

IN THE COURT OF COMMON PLEAS OF  
LYCOMING COUNTY, PA

GEORGE SEGRAVES and JOAN	:	
SEGRAVES	:	
Plaintiffs	:	NO: 09-02270
	:	
vs.	:	
	:	
BETTY STEINBACHER	:	CIVIL ACTION
Defendant	:	

**OPINION**

On October 30, 2009 the Plaintiffs filed a Complaint alleging Negligence, Negligent Infliction of Emotional Distress, and Loss of Consortium arising from a fall on property located at 1115 West Mountain Avenue, South Williamsport, Pennsylvania. At the time of the fall, the residence was owned by the Defendant, and occupied by Lance and Susan Thomas. The Plaintiffs are the parents of Susan Thomas, and at the time of the fall were visiting their daughter and her family on Christmas day.

On December 2, 2009 the Defendant filed her Answer with New Matter. Defendant's New Matter contends that the Plaintiffs were trespassers on the Defendant's property on December 25, 2007. On March 3, 2010, the Plaintiffs filed a Motion for Partial Judgment on the Pleadings. The sole issue presented is whether the Plaintiffs were trespassers for premise liability purposes at the time of Plaintiff, George Seagrave's fall. The crux of the argument involves whether a tenant becomes

a trespasser once a judgment has been issued, but before an Order for possession has been sought.

The Pennsylvania Rules of Civil Procedure and the Landlord Tenant Act of 1951, 68 P.S. §§ 250.101 provide landlords with an avenue to redress a tenant's failure to pay rent, whether through recoupment of unpaid rent, damages, or regaining actual physical possession of property.

Pa.R.C.P.M.D.J. No. 515 B(1) provides:

Except as otherwise provided in subparagraph (2), if the magisterial district justice has rendered a judgment arising out of a residential lease that the real property be delivered up to the plaintiff, **the plaintiff may after the 10<sup>th</sup> day** but within the 120 days following the date of the entry of the judgment, file with the magisterial district judge a request for an order for possession. The request shall include a statement of the judgment amount, return, and all other matters required by these rules. (Emphasis added).

The Note following Rule 515 provides:

The 1995 amendment to section 513 of The Landlord and Tenant Act of 1951, 68 P.S. § 250.513, established a ten-day appeal period from a judgment for possession of real estate arising out of a residential lease; **therefore, the filing of the request for an order for possession in subparagraph B(1) is not permitted until after the appeal period has expired.** (Emphasis added).

The rules of Civil Procedure require an order for possession to be issued by a magisterial district justice. Following issuance, the order must be mailed by first class mail to the Defendant, and delivered for service and execution via sheriff or constable. See Pa.R.C.P.M.D.J. No. 516(A) and 517.

The Order of Possession must contain the following notice:

If you, and all occupants of this property not authorized by the owner to be present thereon, do not vacate this property within ten (10) days after the date of this notice, the law authorizes me to use such force as may be necessary to enter upon the property by the breaking of any door or otherwise, and to eject you and all unauthorized occupants.

Pa.R.C.P.M.D.J. No. 517(2)

Pa.R.C.P.M.D.J. No. 518 permits the defendant to satisfy the order for possession by paying the rent in arrears and costs prior to actual delivery of the real property.

Defendant filed a Landlord Tenant Complaint on December 4, 2007 seeking unpaid rent against tenants Lance and Susan Thomas. Judgment was entered by District Justice Schriener on December 13, 2007 against Lance and Susan Thomas in the amount of \$1,254.26. One day after the Plaintiff sustained his fall, or December 26, 2007, the Defendant filed a Request for Order for Possession. Pursuant to the civil procedure rules set forth above, the Plaintiffs were clearly not trespassers as of December 25, 2007. Residential tenants cannot be forced to vacate until the proper procedural steps are taken. Defendants are required to be served with notice to vacate, and are to be given an opportunity to cure rent in arrearage. Defendant's Request for an Order for Possession was filed December 26, 2007, one day after Mr. Seagraves fall. Even if the Order for Possession had been sought prior to the Plaintiff's fall, the tenants would have had ten (10) days to vacate the premises, or pay the rent in arrears, upon receipt of the Order. Because the tenants maintained a legal right to remain on the subject premises, they cannot be found to trespassers.

Defendant asserts that as the Plaintiffs did not appeal the judgment nor pay the writ server all of the rent due plus costs, they had no right to remain in possession of the property, and were accordingly trespassers. Defendants also assert that as the rules provide that a writ of possession requires "actual" possession to be delivered, implicit constructive possession is maintained by a landlord following entry of a judgment. Defendants have cited no legal support for these assertions. While it is

true that the procedural rules permit tenants to retain possession upon payment of rent in arrears plus costs, the rules do not provide that a tenant loses his right to remain in the subject premises during the statutory appeal period for subsequently failing to pay the arrearage. Moreover, although not controlling, the Bankruptcy Court held in In Re Whitsett, 163 B.R. 752, 753 (Bankr. E.D. PA. 1994) that a judgment for unpaid rent does not terminate a lease agreement. In reaching this holding, the Bankruptcy Court held:

The issue of whether a judgment for possession based upon unpaid rent terminates a lease was thusly addressed by Judge Sigmund of this Court in In re Goodwin, Bankr. No. 93-15445DWS, slip op. at \*5 (Bankr. E.D. Pa. Dec. 19, 1993):

Under Pennsylvania law, applicable here, a lease is not terminated when the tenant fails to pay rent until the tenant is physically evicted....This is because, under Pennsylvania common law and court rule, a tenant retains a right to cure any rental deficiency and preserve the tenancy until the moment of actual valid and complete eviction....Pa.R.C.P.J. No. 518 (Satisfaction of Order by Payment of Rent Costs) provides:

At any time before actual delivery of the real property is made in execution of the order for possession, the defendant may, in a case for the recovery of possession solely because of failure to pay rent, satisfy the order for possession by paying to the executing officer the rent actually in arrears and the costs of the proceeding..." (Citations omitted).

As the Defendant did not have an Order for Possession giving notice to the tenants to leave the property, the eviction proceedings were not concluded at the time Mr. Seagraves sustained injuries, and the lease was not yet terminated.

**ORDER**

AND NOW, this \_\_\_\_ day of April, 2010, the Plaintiffs' Motion for Partial Judgment on the Pleadings is hereby GRANTED. This Court finds that a tenant cannot be considered a trespasser until a landlord actually dispossesses a tenant through the proper eviction proceedings. Accordingly, Lance and Susan Thomas and the Plaintiffs who were visiting their home on December 25, 2007 were not trespassers for premises liability purposes before the Defendant landlord obtained an Order of Possession.

BY THE COURT,

\_\_\_\_\_  
Richard A. Gray, J.

cc: Michael J. Zicolello, Esquire

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