IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ALAN COHICK, *Plaintiff,* v. ANTHONY E. MAZZA AND JENNIFER R. WRIGHT, *Defendants*	CIVIL ACTON NO. CV-17-0693 PRELIMINARY OBJECTIONS

OPINION AND ORDER

This matter comes before the Court on six preliminary objections filed by Defendants to the Complaint filed in this matter following an appeal from an order issued by the Lycoming County Magisterial District Court in favor of landlord-lessor, Alan Cohick (Plaintiff). For the reasons that follow, this Court overrules preliminary objections 1, 3, and 5; sustains preliminary objection 6; and sustains in part objections 2 and 4 and orders that a more specific complaint with respect to those objections.

PROCEDURAL POSTURE

This matter arises as an appeal following a March 29, 2017 order issued by the Hon. Judge Christian Frey of the Lycoming County Magisterial District Court ("Magisterial District Court") in favor of the Plaintiff. The order issued by the Magisterial District Court awarded Plaintiff repossession of the lease property as well as damages incurred up to the date of repossession in the sum of $3,519.73.

Following the order issued by the Magisterial District Court, counsel for lessor-tenants Anthony E. Mazza and Jennifer R. Wright (Defendants) filed a timely[1] notice of appeal from the Magisterial District Judge Judgment with this Court on April 27, 2017. Plaintiff responded by

[1]" *A party aggrieved by a judgment for money*, or a judgment affecting the delivery of possession of real property arising out of a nonresidential lease, *may appeal therefrom within thirty (30) days* after the date of the entry of the judgment . . . ." Pa.R.C.P.M.D.J 1002 (emphasis added).

filing of a Complaint with this Court on June 2, 2017, averring that an additional sum of $2,551.50 was owed by Defendants as damages that arose between April 2017 and June 2017 for a number of breaches of the lease terms. Defendants filed preliminary objections to Plaintiff's Complaint on June 22, 2017, which Plaintiff responded to with an Answer filed on July 27, 2017. Argument on the preliminary objections was held on July 31, 2017.

FINDINGS OF FACT

On July 18, 2016, an alleged lease agreement ("Lease") was signed by the Plaintiff and Defendants. The leased building was Plaintiff's apartment located at 11052 Route 14, Ralston, PA 17763. The Lease stipulated that monthly payments of $475 were to be made by Defendants by the first of each month, and that the term of the Lease was from July 16, 2016, to July 15, 2017. The lease contained a number of covenants, including one relating to fees that would be assessed to Defendants for failure to make payments on time, fees assessed for broken windows, and the cost of removal of trash not removed by Defendants.

Although the Complaint is ambiguous, it appears as though Defendants vacated the premises in March 2017 pursuant to the order issued by the Magisterial District Court on March 29, 2017. Nevertheless, because the Lease term continued through July 2017, Plaintiff asserts his claim for damages for breach of contract through the Lease term, and his claim for late fees all the way until the date of the parties' July 31, 2017 conference on preliminary objections. In his Complaint, Plaintiff avers that the following amounts are owed to him:

October 2016 to March 2017:

- **$2,500** of rent money in arrears;
- **$720** in accumulated late fees;
- **$75** for trash removal; and
- **$224.75** for filing fees.

Totaling $3,519.75 (listed in the Complaint as $3,519.00).

April 2017 to June 2017:

- **$1,425** of rent money in arrears;
- **$189** in accumulated late fees;
    - Total of $909 in late fees, which corresponds with the 303 days from October 2, 2016 (the first late day) to July 31, 2017 (the date of the parties' conference on preliminary objections) multiplied by $3 per day, as stipulated in the Lease.
- **$142.50** for an unpaid water services bill;
- **$380** for 38 hours of cleaning the apartment at $10 per hour;
- **$100** for two broken windows at a Lease-stipulated $50 each; and
- **$315** for damage to window trim.

Totaling $2,551.50,

For a grand total sought of $6,070.50.

DISCUSSION

The Court will discuss the six preliminary objections in the order in which they are raised.

1. LACK OF JURISDICTION.

Defendants first assert that this Court does not have jurisdiction to hear this case because no notice to quit was provided by the Plaintiff pursuant to the dictates of the Landlord Tenant Act.[2] In support of this proposition, Defendant's avers: that a lease may change the notice to quit requirement[3]; that ambiguous terms are construed against the drafter[4]; that a lease is a contract[5]; that notice to quit is jurisdictional[6]; and that the Court has no jurisdiction if notice to quit is not

[2] 68 P.S. § 250.501
[3] *Id.*
[4] *Chester Upland Sch. Dist. v. Edward J. Meloney, Inc.*, 901 A.2d 1055, 1061 (Pa. Super. 2006).
[5] *Bayne v. Smith*, 965 A.2d 265, 266 (Pa. Super. 2006).
[6] *Fulton Terrace Ltd. Partnership v. Riley*, 1989 Pa. Dist. & Cnty. Dec. LEXIS 146 *7

given[7]. Each of the Defendant's propositions has support in the law, though the precedent regarding the jurisdictional nature of notice to quit is not binding on this Court.

Of note, however, is the fact that the mandate to provide notice to quit only applies in a cause of action for repossession of the landlord's property. This conclusion finds support in the Landlord Tenant Act itself, which declares that notice to quit is required for "[a] landlord desirous of repossessing real property from a tenant . . ." and that "the notice shall specify that the tenant shall remove" within a certain number of days after the tenant has been provided with notice. 68 P.S. §§ 250.501(a),(b).

The verbiage of the Pennsylvania Rules of Civil Procedure Governing Actions and Proceedings before Magisterial District Judges ("Rules") also supports the conclusion that judgments for repossession of residential lease property are distinct from judgments for money on the same kind of property. The Rules dictate, in relevant part, that:

> A party aggrieved by a judgment for money, or a judgment affecting the delivery of possession of real property arising out of a nonresidential lease, may appeal therefrom within thirty (30) days . . . [but a] party aggrieved by a judgment for the delivery of possession of real property arising out of a residential lease may appeal therefrom within ten (10) days.

Pa. R.C.P.M.D.J. 1002.

In the present case, the issue of possession was not appealed but rather the appeal related to damages sought. In fact, because of the time lapse between the judgment of the Magisterial District Court and the Defendant's appeal, an appeal to this Court from the repossession judgment would have been untimely, had it been included in the Defendant's appeal. Because the present case is no longer about eviction and repossession of land, but is instead about recovery of damages due to breach of contract, notice to quit is not a threshold issue necessary to give this

[7] *Id.*

Court jurisdiction, and this Court may hear the Defendant's appeal. As such, the Defendant's first preliminary objection is overruled.

2. INCLUDING A WATER BILL FROM A DIFFERENT PROPERTY.

Defendants' second objection is the failure to include a copy of the water bill at issue. Pursuant to Pa.R.C.P. 1019(i), a copy of the writings that form the basis of a claim must be attached to a plaintiff's complaint. If the writing cannot be attached, the pleader must state the reason why the writing could not be attached, and indicate what the substance of the writing was. Further, if a pleader fails to attach the required writing, a court should strike the unsupported claim. *Atl. Credit & Fin. V. Giuliana*, 829 A.2d 340, 345 (Pa. Super. 2003).

In the present case, the Plaintiff attached to his Complaint a copy of a water bill that the Defendants are allegedly responsible for. However, nothing in the alleged bill contains the name of either Defendant, or the Defendants' address—in fact, the bill appears to be directed to an address other than the Defendants'. However, Plaintiff averred in his Answer to Defendant's preliminary objections that the Water Authority to which the bill is owed offered to provide a specific and accurate writing which identifies the Defendants and the balance due by them. As such, and pursuant to Pa.R.C.P. 1028(e), this Court orders that an amended pleading be filed with respect to this issue.

3. EXCESSIVE AND PUNITIVE LATE FEES.

Defendants' third objection is a demurrer to the late fees as excessive and punitive. The Defendants aver that the $3.00 per day amount sought for late rent payments is unenforceable because it is punitive, and is not reflective of actual and reasonable damages incurred by the Defendants' late payments. While neither the Landlord Tenant Act, nor any other Pennsylvania statute, speaks to a numeric value for what may be considered a "reasonable" late fee, the

Landlord Tenant Act does dictate that" interest at the legal rate on the amount of rent due may be allowed if deemed equitable under the circumstances of the particular case." 68 P.S. § 250.301. The Court in *Enx Enters. v. Humphries*, 2017 Pa. Dist. & Cnty. Dec. LEXIS 1830 *3 held that a $5.00 per day late fee was unreasonable *per* se, and limited late fees to $50.00 per month. There exists no precedent indicating that a $3.00 per day late fee is unreasonable *per se*—$3.00 per day amounts to approximately $90.00 per month, which is only marginally closer to what the *Humphries* Court found reasonable than to what that Court found unreasonable. As such, this preliminary objection is overruled as an issue of fact.

4. FALSE CLAIMS REGARDING BROKEN WINDOWS.

The Defendants' fourth objection is essentially a demurrer to claims for broken windows as false and punitive. Defendants aver that the claim regarding damages for broken windows on the Plaintiff's property is unenforceable because the damages were not the Defendants' fault or responsibility, and because the charges appear to be punitive. Therefore, the Defendants argue, the Plaintiff has failed to state a claim for which relief can be granted. The Defendants posit this argument on the fact that the writings on the Lease that allegedly refer to broken windows were on the Lease at the time of the signing, and that the windows were therefore damaged before the Defendants became tenants. In his Answer, Plaintiff conceded that the windows "may have been damaged prior to the Defendants had [sic] occupancy . . ." but that Defendants further damaged the windows during their tenancy to the point where the windows needed to be replaced entirely. Answer, July 27, 2017, at 35. While this concession lends to the conclusion that the Plaintiff has failed to state a claim for which relief can be granted, this Court finds it of material importance to be presented with evidence indicating whether the manual writings with regards to the broken windows were added before or after the signing of the Lease, and to what extent the windows

were additionally damaged by the Defendants. As such, and pursuant to Pa.R.C.P. 1028(e), this Court orders that an amended pleading be filed with respect to this issue.

5. IMPROPER CLAIM FOR TRASH REMOVAL.

The Defendants' fifth objection is in the nature of a demurrer to the claim for trash removal. Defendants aver that the $75.00 sought for trash removal is unenforceable because it is punitive, and because there is no indication in the Complaint as to how the cost is reflective of actual and reasonable damages incurred. The Defendants also argue that the claim lacks specificity and is legally insufficient. However, this Court finds that the claim for damages for the removal of trash does not lack specificity, as the Lease identified in plain language the cost associated with each unit of trash that required removal, and the amount sought in Paragraph 5 of the Complaint corresponds with that cost per unit. While the Complaint does have two different paragraphs—Paragraphs 5 and 10—that make reference to damages associated with trash removal, the reference in Paragraph 10 does not appear anywhere in the total value of damages sought. As such, Plaintiff does not appear to this Court to be seeking double recovery. The cost per unit of trash also does not appear to be unreasonable and punitive *per se*. For these reasons, this preliminary objection is overruled.

6. IMPROPER ATTEMPT TO RECOVER RENT AFTER RETAKING POSSESSION

Finally, the Defendants' last objection is a demurrer to claims of rent for a period after re-taking possession. Defendants aver that because a landlord has a duty to mitigate damages, and because there are no indicia in the Complaint that the Plaintiff did, in fact, attempt to mitigate damages, that no damages may be recovered for the months of April 2017 to June 2017. The Defendants further aver that damages may not be recovered because there are no indicia in the Complaint as to whether the Plaintiff was able to retake possession of the premises, and that if he

was able to, damages are inappropriate because a landlord cannot recover both future rent and possession of the premises.

It is well established that a non-breaching landlord may not recover both repossession of his land and rent for the balance of the term, as this would provide the landlord with a double remedy. The Court in *Mack v. Fennell*, 171 A.2d 844, 845 (Pa. Super. 1961), held in relevant part:

> It is true that *after* the entry of a judgment in ejectment a landlord cannot any longer collect rent, because he is then dealing with the occupant of his premises as a trespasser, and not a tenant. He can eject the tenant and at the same time enter judgment for the rent accrued when the tenant was evicted, but he cannot recover both the possession and the rent for the balance of the term.

Id. (emphasis in original).

In short, Plaintiff may not claim accelerated rent for April through June. However, there appears to be no controlling authority as to a landlord's ability to claim damages for their inability to rerent the premises. If plaintiff has such a claim, an amended complaint should be filed with particulars as to dates and why was unable to re-rent the property.

Accordingly, the Court enters the following Order.

ORDER

AND NOW this **10th** day of **August, 2017,** for the reasons stated, it is ORDERED and DIRECTED that the objections are SUSTAINED in part and OVERRULED in part follows.

1. Preliminary Objections 1, 3, and 5 are hereby **OVERRULED**.
2. Preliminary Objection 6 is hereby **SUSTAINED**. The claim for unpaid rent after re-possession of the property is STICKEN. However, plaintiff is granted leave to file an amended complaint for damages for an inability to re-rent the property if applicable.

3. Preliminary Objections 2 and 4 are SUSTAINED in part. Plaintiff shall file an Amended more specific Complaint pursuant to Pa. R.C.P. 1028(e) within twenty (20) days. In the amended complaint, Plaintiff shall provide more specificity and documents as applicable to link the claimed damages to the Defendants.
4. Upon the closing of pleadings, the matter will be scheduled for arbitration.

BY THE COURT,

August 10, 2017
Date

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Richard A. Gray, J.

cc: James D. Smith, Esquire (for Plaintiff)
Wesley S. Speary, Esquire (for Defendants)
Eric Flagg, Judicial Intern, c/o Judge Gray's Office