

SHAWN GUTHRIE and APRIL
GUTHRIE, Husband and Wife,
Plaintiffs

vs.

JESSIE HURST,
Defendant

: IN THE COURT OF COMMON PLEAS OF
: LYCOMING COUNTY, PENNSYLVANIA
:
:
: NO. 04-01,937
:
:
: PRELIMINARY OBJECTIONS

Date: March 31, 2005

OPINION and ORDER

Before the court for determination are the Preliminary Objections of Defendant Jessie Hurst filed January 7, 2005. The Court will deny in part and grant in part the preliminary objections.

Background

Plaintiffs Shawn Guthrie and April Guthrie (hereafter “Guthries”) filed a complaint on December 8, 2004 against their landlord Defendant Jessie Hurst (hereafter “Hurst”). The complaint asserts four counts against Hurst arising out of Guthries’ lease of residential property located at 1938 West Fourth Street in Williamsport. The complaint alleges that the lease was an oral month-to-month lease for a rental amount of \$310.00 per month. The lease began in early 2003. Complaint, ¶ 3. According to the complaint, the premises became infested with rats, mice, and fleas. Id. at ¶ 7. During the time the premises was occupied by Guthries, their furniture and clothing were damaged due to the infestation. The complaint alleges that Hurst was given notice of the infestation, but failed to take appropriate action to correct the condition. Id. at ¶ 8-10. The complaint also alleges that on August 2, 2004 a rat scratched Shawn Guthrie. Because of this, he suffered personal injuries and was required to receive a rabies

vaccination. Id. at ¶13. . In August 2004, Guthries were forced to vacate the premises because of the infestation. Id. at ¶14.

In Count I of the complaint, Guthries set forth a negligence cause of action seeking to recover typical tort damages resulting from Shawn Guthrie's injuries that were allegedly suffered in the rat attack. The allegations of negligence, as set forth in paragraph 16 of the complaint, include charges that Hurst failed to keep the premises in a safe condition; failed to make reasonable inspection; failed to take appropriate measures to remove or exterminate the dangerous infestation; and failed to give warning of dangerous conditions. Subparagraph (e) of paragraph 16 also asserts such other negligence that may be revealed through discovery. The damages sought to be recovered under count one include medical expenses, pain and suffering, inconvenience, and mental anguish.

Count II of the complaint asserts a breach of the warranty of habitability claim in which Guthries assert that the infestation made the premises uninhabitable thereby forcing them to vacate the premises. As a result, Guthries seek a refund of the rent paid for the period beginning on the date Hurst was notified of the infestation in March 2004 to the date they vacated the premises in August 2004.

Count III asserts a claim for "Damage to Property" in which Guthries seek to recover the value of the property damaged by the infestation. Their theory is that Hurst was negligent in failing to notify Guthries of the infestation; in failing to make a proper inspection of the premises; and in failing to take adequate measures to correct the dangerous infestation.

Count IV asserts an unjust enrichment claim in which Guthries assert they spent in excess of \$1,200.00 for certain improvements to the premise including the installation of a new

floor in the living room and painting of all the rooms. Guthries assert that this resulted in an unjust enrichment to Hurst upon their forced vacation of the premises.

Hurst filed preliminary objections to this complaint on January 7, 2005. Argument on the preliminary objections was held on January 21, 2005. Neither party submitted briefs; however, at argument, counsel provided this court with copies of case decisions believed to support their respective positions.

Hurst's preliminary objections raised four specific reasons as to why the complaint was inappropriate and should either be stricken, dismissed, or made more specific. Guthries did not oppose the second and third preliminary objections. The second preliminary objection was to paragraph 28(e) of Guthries' complaint. Guthries acknowledge that the allegation "Such other negligence that may be revealed through discovery" is a general allegation. Accordingly, that subparagraph will be stricken per *Connor v. Allegheny Hospital*, 461 A.2d 600 (Pa. 1983). The third preliminary objection goes to the title of Count III, "Damage to Property," and the assertions in paragraphs 22-25. Hurst contends that the paragraphs fail to specifically allege damages and have a somewhat confusing statement as to whether a claim is being asserted for breach of the warranty of habitability or some negligent act. Guthries have agreed that this count must be correctly and more specifically pleaded. An appropriate order striking paragraphs 22-25 with leave to amend will be entered. The remaining preliminary objections are Hurst's demurrers to the negligence and unjust enrichment claims.

Discussion

Hurst asserts that Guthrie's negligence claim is barred by the gist of the action doctrine. Hurst contends that the lease and the implied warranty of habitability contained therein define the duties owed Guthries as would relate to the condition of the leased property. The court does not find that Guthries' negligence claim is barred by the gist of the action doctrine.

A plaintiff may assert more than one cause of action against a defendant in a civil action. Pa.R.C.P. 1020(a). However, "... courts are cautious about permitting tort recovery based on contractual breaches." *Pittsburgh Constr. Co. v. Griffith*, 834 A.2d 572, 582 (Pa. Super. 2003), *app. denied*, 852 A.2d 313 (Pa. 2004). To achieve this end, courts employ the gist of the action doctrine. The gist of the action doctrine is designed to maintain the conceptual distinction between breach of contract and tort claims by precluding a plaintiff from casting a breach of contract claim as a tort claim. *Etoll, Inc. v. Ellias/Savion Advertising, Inc.*, 811 A.2d 10, 14 (Pa. Super. 2002). The distinction between the two claims lies in the duties at issue. A breach of contract arises when there is a breach of duties imposed by mutual consent, while a tort action arises when there is a breach of duties imposed as a matter of social policy. *Ibid.* Therefore, "... a claim should be limited to a contract claim when the parties' obligations are defined by the terms of the contracts, and not by the larger social policies embodied by the law of torts." *Ibid.* (quoting *Bohler-Uddeholm Am., Inc. v. Ellwood Group, Inc.*, 247 F.3d 79, 104 (3rd Cir. 2001)).

Guthries' negligence claim is not barred by the gist of the action doctrine. Guthries have pleaded two distinct causes of action based upon two distinct duties that Hurst allegedly owed them. The negligence claim is based on Hurst's alleged failure to protect them from a

dangerous condition existing on the property. The breach of contract claim is based on Hurst's alleged failure to provide habitable living quarters. The duty at the heart of the negligence claim is a duty society imposes upon a landlord, under certain circumstances, with respect to conditions on the property.¹ The duty at the heart of the breach of contract claim is a duty imposed by mutual agreement through the lease, which contains the implied warranty of habitability provision, between the landlord and tenant. Different duties are imposed upon a landlord like Hurst because each duty is designed to remedy a different problem.

While there may be similarities in the conditions giving rise to a dangerous condition and those conditions making a property uninhabitable, a dangerous condition may exist on a property and yet not make it uninhabitable. In such a situation, if a landlord's duty were solely limited to comply with the implied warranty of habitability, then a tenant would be without a remedy with respect to the dangerous condition. Society has chosen to impose a duty upon landlords with regard to dangerous conditions that is more expansive than their duties under the implied warranty of habitability. Accordingly, the duty underlying the negligence cause of action is not created by the lease between Guthries and Hurst and is not barred by the gist of the action doctrine.

¹ A landlord may be liable for injuries suffered on the leased premises if: (1) the lessor reserved control over a defective portion of the demised premises; (2) if the demised premises are so dangerously constructed that the premises are a nuisance per se; (3) if the lessor has knowledge of a dangerous condition existing on the demised premises at the time of transferring possession and fails to disclose the condition to the lessee; (4) if the lessor leases the property for a purpose involving the admission of the public and he neglects to inspect for or repair dangerous conditions existing on the property before possession is transferred to the lessee; (5) if the lessor undertakes to repair the demised premises and negligently makes the repairs; (6) if the lessor fails to make repairs after having been given notice and a reasonable opportunity to remedy a dangerous condition existing on the leased premises. *Dorsey v. Cont'l Assoc.*, 591 A.2d 716, 718 (Pa. Super. 1991), *app. denied*, 612 A.2d 985 (Pa. 1992); *Henze v. Texaco, Inc.*, 508 A.2d 1200, 1202 (Pa. Super. 1986).

Hurst's second demurrer is to Guthries' unjust enrichment claim. Hurst argues that Guthrie cannot establish an unjust enrichment claim because they have failed to plead that they had an expectancy for a long term occupancy. A tenant may recover from his landlord the cost of improvements the tenant made under a theory of unjust enrichment. *Chesney v. Stevens*, 644 A.2d 1240, 1244 (Pa. Super. 1994). The Superior Court has stated:

Thus, it is reasonable to conclude from Wolf, Zvonik and the present case, that if a tenant, with a reasonable and good faith expectation of long-term occupancy or ownership, makes substantial and obvious improvements to the real estate of another, the tenant is entitled to compensation for the improvements when they have been accomplished with the actual or implied knowledge and consent of the owner. It is a reasonable corollary of the implied promise to furnish a habitable leasehold rule, see Pugh; Asper; Glickman; *Beasley, supra*, to imply a promise by the owner to reimburse a tenant for improvements reasonably made when there is a basis for concluding that there has been consent by the owner to the improvements.

Ibid.

The court finds that Guthries have not pleaded facts that could permit a trier of fact to determine that they had a reasonable and good faith expectation for long-term occupancy. The complaint alleges that Guthries resided at the property pursuant to an oral month-to-month lease. As such, the lease could be renewed or terminated every month. While Guthries may have intended to renew the lease ad infinitum, there are no factual allegations in the complaint to permit a conclusion to be drawn other than Guthries, at most, could have expected to occupy the premises for one month at a time. Therefore, Guthries have failed to plead facts that could establish an unjust enrichment claim.

Accordingly, the preliminary objections are denied in part and granted in part.

ORDER

It is hereby ORDERED that the Preliminary Objections of Defendant Jessie Hurst filed January 7, 2005 are DENIED IN PART and GRANTED IN PART as follows:

1. The demurrer to the negligence claim in Count I of the complaint is DENIED.
2. The demurrer to the unjust enrichment claim in Count IV of the complaint is GRANTED.
3. The motion to strike paragraph 28(e) of the complaint is GRANTED. Said paragraph is hereby STRICKEN from the complaint.
4. The motion to strike paragraphs 22 through 25 inclusive of the complaint is GRANTED. Said paragraphs are hereby STRICKEN from the complaint..

Plaintiffs shall have a period of twenty (20) days from notice of this Order to file an amended complaint.

BY THE COURT:

William S. Kieser, Judge

cc: Edward J. Rymysz, Esquire
William L. Knecht, Esquire
Brian J. Bluth, Esquire
Judges
Christian J. Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)