

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNA.

PAUL J. PETCAVAGE	:
Plaintiff	:
v.	: No. 04-00,184
TRACY E. HEISER, AND	:
MICHAEL J. BEACHER	:
Defendants	:

OPINION AND ORDER

This matter is before the court on Plaintiff Landlord’s Motion for Judgment on the Pleadings based upon Defendants admission in the pleadings that they moved out prior to the expiration of the Lease and did not pay the final four months of rent. (See paragraph 13 (a) of Defendants’ Answer). Although Defendants make those admissions, Defendants state that Plaintiff advised them that the property was being sold and that Plaintiff could not assure them that they would be able to occupy the residence for the remainder of the Lease term. (See averment 19 of Defendants’ Answer.) By failing to assure them of their right to continue their occupancy, Defendants contend that Plaintiff breached the Lease and attempted an oral modification of the Lease. The court disagrees.

The court notes that the Lease is contained in and admitted by the Pleadings. The Lease by its term and specifically Paragraph 24 on page 3, provides specific guidance on the sale of a property. In subsection D the Landlord agrees to require any new landlord, as a condition of the sale, to take on the landlord’s duty under the Lease and honor them. The court does not see anything in the Lease that obligates the landlord to give assurances. Even if believed, the court does not find that the allegations amount to an attempted modification or breach of the Lease. In addition, where a cause of action or defense rests entirely on an alleged oral conversation

concerning a subject which is dealt with in a written contract, it is presumed for purposes of parol evidence that the writing was intended to set forth the entire agreement as to that particular subject. Parol evidence of a contemporaneous oral agreement is inadmissible in a situation where a topic was naturally and normally included in the writing between the parties. Kehr Packages, Inc., v. Fidelity Bank, 710 A.2nd 1169 (Pa. Super 1998).

In short, the agreement between the parties specifically dealt with the subject of sale of the property, and parol evidence can not be accepted to modify that agreement nor are the statements allegedly made by Plaintiff sufficient to constitute a breach of the lease. Essentially, Defendants were asking for assurances as to something that was already provided in the Lease between the parties. Defendants have not cited any authority that would obligate a landlord to assure the tenant in advance that the Lease will be followed. Therefore, there is no issue to be tried, and Plaintiff is entitled to judgment against Defendants for four months rent in the amount of (\$1,700.00). As to the utility bill and the return of the security deposit, the pleadings raise genuine issues of fact for trial.

ORDER

AND NOW, this _____ day of June, 2004, Judgment on the Pleadings is entered in favor of Paul J. Petcavage, Plaintiff, and against Defendants Tracy E. Heiser and Michael J. Beacher, jointly and severally in the amount of \$1,700.00 representing four months rent. The remainder of the Motion for Judgment on the Pleadings is **Denied**.

BY THE COURT,

Richard A. Gray, Judge

C: Paul J. Petcavage
Michael C. Morrone, Esquire