

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

BARRY ECK,
Plaintiff,

vs.

DONNELL BOYD and ZAKIA FOWLER,
Defendants.

: No. 20-0965
:
:
:
:
: CIVIL ACTION - LAW
:
:
: *Emergency Order to*
: *Stay Order of Possession*

ORDER

AND NOW, following an Evidentiary Hearing held November 3, 2020, on Plaintiff's Motion for Reconsideration, the Court hereby issues the following ORDER.

On September 1, 2020, Plaintiff Barry Eck ("Mr. Eck" or "Plaintiff") filed a Landlord/Tenant Complaint with the Magisterial District Court seeking rent in arrears and possession of premises located at 860 Park Avenue, Williamsport, Pennsylvania 17701 ("Park Avenue Property") rented by Defendants Donnell Boyd ("Mr. Boyd") and Zakia Fowler ("Ms. Fowler," collectively "Defendants").¹ On September 9, 2020, District Magistrate Christian David Frey (the "MDJ") entered a Judgment for Possession in favor of Plaintiff and awarded Plaintiff rent in arrears and filing fees in the total amount of \$5,172.70.² Defendants did not appeal this Judgment for Possession within ten (10) days.³ The MDJ issued an Order for Possession on September 25, 2020.⁴

On September 28, 2020, Defendants, through counsel, filed an Emergency Motion to Stay Order of Possession ("Emergency Motion") with this Court. Defendants asserted that they had met all requirements under the CDC's Order of September 1, 2020 ("CDC Order"), which stays evictions for the non-payment of rent for "covered persons"⁵ who serve a signed declaration onto their landlord attesting to their covered

¹ See Motion for Reconsideration (Ex. A – Landlord/Tenant Complaint) (Oct. 8, 2020).

² See Motion for Reconsideration (Ex. B – Notice of Judgment).

³ Pa.R.C.P.M.D.J. No. 1002(B)(1) ("[A] party aggrieved by a judgment for the delivery of possession of real property arising out of a residential lease may appeal the judgment within 10 days after the date of the entry of judgment[.]").

⁴ See Emergency Motion to Stay Order of Possession (Ex. A – Order of Possession) (Sept. 28, 2020) ("Emergency Motion").

⁵ A covered person is defined as: "any tenant, lessee, or resident of a residential property who provides to their landlord, the owner of the residential property, or other person with a legal right to pursue eviction or a possessory action, a declaration under penalty of perjury indicating that: (1) The individual has used best

status.⁶ The CDC Order, which had an effective date of September 4, 2020, remains in effect through December 31, 2020. By Order issued September 30, 2020, the Court summarily granted the Emergency Motion and held that a stay of the MDJ's Order of Possession would remain in effect through the end of the calendar year, although Defendants would remain liable for any accrued rent, fees, or interest.

On October 8, 2020, Plaintiff, through counsel, filed a Motion for Reconsideration of the Court's September 30th Order. Within this Motion for Reconsideration, Plaintiff asserted that Defendants' eviction did not fall within the purview of the CDC Order because Defendants were not evicted for non-payment of rent, but because Plaintiff had elected to not renew the parties' month-to-month lease. The Court scheduled a conference with both parties' counsel to discuss the best method to proceed on the Motion for Reconsideration. At that juncture, Plaintiff's counsel, Scott T. Williams, Esquire, further argued that Plaintiff's decision to terminate the lease was not predicated on Defendants' non-payment of rent, but on Defendants' breach of other provisions of their lease, and was therefore outside the purview of the CDC Order for this reason as well. The Court scheduled an Evidentiary Hearing on the Motion for Reconsideration on November 3, 2020 so the parties could provide testimony on the reason for the non-renewal.

At the November 3rd Hearing, Plaintiff Barry Eck was called as the first witness. Mr. Eck testified that on April 1, 2020, he and Defendants had entered into a lease agreement to lease the Park Avenue Property for the term of one month.⁷ Under the "Lease Term" provision of the lease, the lease would thereafter automatically renew on a month-to-month basis, but could be terminated at-will by either party upon twenty-one

efforts to obtain all available government assistance for rent or housing; (2) The individual either (i) expects to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return),^[6] (ii) was not required to report any income in 2019 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act; (3) the individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses; (4) the individual is using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses; and (5) eviction would likely render the individual homeless—or force the individual to move into and live in close quarters in a new congregate or shared living setting—because the individual has no other available housing options.”

⁶ See Emergency Motion (Ex. B – Declarations of Donnell Boyd and Zakia Fowler).

⁷ This Lease Agreement was entered as Plaintiff's Exhibit 1.

(21) days' written notice. Under the "Vacating" provision of the lease, the Defendants agreed to vacate the premises upon expiration of the lease term unless the parties mutually agreed to the contrary. Mr. Eck testified that had served a Notice of Non-Renewal of Lease upon Defendants on June 11, 2020, providing Defendants thirty (30) days to vacate the Park Avenue Property.⁸ Mr. Eck averred that his primary motivation for terminating the lease was his desire to sell the Park Avenue Property. He stated that his decision was also motivated by Defendants' violation of the lease's terms. He elaborated that Defendants had installed an above-ground pool without authorization, a violation of the "Maintenance and Repairs" provision of the lease, which required that any alterations to the property receive prior landlord approval.⁹ Mr. Eck further testified that Defendants had allowed trash to accumulate around the exterior of the Park Avenue Property, a violation of "Refuse/Garbage Recycle" provision of the lease.¹⁰

On cross-examination, Mr. Eck acknowledged that his assistant had sent Defendants a letter on August 10, 2020, stamped with Mr. Eck's signature, which directed Defendants to find alternate housing that they could "afford," and which admonished Defendants for not having personally paid rent in over a year.¹¹ Mr. Eck confirmed that prior to the April 1, 2020 Lease Agreement, Defendants had resided in the Park Avenue Property under a one-year term lease, and that they were often late in making payments under that lease. He also explained that Defendants did not directly make payments on the lease, but paid through a third-party agency. However, he stated that when he served the Notice of Non-Renewal on June 11, 2020, Defendants were current on their rent through the month of May. He further explained that the August 10th letter was a response to a prior communication from Defendants, requesting to remain at the property and assuring that they could meet the monthly rent through the CARES rental assistance program. However, Mr. Eck testified that he was not willing to allow Defendants to remain even if they could meet the rent because, as stated in the August 10th letter itself, Mr. Eck wanted Defendants to vacate so that he could sell the property.

⁸ The Notice of Non-Renewal was entered as Plaintiff's Exhibit 2.

⁹ A photograph of this pool, taken in August or September of 2020, was entered as Plaintiff's Exhibit 3.

¹⁰ A photograph of the exterior of the Park Avenue property, taken in September or October of 2020, was entered as Plaintiff's Exhibit 4.

Ms. Fowler was then called to testify. She testified that she and Mr. Boyd had installed the above-ground pool in the Summer of 2019, prior to entering into the month-to-month lease. She further averred that Mr. Eck had never informed her or Mr. Boyd that they were in breach of the terms of the lease. She stated that Mr. Eck had not mentioned at the hearing before the MDJ that she and Mr. Boyd were in breach of the lease or had committed any violation other than non-payment of rent.¹²

At the close of Ms. Fowler's testimony, counsel had the opportunity to make argument. Attorney Williams argued that the CDC Order as drafted applies only to the non-payment of rent, and that evictions on other bases, including evictions for a violation of a contractual obligation in a tenant's lease, may proceed. Attorney Williams contended that Defendants violated the "Vacating" provision of the lease by refusing to leave the premises after Plaintiff had provided twenty-one (21) day written notice, in addition to violating other lease terms by installing a pool without prior permission and in allowing trash to accumulate on the premises. Attorney Williams further argued that while Plaintiff sought rent in arrears as part of his Landlord/Tenant Complaint, he did not terminate the lease due to Defendants' non-payment of rent, as indeed, Defendants were current on their rent at the time Plaintiff served the Notice of Non-Renewal. Instead, Attorney Williams asserted, Plaintiff terminated the lease because he intended to sell the Park Avenue Property and because he was dissatisfied with Defendants' conduct as tenants.

Defendants' counsel, Attorney Zicoello, offered in counterargument that the CDC Order should be read in light of its stated purpose to lessen community spread of COVID-19 by reducing homelessness. He maintained that the efficacy of the CDC Order would be seriously undermined if it were to be interpreted as non-applicable to month-to-month leases. Attorney Zicoello further maintained that Plaintiff's assertions that he terminated the lease based on anything other than Defendants' non-payment of rent was merely pretextual, asserting that Defendants' other breaches of the lease were not material breaches, and noted that they had not even been mentioned at the hearing before the MDJ or raised in Plaintiff's Motion for Reconsideration. Attorney Zicoello

¹¹ This letter was entered as Defendants' Exhibit 1.

concluded that Plaintiff's decision to lease to Defendant on a month-to-month basis after their prior one-year term lease had expired was motivated by Plaintiff's concern that Defendants would be unable to pay the rent, a concern documented in the August 10th letter.

The Court first notes that its September 30th Order staying the MDJ's Order of Possession was issued because the Court mistakenly understood that this was an eviction based solely on non-payment of rent. The CDC Order does not specify whether it applies to the non-renewal of a lease term or to holdover tenants, and the CDC has not provided further guidance on this issue. However, pursuant to the canon of construction that "[a] statute's plain language generally provides the best indication of legislative intent[.]"¹³ the Court is satisfied that by the plain language of the CDC Order, an eviction may proceed when a tenant has violated a contractual obligation of the lease not related to the timely payment of rent.¹⁴ This may include an eviction based on a defendant's refusal to vacate the leased premises at the end of a lease term, in violation of an express contractual provision.

When Defendants refused to vacate the Park Avenue Property within thirty (30) days of receiving the Notice of Non-Renewal, they violated a contractual obligation of their lease. Plaintiff could then initiate eviction proceedings based on this contractual violation. Therefore, the Court holds that it is irrelevant whether Plaintiff's decision to initiate such proceedings was motivated by Defendants' past late payment of the rent,

¹² Mr. Boyd did not testify upon counsels' stipulation that his testimony would essentially duplicate Ms. Fowler's.

¹³ *A.S. v. Pennsylvania State Police*, 143 A.3d 896, 903 (Pa. 2016) (citations omitted); see also *Mohamed v. Com., Dep't of Transp., Bureau of Motor Vehicles*, 40 A.3d 1186, 1194-95 (Pa. 2012) ("[W]here the language of a statute is clear and unambiguous, a court may not add matters the legislature saw fit not to include under the guise of construction. Any legislative oversight is for the General Assembly to fill, not the courts.") (citations omitted).

¹⁴ Pursuant to the CDC Order, "[a tenant] may still be evicted for reasons other than not paying full rent or making a full housing payment. The Order does not prevent [a tenant] from being evicted for

- (1) engaging in criminal activity while on the premises;
- (2) threatening the health or safety of other residents;
- (3) damaging or posing an immediate and significant risk of damage to property;
- (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or
- (5) violating any other contractual obligation of a tenant's lease, other than the timely payment of rent or similar housing-related payment (including nonpayment or late payment of any fees, penalties, or interest)."

Defendants' other breaches of the lease, Plaintiff's desire to sell the property, or some combination of factors. Plaintiff's Motion for Reconsideration is GRANTED. The Court VACATES its September 30th Order. The MDJ's Order of Possession is hereby REINSTATED.

IT IS SO ORDERED this 9th day of November 2020.

BY THE COURT,

Eric R. Linhardt, Judge

ERL/cp

cc: Michael Zicoello, Esq.
Scott T. Williams, Esq.
Magisterial District Judge Christian D. Frey
Gary Weber, Esq. / Lycoming Reporter