

IN THE COURT OF COMMON PLEAS, LYCOMING COUNTY PENNSYLVANIA

CEF Centreco, Inc.	:	
d/b/a/ main Street Investment Group	:	
Plaintiff	:	
v.	:	No. 07-00,637
	:	CIVIL ACTION
THERESA MOORE,	:	
Defendant	:	

OPINION AND ORDER

This matter is before the Court for non-jury trial disposition. Trial in this matter was held on November 9, 2007. Chad Fisher, President of CEF Centreco, Inc. (Plaintiff) filed a Complaint on April 9, 2007 alleging Breach of Contract and sought Absolute Possession. Theresa Moore (Defendant) filed a counter-claim of Breach of Implied Warranty of Habitability on July 27, 2007. At trial the Plaintiff moved to withdraw the Complaint. The Defendant proceeded on its Breach of Implied Warranty of Habitability counterclaim.

Background

On October 15, 2006, the Parties entered into a written lease agreement and the written addendum to the lease for 1682 Andrews Place. The lease provided that the Defendant was responsible for all utilities. Also pursuant to the lease, the Defendant agreed to pay the Plaintiff a monthly rent in the amount of \$375.00, due on the first day of each month. Further, Defendant agreed to pay a \$25 late fee in the event rent is paid later than the third day of the month. Plaintiff alleged in its Complaint that the Defendant failed to pay rent for the month of April 2007. Additionally, Plaintiff alleged that the Defendant failed to keep the property in a clean and sanitary condition and failed to properly remove pet waste as required under the lease.

In opposition, the Defendant alleged that she attempted to tender rent to the Plaintiff, but rent was refused. Further, Defendant claimed that Plaintiff breached the implied warranty of habitability and therefore is not entitled to rent. Finally, Defendant denied that she failed to keep the property in a clean and sanitary condition and failed to properly remove pet waste.

At trial, the Defendant presented evidence on her Breach of Implied Warranty of Habitability claim. The Defendant alleges that the back porch had holes in it, the front porch had really bad drafts, there were electricity problems in the kitchen, that pipes froze, smoke detectors were missing, the roof over her son's room leaked, and other various code violations. The Defendant testified further that she and her son were forced to move out of the apartment because she did not feel safe and because her son suffered from severe asthma, which was exacerbated by the leaking roof. Defendant also argued that the apartment had been condemned at least twice in the last twelve months.

Plaintiff testified at trial that all defects made known to him were remedied; specifically Plaintiff pointed out that a tarp was placed over the roof until June 2007, when it could be fully repaired. Additionally, the Plaintiff pointed to paragraph 11, provision m of the lease which states: **“ALL REPAIR REQUEST MUST BE MADE IN WRITING TO LANDLORD.”** Plaintiff contends that if Defendant made requests in writing to Plaintiff, all the alleged defects would have been remedied by Plaintiff. Plaintiff also testified that the apartment was furnished with smoke detectors at the time of Defendant's move in. Additionally, Plaintiff testified that the Defendant's pipe froze because Defendant failed to fill the oil tank. Further, Plaintiff testified that the floor of the apartment was covered with puppy feces and urine. Plaintiff's handyman, Wayne Beamer also testified at trial, corroborating some of Plaintiff's testimony. Mr. Beamer

testified that Plaintiff made repairs to the apartment, such as repairing the electricity problem in the kitchen and replacing the front door.

Discussion

The Pennsylvania Superior Court has determined that “[i]n order to constitute a breach of the implied warranty of habitability, [‘]. . . the defect must be of a nature and kind which will render the premises unsafe, or unsanitary and thus unfit for living therein.’” Pugh v. Holmes, 384 A.2d 1234, 1240 (Pa. Super. Ct. 1978) (quoting Kline v. Burns, 111 N.H. 87, 93, 276 A.2d 248, 252 (1971); Mease v. Fox, Iowa, 200 N.W.2d 796 (1972)). The trier of fact must ascertain materiality on a case-by-case basis. Pugh, 384 A.2d at 1240. Some factors the Court looks at to determine whether a breach is material are: “1) whether the condition violates a housing law, regulation or ordinance; 2) the nature and seriousness of the defect; 3) the effect of the defect on safety and sanitation; 4) the length of time for which the condition has persisted; and 5) the age of the structure.” Id. However, the Superior Court has also determined that

[i]n order to assert a breach of the implied warranty of habitability as a defense or as a counterclaim, a tenant must prove that he or she gave notice to the landlord of the defect or condition, that the landlord had a reasonable opportunity to correct the condition, and that the landlord failed to do so.

Pugh, 384 A.2d at 1241. (and cases cited therein).

After considering the testimony presented at the non-jury trial in this matter, the Court finds that the Plaintiff did not breach the Implied Warranty of Habitability. “It is within the province of the trial judge, sitting without a jury, to judge the credibility of the witnesses and to weigh their testimony.” Bold Corp. v. County of Lancaster, 569 Pa. 107, 122 (2002). The Court finds that the Plaintiff’s testimony and assertions were more credible than those of the

Defendant's testimony and assertions. The Defendant failed to present any proof of prior condemnation or proof of her son's medical injuries. Further, the Court finds that all defects made known to Plaintiff were remedied. The Court also finds that the Defendant failed to comply with the terms of the lease, which required notice of repairs in writing.. As required by law, Defendant did not give notice to Plaintiff of any defects, Plaintiff did not breach the Implied Warranty of Habitability.

VERDICT

AND NOW, this _____ day of December, 2007, the Court hereby finds in favor of the Plaintiff and against the Defendant with respect to the Defendant's Counterclaim. Additionally, the Court hereby grants the Plaintiff's motion to dismiss its Complaint. It is further **ORDERED** and **DIRECTED** that the rental payments held in escrow should be paid to the Plaintiff.

By the Court,

Nancy L. Butts, Judge

xc: Jennifer Ayers, Esq.
CEF Centreco, Inc.
Chad Fisher, President
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Hon. Nancy L. Butts
Trisha D. Hoover, Esq. (Law Clerk)