

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

KARINA WASHINGTON,	:	
Plaintiff,	:	No. CV 21-00,457
	:	
vs.	:	CIVIL ACTION – LAW & EQUITY
	:	
WCH PROPERTIES, LLC,	:	
Defendant.	:	

ORDER

AND NOW, this 20th day of November, 2023, upon consideration of the Defendant's Motion for Summary Judgment, it is hereby ORDERED and DIRECTED that the Motion is GRANTED in part and DENIED in part, as explained below.

I. BACKGROUND.

On or about April 23, 2021, Plaintiff/Tenant Karina Washington was a tenant at a rental property located at 1 Maple Avenue, Williamsport, Lycoming County, Pennsylvania (the "Premises") and owned by Defendant/Landlord WCH Properties, LLC. On that day, an electrical fire occurred at the Premises, after which Plaintiff and her three minor children were rendered homeless. Plaintiff filed this suit claiming Defendant is liable for the damages she alleges that she suffered as a result of the fire.

Plaintiff testified at her deposition¹ that in April, 2021 she was living at the property, which she had rented from Mr. Butters² in June, 2020, with her three

¹ Transcript of the deposition of Karina Washington, taken September 6, 2022 ("Washington Transcript"), attached to Brief in Support of Defendant's Motion for Summary Judgment, filed July 13, 2023 ("Defendant's Brief").

² Butters is Defendant's predecessor in interest, having conveyed the Premises to Defendant in late 2020, during Plaintiff's tenancy. As purchaser of a property leased to a third party, Defendant

children;³ that the security deposit was \$850.00, \$425.00 of which was paid by her and the remainder by her boyfriend, Freeman;⁴ that she inspected the property prior to renting it and did not raise any issues at that time;⁵ that she had one issue with the electrical while Butters was her landlord, from June until November or December, 2020;⁶ that the issue, which was ultimately fixed, involved receptacles in her apartment that were tied in with her neighbor's service;⁷ that she had no other issues with the electric;⁸ that she continued as a tenant after Defendant purchased the property and had no problem contacting or communicating with Defendant's agent when necessary;⁹ and that she had no problems with the electric after Defendant purchased the property.¹⁰

Plaintiff testified concerning the day of the fire at the Premises that prior to the fire she went to the grocery store;¹¹ that while she was at the store, her son Christopher observed a problem with a lamp in the area where the fire is believed to have started;¹² that he tried to replace the light bulb, which had gone out two days previously, but could not unscrew it;¹³ that the bulb sparked, so he did not touch it anymore;¹⁴ that when she returned from the store, she noticed that the lamp was on, but flickering;¹⁵ that she attempted to unplug the lamp because it

assumed ownership of the Premises subject to Plaintiff's existing lease with Butters. See, e.g., *Baltimore Markets v. Real Estate-Land Title & Trust Co*, 181 A. 850, 851 (Pa. Super. 1935).

³ Washington Transcript, *supra*, at 5, 10

⁴ *Id.*, at 11.

⁵ *Id.*, at 12-13.

⁶ *Id.*, at 13-15.

⁷ *Id.*

⁸ *Id.*, at 15.

⁹ *Id.*, at 16.

¹⁰ *Id.*

¹¹ *Id.*, at 20.

¹² *Id.*, at 32.

¹³ *Id.*, at 32-33.

¹⁴ *Id.*, at 33-35.

¹⁵ *Id.*, at 20.

would not turn off but was unable to pull the plug from the socket;¹⁶ that she heard sizzling in the wall and saw the light bulb make an explosion;¹⁷ that she saw a spark from the outlet;¹⁸ that she went to retrieve her children as she saw flames coming out of the outlet;¹⁹ that when she came down the stairs with her children, she saw flames, and the lamp, the wall and the ceiling were on fire;²⁰ that prior to that day she had no problems with the receptacle or the lamp plugged into it;²¹ that she did not conduct an investigation of the cause of the fire;²² that she had been told of a previous fire at the Premises years earlier by an unknown fireman;²³ and that she had no information concerning any previous fire.²⁴

The Williamsport Bureau of Fire ("WBF") conducted an investigation of the origin and cause of the fire at the Premises.²⁵ WBF concluded that the fire was accidental, "due to electrical sparks from the receptacle area being sprayed onto the decorative grass in the area of origin," and originated in the area of the electrical receptacle on the west wall of the southwest corner of the living room.²⁶ WBF did not identify a specific cause of the fire, but was unable to rule out the electrical receptacle itself or two electrical devices, a pole lamp and a modem,

¹⁶ *Id.*, at 22.

¹⁷ *Id.*, at 20-21.

¹⁸ *Id.*, at 20.

¹⁹ *Id.*, at 25.

²⁰ *Id.*, at 26.

²¹ *Id.*, at 35-36.

²² *Id.*, at 31-32.

²³ *Id.*, at 30, 39-40.

²⁴ *Id.*, at 39-42.

²⁵ See Structure Fire Origin and Cause Report, Incident Address 1 Maple Ave, Case Number 2021-720 ("WBF Report"), attached as Exh. 1 to Plaintiff's Brief in Opposition to Defendant's Motion for Summary Judgment, filed August 11, 2023 ("Plaintiff's Brief").

²⁶ *Id.*, at 6-7.

plugged into it.²⁷ WBF estimated damages to be \$5,000.00 to the structure and \$2,000.00 to the contents.²⁸

In her Third Amended Complaint (the "Complaint"),²⁹ Plaintiff asserted five causes of action against the Defendant: Breach of Contract (Count I), Breach of Implied Warranty of Habitability (Count II), Violation of the Unfair Trade Practices and Consumer Protection Law (Count III), Negligence (Count IV), and Breach of Contract/Statutory Claim of Security Deposit (Count V). This Court struck Plaintiff's claims for Breach of Implied Warranty of Habitability (Count II) and Violation of the Unfair Trade Practices and Consumer Protection Law (Count III) by Order of June 13, 2022. Her claims for Breach of Contract (Count I), Negligence (Count IV), and Breach of Contract/Statutory Claim of Security Deposit (Count V) survive.

Defendant moved for summary judgment on the surviving claims on July 13, 2023,³⁰ and Plaintiff filed her response to the Defendant's Motion for Summary Judgment on August 11, 2023.³¹ The matter has been fully briefed,³² and the Court heard argument on August 18, 2023. Thus, Defendant's Motion is now ripe for disposition.

II. LAW AND ANALYSIS.

A. Legal Standard.

A party may move for summary judgment, in whole or in part,

[a]fter the relevant pleadings are closed, but within such time as not to unreasonably delay trial ...

²⁷ *Id.*, at p.6.

²⁸ *Id.*

²⁹ Plaintiff's Third Amended Complaint, filed on January 19, 2022.

³⁰ WCH Properties, LLC's Motion for Summary Judgment, filed July 13, 2023 ("Motion").

³¹ Plaintiff's Response to Defendant's Motion for Summary Judgment, filed August 11, 2023 ("Plaintiff's Response").

³² Defendant's Brief, filed July 13, 2023; Plaintiff's Brief, filed August 11, 2023.

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.³³

Initially, the Court finds that Defendant's Motion is timely. The relevant pleadings are closed,³⁴ and Defendant filed its Motion in accordance with this Court's Scheduling Order,³⁵ so it has been filed within such time as not to delay trial unreasonably.

Once a party has filed a motion for summary judgment,

(a) ... the adverse party may not rest upon the mere allegations or denials of the pleadings but must file a response within thirty days after service of the motion identifying

(1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion or from a challenge to the credibility of one or more witnesses testifying in support of the motion, or

(2) evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced.³⁶

³³ Pa. R. Civ. P. 1035.2.

³⁴ "[T]he pleadings in an action are limited to ... a complaint and an answer thereto ... [and] a reply if the answer contains new matter...." Pa. R. Civ. P. 1017(a). Plaintiff filed her Third Amended Complaint on January 19, 2022. After resolution of preliminary objections, Defendant filed its Answer and New Matter of WCH Properties, LLC to Third Amended Complaint ("Answer and New Matter") on June 16, 2022. Plaintiff thereafter filed Plaintiff's Answer to Defendant's Answer and New Matter to Third Amended Complaint (the "Reply to New Matter") on July 12, 2022. Thus, all authorized pleadings have been filed.

³⁵ This Court's Scheduling Order of September 13, 2022 provided, *inter alia*, that discovery was to be completed by June 2, 2023 and that the cut-off date for filing dispositive motions was August 11, 2023. Defendant filed its Motion on July 13, 2023, prior to the cut-off date for dispositive motions.

³⁶ Pa. R. Civ. P. 1035.3(a).

The court may enter summary judgment against a party who fails to respond to the motion.³⁷ “Where a motion for summary judgment has been made and properly supported, parties seeking to avoid the imposition of summary judgment must show by specific facts in their depositions, answers to interrogatories, admissions or affidavits that there is a genuine issue for trial.”³⁸ Plaintiff filed “Plaintiff’s Response to Defendant’s Motion for Summary Judgment” on August 11, 2023, within the time required.³⁹ There, she alleges “one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion.”⁴⁰ Thus, the Court will not enter summary judgment for failure to respond to the Motion.

When considering a motion for summary judgment, a court views the record in the light most favorable to the non-moving party and resolves all doubts as to the existence of a genuine issue of material fact against the moving party.⁴¹

“Summary judgment is properly granted where ‘the pleadings, depositions, answers to interrogatories, and admission on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law’....”⁴²

³⁷ Pa. R. Civ. P. 1035.3(d) (“Summary judgment may be entered against a party who does not respond”).

³⁸ *Marks v. Tasman*, 589 A.2d 205, 206 (Pa. Super. 1991) (citing *Overly v. Kass*, 554 A.2d 970 (Pa. Super. 1989); *Tom Morello Construction Co., Inc. v. Bridgeport Federal Savings and Loan Ass’n*, 421 A.2d 747 (Pa. Super. 1980)).

³⁹ See Pa. R. Civ. P. 1035.3(a) ([T]he adverse party ... must file a response within thirty days after service of the motion....); this Court’s Scheduling Order of September 13, 2022 (“Responses and Responsive briefs are due within thirty (30) days of the service of the motion per Pa. R.C.P. 1035.3”).

⁴⁰ Pa. R. Civ. P. 1035.3(a)(1).

⁴¹ *Sevast v. Kakouras*, 915 A.2d 1147, 1152-53 (Pa. 2007) (citing *Jones v. SEPTA*, 772 A.2d 435, 438 (Pa. 2001)).

⁴² *Ducjal v. Dennis*, 656 A.2d 102, 107 (Pa. 1995) (quoting *Pennsylvania State University v. County of Centre*, 615 A.2d 303, 304 (Pa. 1992) (citations omitted)), disapproved of on other grounds by *Gardner v. Erie Ins. Co.*, 722 A.2d 1041 (Pa. 1999).

A court will grant summary judgment “only in cases where the right is clear and free from doubt.”⁴³ The burden is on the moving party to show that there is no genuine issue of material fact,⁴⁴ and the court’s function is to ascertain whether a material issue of fact exists rather than to determine the facts.⁴⁵

B. Plaintiff’s Claims.

1. Breach of Contract.

Count I (Breach of Contract) of Plaintiff’s Complaint asserts that the Lease Agreement between the parties (the “Lease Agreement”)⁴⁶ is a valid and binding contract which, *inter alia*, “placed a duty upon Defendant to provide Plaintiff with a habitable residence.”⁴⁷ She further assert that Defendant is in breach of the provision of the Lease Agreement guaranteeing Plaintiff “quiet enjoyment” during her tenancy⁴⁸ and of the implied covenant of quiet enjoyment present in every residential lease.⁴⁹ Plaintiff contends that Defendant deprived her of use of the Premises by failing to maintain it properly, by failing to provide temporary housing

⁴³ *Marks v. Tasman*, *supra*, 589 A.2d at 206 (citing *Musser v. Vilsmeier Auction Co., Inc.*, 562 A.2d 279, 280 (Pa. 1989)).

⁴⁴ *Adamski v. Allstate Ins. Co.*, 738 A.2d 1033, 1035 (Pa. Super. 1999) (citing *Accu-Weather v. Prospect Communications*, 644 A.2d 1251 (Pa. Super. 1994)).

⁴⁵ *Swartley v. Hoffner*, 734 A.2d 915, 918 (Pa. Super. 1999) (citing *McDonald v. Marriott Corp.*, 564 A.2d 1296, 1298 (Pa. Super. 1989)).

⁴⁶ Complaint, Exh. A.

⁴⁷ *Id.*, ¶ 27.

⁴⁸ *Id.*, ¶ 28. See also Lease Agreement, ¶ 18 (“Quiet Enjoyment. As long as Tenant is not in default under the terms of this lease, Tenant will have the right to occupy the premise peacefully and without interference”).

⁴⁹ “In every lease of real property there will be implied a covenant of quiet enjoyment.” *Pollock v. Morelli*, 369 A.2d 458, 461 (Pa. Super. 1976) (citing *Raker v. G.C. Murphy Co.*, 58 A.2d 18 (Pa. 1948); *Minnich v. Kauffman*, 108 A 597) (Pa. 1919)). “In that lease there was a formal covenant of quiet enjoyment, but, even if it had not been expressed, such a covenant would have been implied.” *Raker*, *supra*, 58 A.2d at 19 (citing *Kelly v. Miller*, 94 A. 1055 (Pa. 1915); *Lanigan v. Kille*, 97 Pa. 120 (Pa. 1881); *Duff v. Wilson*, 69 Pa. 316 (Pa. 1871); *Einfeld v. Shermer*, 56 Pa. Super. 4 (Pa. Super. 1914)).

for her while the apartment was under repair and by failing to repair it, and that these breaches caused her damages.⁵⁰

"[A] lease is in the nature of a contract and is to be controlled by principles of contract law."⁵¹ "[A] contract may be manifest orally, in writing, or as an inference from the acts and conduct of the parties."⁵² An enforceable contract exists when "both parties have manifested an intent to be bound by the terms of the agreement; ... the terms are sufficiently definite; and ... consideration existed."⁵³ The elements of a cause of action for breach of contract are "(1) the existence of a contract, including its essential terms, (2) a breach of a duty imposed by the contract and (3) resultant damages."⁵⁴ As explained above, Plaintiff has alleged each of these elements in her Complaint.

⁵⁰ Complaint, ¶¶ 31-32.

⁵¹ *Pugh v. Holmes*, 405 A.2d 897, 903 (Pa. 1979).

⁵² *J.F. Walker Co., Inc. v. Excalibur Oil Grp., Inc.*, 792 A.2d 1269, 1272 (Pa. Super. 2002) (citations omitted).

⁵³ *Johnston the Florist, Inc. v. Tedco Construction Corp.*, 657 A.2d 511, 516 (Pa. Super. 1995) (citing *Burkett v. Allstate Ins. Co.*, 534 A.2d 819 (Pa. Super. 1987), vacated on other grounds, 552 A.2d 1036 (Pa. 1988)). "Consideration is defined as a benefit to the party promising, or a loss or detriment to the party to whom the promise is made..." *Stelmack v. Glen Alden Coal Co.*, 14 A.2d 127, 128 (Pa. 1940) (quoting *Hillcrest Foundation, Inc. v. McFeaters*, 2 A.2d 775, 778 (Pa. 1938)). "The detriment incurred must be the 'quid pro quo', or the 'price' of the promise, and the inducement for which it was made. 'Consideration must actually be bargained for as the exchange for the promise.'" *Id.*, at 128-29 (quoting *Restatement (First) of Contracts*, § 75, cmt. (b)) (citing *Union Trust Co. v. Long*, 164 A. 346, 347-48 (Pa. 1932)). Consideration to establish a valid contract, either express or implied, "must be an act, a forbearance, or a return promise bargained for and given in exchange for the promise." *Thomas v. R.J. Reynolds Tobacco Co.*, 38 A.2d 61, 62 (Pa. 1944) (citing *Restatement (First) of Contracts*, § 75). "The promise must induce the detriment and the detriment must induce the promise." *Pennsy Supply, Inc. v. Am. Ash Recycling Corp.*, 895 A.2d 595, 601 (Pa. Super. 2006) (citations omitted).

⁵⁴ *CoreStates Bank v. Cutillo*, 723 A.2d 1053, 1058 (Pa. Super. 1999) (citing *Gen. State Auth. v. Coleman Cable & Wire Co.*, 365 A.2d 1347, 1349 (Pa. Commw. 1976)); see also *Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. v. Law Firm of Malone Middleman, P.C.*, 137 A.3d 1247, 1258 (Pa. 2016) (citing *J.F. Walker Co., Inc. v. Excalibur Oil Grp., Inc.*, 792 A.2d 1269, 1272 (Pa. Super. 2002)). To sustain her burden, a plaintiff must prove each of these elements by a preponderance of the evidence, see, e.g., *Snyder v. Gravell*, 666 A.2d 341, 343 (Pa. Super. 1995), alloc. denied, 678 A.2d 366 (Pa. 1996), which "is tantamount to a more likely than not inquiry." *Pa. Dep't of Labor and Indus. v. Darlington*, 234 A.3d 865, 872 n.7 (Pa. Commw. 2020) (quoting *Smith on behalf of Smith Butz, LLC v. Pa. Dep't of Env't'l Prot.*, 161 A.3d 1049, 1059 n. 10 (Pa. Commw. 2017)). "A preponderance of the evidence is 'such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.'" *Hamilton v. Pa. State Employees*

Defendant cites *Craig v. Ryan* for the proposition that a landlord out of possession generally is not liable for injuries sustained by its tenant on the leased premises.⁵⁵ Our courts have recognized exceptions to this general rule, however. One of those exceptions is that a landlord may be held liable where it knows or has reason to know of a defect of the leased premises.⁵⁶ Plaintiff claims the fire at the Premises was caused by a defective receptacle. Defendant contends that there is no evidence in the record to know that it knew, or should have known, of any such defect. Therefore, Defendant asserts, it cannot be found liable on Count I of Plaintiff's Complaint.

The sole claims of breach Plaintiff pursued under her Breach of Contract cause of action are claims that Defendant did not provide her a habitable residence and that it interfered with her quiet enjoyment of the Premises.⁵⁷ As this Court noted in its Opinion and Order entered June 14, 2022 concerning Defendant's Preliminary Objections to the Complaint:

Whether express or implied, a covenant of quiet enjoyment inures to the benefit of every lessee of real property in Pennsylvania.[.] The covenant of quiet enjoyment "is breached when the lessee's possession is impaired either by acts of the lessor or those acting under the lessor... Any 'wrongful act' of the lessor that interferes with the lessee's possession, in whole or in part, is a breach of the covenant of quiet enjoyment." [.]⁵⁸

Retirement Bd., 194 A.3d 1147, 1155 (Pa. Commw. 2018) (quoting *Sigafoos v. Pa. Bd. of Probation and Parole*, 503 A.2d 1076, 1079 (Pa. Commw. 1986)).

⁵⁵ *Craig v. Ryan*, 191 A.2d 711, 713 (Pa. Super. 1963) ("The law is clear that a landlord out of possession is generally not liable for bodily harm sustained on his property by his tenant and those on the premises under his tenant's right when he is entirely out of possession and control.") (citing *Hayden v. Second National Bank of Allentown*, 331 Pa. 29, 199 A.2d 218 (Pa. 1938); *Keiper v. Marquart*, 159 A.2d 33 (Pa. Super. 1960); *Maglin v. Peoples City Bank*, 14 A.2d 827 (Pa. Super. 1940)).

⁵⁶ See, e.g., *Dinio v. Goshorn*, 270 A.2d 203 (Pa. 1969).

⁵⁷ Count I, ¶ 27 of the Complaint states, "[t]he Lease Agreement is a valid and binding contract, which placed a duty upon Defendant to provide Plaintiff with a habitable residence." The balance of the Paragraphs of Count I reference breaches of the covenant of quiet enjoyment.

⁵⁸ Opinion and Order, entered June 14, 2022, p.4 (citing and quoting *Lichtenfels v. Bridgeview Coal Co.*, 531 A.2d 22, 25 (Pa. Super. 1987)).

Thus, Plaintiff can prevail on her claim for breach of contract claim based on quiet enjoyment only if she can prove that a wrongful act of the Defendant interfered with her possession. As noted elsewhere in this opinion, she has not proffered evidence of that, so her breach of contract claim based on quiet enjoyment must be dismissed. Her claim for breach of contract based on habitability must fail because of her inability to prove damages beyond those already recovered, as this Court articulated in its Opinion and Order entered June 14, 2022.⁵⁹

Accordingly, the Court will GRANT Defendant's Motion as to Count I of the Plaintiff's Third Amended Complaint and enter summary judgment against the Plaintiff on Count I.

2. Negligence.

"To prevail on a negligence claim, a plaintiff must demonstrate the following: (1) the defendant owed a duty to the plaintiff; (2) the defendant breached that duty; (3) a causal relationship between the breach and the resulting injury suffered by the plaintiff; and (4) actual loss suffered by the plaintiff."⁶⁰ These same elements are applicable in a landlord-tenant dispute.⁶¹ When a tenant brings a negligence claim against her landlord for personal injuries she suffered at the leased premises, she must prove that her injuries were proximately caused by her landlord's failure to exercise reasonable care to make the premises safe.⁶² Plaintiff alleges in Count IV of her Complaint that Defendant had a duty to protect her against unreasonable risks; that it failed to make repairs after being informed of electrical problems at the

⁵⁹ *Id.*, pp. 6-8.

⁶⁰ *Reeves v. Middletown Athletic Ass'n*, 866 A.2d 1115, 1126 (Pa. Super. 2004)

⁶¹ *Keck v. Doughman*, 572 A.2d 724 (Pa. Super. 1990).

⁶² *Asper v. Haffley*, 458 A.2d 1364, 1370 (Pa. Super. 1983). See also *Echeverria v. Holley*, 142 A.3d 29, 34 (Pa. Super. 2016) (reiterating that landlords owe duty to protect tenants from injury or loss arising out of negligent failure to maintain rental property in safe condition).

Premises; that Defendant's conduct is a breach of its duty to her; and that she suffered actual losses as a result of the same.⁶³

Defendant contends that it is a landlord out of possession and that, as such, it is not liable because Plaintiff has not, and cannot, produce any evidence showing that Defendant had knowledge of any alleged defect in the electrical system at the Premises.⁶⁴ Defendant assumed ownership of the Premises during Plaintiff's tenancy, and there is no evidence in the record suggesting Plaintiff provided Defendant with notice of any defect with the electrical system or that Defendant otherwise acquired knowledge of such a defect.

Defendant also contends that Plaintiff's negligence claims must be dismissed because Plaintiff did not procure expert testimony to establish the cause of the fire. The Williamsport Bureau of Fire did not identify a specific cause of the fire, but was unable to rule out the electrical receptacle itself or two electrical devices, a pole lamp and a modem, plugged into it.⁶⁵ If the fire was caused by a faulty receptacle, Defendant may be liable to Plaintiff, should she establish Defendant's negligence. Conversely, if the fire was caused by an electrical device plugged into the receptacle, Defendant cannot be liable to Plaintiff, as Defendant was a landlord out of possession of the Premises.

"It is well-established that 'expert opinion testimony is proper only where formation of an opinion on a subject requires knowledge, information, or skill beyond what is possessed by the ordinary juror.'⁶⁶ In contrast, "[e]xpert testimony

⁶³ Compliant, ¶¶ 55-60.

⁶⁴ See, *supra*, Part II.B.1.

⁶⁵ WBF Report, p.6.

⁶⁶ *Ovitsky v. Capital City Economic Development Corp.*, 846 A.2d 124, 126 (Pa. Super. 2004) (quoting *Commonwealth v. Carter*, 589 A.2d 1133, 1134 (Pa. Super. 1991)).

is not required 'where the matter under investigation is so simple, and the lack of skill or want of care so obvious, as to be within the range of the ordinary experience and comprehension of even nonprofessional persons.'"⁶⁷ Thus, the question here is whether the dispute concerning the cause of the fire is within the range of ordinary experience and comprehension of an ordinary layperson.

Plaintiff correctly points out that expert testimony is not required in all negligence cases and that the credibility and weight of expert testimony is a determination for the jury rather than an issue to be decided at the summary judgment phase of litigation.⁶⁸ Nevertheless, the Court concludes that expert testimony is necessary to establish the cause of the fire. An ordinary layperson viewing the facts of record is in no position to determine whether the fire was caused by a defective receptacle—in which case Defendant could be liable—or by a defective appliance—in which case Defendant cannot be liable.

Accordingly, the Court will GRANT Defendant's Motion and enter summary judgment in favor of the Defendant and against the Plaintiff as to Count IV of the Third Amended Complaint, because Plaintiff has failed to produce "evidence of facts essential to [her] cause of action [for negligence] ... which in a jury trial would require the issues to be submitted to a jury."⁶⁹

3. Breach of Contract/Statutory Claim for Security Deposit.

Plaintiff alleges in Count V of her Complaint that Defendant Breached its contract with her by refusing to return the security deposit and asserts a statutory

⁶⁷ *Welsh v. Bulger*, 698 A.2d 581, 586 n. 11 (Pa. 1997) (quoting *Chandler v. Cook*, 265 A.2d 794, 796 n.1 (Pa. 1970)).

⁶⁸ See, e.g., *Summers v. Certaineed Corp.*, 997 A.2d 1152, 1161 (Pa. 2010).

⁶⁹ See Pa. R. Civ. P. 1035.2(2).

claim for the same. Specifically, Plaintiff alleges that she provided a security deposit in connection with her tenancy in the amount of \$850.00; that Defendant returned \$500.00 of the security deposit on May 24, 2021 pursuant to Order of Court; that Defendant failed to return the remainder of the security deposit, claiming Plaintiff caused damage to the apartment; that any damage to the department was caused, either directly or indirectly, by the fire that occurred on April 24, 2021; that any personal property left in the apartment was damaged by fire, smoke, water, or lack of electricity and that Plaintiff is not liable for its removal; and that Plaintiff is entitled to return of the remainder of the security deposit.⁷⁰

The Lease Agreement provides that Plaintiff paid a security deposit in the amount of \$850.00.⁷¹ Plaintiff testified in her deposition that one-half of the funds for the security deposit were provided by her and that the remaining funds were provided by her boyfriend.⁷² The Lease Agreement provides that

Landlord will refund the full security deposit to Tenant within 14 days following the end of the lease if Tenant returns the premises to Landlord in good condition (except for reasonable wear and tear) and tenant has paid Landlord all sums due under this lease. Otherwise, Landlord may deduct any amounts required to place the premises in good condition and to pay for any money owed to Landlord under the lease.⁷³

Here, the Premises was returned damaged by fire. As discussed above, the ultimate cause of the fire is undetermined, and *neither party* procured expert testimony to support a conclusion that the damage to the Premises and its contents ultimately was the responsibility of the other party. The only defense offered by

⁷⁰ Compliant, ¶¶ 62-51 [*sic* – the paragraphs in Count V are numbered 61, 62, 49, 50, 51].

⁷¹ Lease Agreement, ¶ 6.

⁷² Washington Transcript, pp. 6-7.

⁷³ Lease Agreement, ¶ 6.

Defendant in its Motion, is an unconvincing argument that, because Plaintiff only provided \$425.00 of the security deposit from her own funds, she was fully compensated when the Court ordered it to return \$500.00 to Plaintiff.⁷⁴ In its Answer and New Matter to the Complaint, however, Defendant attached an itemized list of alleged damages it suffered as its justification to withhold the security deposit.⁷⁵

Any non-performance of a contractual obligation is a breach when performance is due.⁷⁶ Defendant's failure to return the entire security deposit is a breach of the Lease Agreement, unless Defendant can point to a valid reason why Defendant is entitled to retain the remainder of the security deposit.⁷⁷ In light of claims advanced by the parties previously in this litigation,⁷⁸ the Court finds there are outstanding issues of material fact concerning whether Defendant has a legitimate basis for retaining any portion of the security deposit.

As such, Defendant's Motion for Summary Judgment as to Count V of Plaintiff's Third Amended Complaint is DENIED.

⁷⁴ Defendant's Brief, p.7.

⁷⁵ See Defendant's Answer and New Matter, ¶ 63 & Exh. B.

⁷⁶ *Lane Enterprises v. L.B. Foster Co.*, 700 A.2d 465, 471 (Pa. Super. 1997), rev'd on other grounds, 710 A.2d 54 (Pa. 1998) (citing *Restatement (Second) of Contracts*, § 235(2) (1981)).

⁷⁷ "Every contract imposes on each party a duty of good faith and fair dealing in its performance and its enforcement." *Kaplan v. Cablevision of PA, Inc.*, 671 A.2d 716, 722 (Pa. Super. 1996) (quoting *Restatement (Second) of Contracts*, § 205). "Good faith" has been defined as "[h]onesty in fact in the conduct or transaction concerned." *Id.* (quoting 13 Pa. C.S. § 1201). The obligation to act in good faith varies with context, *Baker v. Lafayette College*, 504 A.2d 247, 255 (Pa. Super. 1986), but examples of "bad faith" conduct include: "evasion of the spirit of the bargain, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance." *Somers v. Somers*, 613 A.2d 1211, 1213 (Pa. Super. 1992) (citing *Restatement (Second) of Contracts*, § 205(d)). If Defendant is unable to articulate a cognizable basis for withholding return of the security deposit, its conduct *could* constitute bad faith.

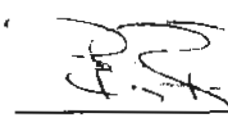
⁷⁸ Defendant has previously argued that it is entitled to a set-off against the security deposit, among other things, for expenses it incurred when Plaintiff abandoned her personal property that she claims was damaged as a result of the fire and defendant was required to dispose of it while repairing the damage.

III. CONCLUSION.

For the reasons explained above, Defendant's Motion for Summary Judgment is GRANTED as to Counts I (Breach of Contract) and IV (Negligence) and DENIED as to Count V (Breach of Contract/ Statutory Claim for Security Deposit) of Plaintiff's Third Amended Complaint. Summary judgment is hereby entered in favor of Defendant and against Plaintiff as to Count I (Breach of Contract) and as to Count IV (Negligence) of Plaintiff's Third Amended Complaint.

IT IS SO ORDERED.

BY THE COURT,



Eric R. Linhardt, Judge

ERL/bel

cc: Stephanie E. Wolak, Esq., *North Penn Legal Services*
Gary L. Weber, Esq., *Mitchell Gallagher P.C.*