare a defense to the allegations contained within the complaint. ***Weiss v. Equibank***, 460 A.2d 271, 274 (Pa. Super. 1983). In examining the complaint, the focus is not upon one particular paragraph in isolation. ***Yacoub v. Lehigh Valley Med. Assoc., P.C.***, 805 A.2d 579, 589 (Pa. Super. 2001). The paragraph at issue must be read in conjunction with the complaint as a whole to determine if the requisite level of specificity has been met. ***Ibid.***

The allegations contained in Paragraphs 8(a) and 12 of the Complaint do not comply with the specificity requirements of the Pennsylvania Rules of Civil Procedure. Paragraph 8(a) states, "Loss of personal property believed to have a value of $5,000 to $10,00." Paragraph 12 states, "As the direct and proximate result of Zimmermans (sic) improper distress as set forth above, Rodkeys have been damaged to the extent of the value of the personal property wrongfully distrained, the value of which is believed to be $5,000 to $10,000." Reading the Complaint as a whole, there are no specific factual averments that could support monetary figure.

The Complaint alleges that personal property was damaged, but does not state what that property was. While Plaintiffs are not required to have to plead an itemized list down to the smallest detail, they must at least plead the type of property that was destroyed and a corresponding value so that Defendant can prepare a defense and rebut the asserted destruction of the property. The property itself is the material facts that support the claim for damages of between $5,000 and $10,000. Therefore, the type of property giving rise to the claim must be pleaded.

Finally, the Court cannot say that as a matter of law Plaintiffs are not entitled to double the deposit, based upon the pleadings in the Complaint. Within thirty days of termination of the lease or upon surrender and acceptance of the leased property, a landlord is required to provide a tenant with a written list of damages to the leased property for which the landlord claims the tenant is liable. 68 P.S. §250.512(a). If the landlord fails to provide the written list to the tenant within thirty days, then the landlord forfeits his rights to the deposit and to bring a suit against the tenant for damages to the leased property. 68 P.S. §250.512(b). If the landlord fails to return the deposit, less the amount of actual damages, to the tenant within thirty days, then the landlord is liable for double the amount of the deposit as a penalty. 68 P.S. §250.512(c).

However, a landlord may retain the deposit for nonpayment of rent or for the breach of any other condition in the lease by the tenant. 68 P.S. § 250.512(a). Also, the landlord is relieved of liability under §250.512 if, upon termination of the lease or upon surrender and acceptance of the leased property, the tenant fails to provide the landlord with his new address in writing. 68 P.S. §250.512(e).

An affirmative defense is different than a denial of facts. An affirmative defense requires "the averment of facts extrinsic to plaintiff's claim for relief." ***Coldren v. Peterson***, 763 A.2d 905, 908 (Pa. Super. 2000). An affirmative defense ignores what is alleged in the complaint and through the extrinsic facts disposes of the asserted claim. ***Ibid.***

Defendant asserts in her preliminary objections that Plaintiffs cannot recover the double deposit penalty because the Complaint does not aver that Plaintiffs have paid all the rent due under the lease, that they are in compliance with all terms of the lease, and that Plaintiffs

had provided Defendant with their new address in writing. As such, Defendant argues that Plaintiffs have failed to plead facts that would demonstrate compliance with the requirements of 68 P.S. §250.512, and thereby have failed to state a claim upon which relief can be granted regarding the double deposit penalty.

Defendant is correct in that Plaintiffs have not pleaded such facts in the Complaint, but Plaintiffs have no such requirement. In order to demonstrate that the landlord forfeited his right to the deposit and that the tenant is entitled to double the deposit, the tenant must establish that the landlord has failed to provide him with written notice of the damages and return the deposit within thirty days of termination or surrender and acceptance of the leased property. This is all that 68 P.S. §250.512 requires of the tenant. The ability of the landlord to retain the deposit for non-payment of rent, for a breach of the lease, and the release from liability by a tenant's failure to provide a new address in writing are affirmative defense that the landlord can assert against the tenant's claim.

These three facets of 68 P.S. §250.512 are not elements of the tenant's claim for the double deposit penalty. These three facets are affirmative defenses because they ignore what the tenant has alleged and through additional facts dispose of the tenant's claim. Even if the tenant could plead and establish that the landlord did not provide the written list of damages or return the deposit within thirty days of termination, the landlord could still retain the deposit and be released from liability if the landlord could plead and prove that the tenant breached the lease or that the tenant did not provide the landlord with written notice of the new address. That way these three facets of 68 P.S. §250.512 dispose of the tenant's claim, regardless of what the tenant can prove in his claim.

Therefore, the failure to plead that Plaintiffs have paid all the rent due under the lease, that they are in compliance with all the terms of the lease, and that they provided Defendant with written notice of their new address does not render Plaintiffs' claim for the double deposit penalty legally insufficient. These issues are best raised as affirmative defenses in Defendant's New Matter.

Conclusion

The Court will grant in part and deny in part Defendant's Preliminary Objections. Based upon the facts pleaded in the Complaint and averred in the Response to Preliminary Objections, John Hughes, Jr. was not a tenant of Defendant. The allegations of damage to personal property are not sufficiently specific. The claim for the double deposit penalty is not legally insufficient for the reasons advanced by Defendant.

O R D E R

It is hereby ORDERED that Defendant Dolores J. Zimmerman's Preliminary Objections filed August 21, 2003 are granted in part and denied in part.

The Preliminary Objections are granted in so far as John Hughes, Jr. does not have the capacity to bring the suit against Defendant, and he is stricken from all three counts of the Complaint.

The Preliminary Objections are granted in so far as Paragraphs 8(a) and 12 are stricken for lack of specificity.

The Preliminary Objections are denied in so far as Plaintiff's claim for the double deposit penalty is not legally insufficient for the reasons advanced by Defendant.

Plaintiffs shall have twenty days to file an Amended Complaint consistent with this Opinion and Order.

BY THE COURT:

William S. Kieser, Judge

cc: Scott T. Williams, Esquire
Ryan M. Tyra, Esquire
Judges
Christian J. Kalaus, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)