

THE NEW PHILADELPHIA MUNICIPAL COURT

Sugarcreek L.T.D.

Plaintiff,  
vs.

Todd Tedrick  
Tori Blackwell

Defendant

CASE NO. 9900554 FEB 4 PM 3 40  
MAGISTRATE DECISION

CLERK

This matter came before the Court for a first claim trial. The plaintiff was present and represented by Attorney Jay Gossett. The defendants were present and represented by Attorney Amy Cleary.

The plaintiff brought before the Court a laundry list of minor lease violations and one major violation that the plaintiff contended were sufficient to establish a right, effective August 18, 1999, to terminate the lease agreement. The Court finds that the lease was renewed on January 10, 1999. There were a variety of complaints lodged by the plaintiff that involved actions of the defendant, Todd Tedrick, prior to that time. The Court rules that the claimed violations of the lease that predate the renewal are not relevant to the first claim decision as the plaintiff has waived any right to complain of these violations by virtue of the renewal. The evidence failed to establish that the renewal was made with any qualifications regarding minor lease violations.

The Court shall focus on the events subsequent to the lease renewal. While the plaintiff had several complaints concerning the conduct of Todd Tedrick, the Court shall only consider those instances where the plaintiff implemented formal written proceedings as described within the lease agreement. The evidence established that in May 1999, the defendant was charged with a lease violation concerning repair of his automobile at the premises. The Court finds that this violation was a *de minimus* infraction that was not one likely to adversely affect the health and safety of the other occupants.

The plaintiff mailed to the defendants a notice of lease violations wherein the plaintiff did not properly identify the conduct that constituted an infraction of the lease terms. The notice was marked plaintiff's exhibit I. The plaintiff marked and introduced exhibit "D". This exhibit is an undated document describing a violation of "Rules and Regulations" concerning the fact that the defendants had a white car that "hasn't been moved or driven in months". The Court was unable to find any apartment regulation that limited the time tenants could leave an automobile parked. The plaintiff's agent testified that the vehicle had a flat tire and was therefore inoperable. The Court finds this allegation, by definition, presented the defendants with a distinct dilemma; they could not repair the flat or install a spare as that would be a violation and they could not leave the vehicle as that too was a claimed violation. The plaintiff's policy in this respect left only one option for the tenants and that was to have the vehicle towed. The Court finds this result to be onerous and unenforceable under the facts of this case.

On July 14, 1999, the plaintiff complained that the defendant, Tori Blackwell, was seen driving side by side with another vehicle in a fashion that appeared to be racing. No notice to correct was given with respect to this incident as the notice of cancellation of the lease had already been mailed. The Court observes that the tenants must certainly be demonstrating their immature natures and the Court finds surprising this potentially dangerous conduct in light of the fact that children may reside in the complex. This eviction action is not based upon this conduct.

This eviction action is based upon an allegation that Todd Tedrick exposed himself to another tenant. The Court finds this conduct to be despicable as the exposure apparently involved another youth in the complex. The police were summoned. No citations were issued calling into question the underlying facts. Assuming that the incident occurred, and the evidence was strongly suggestive that it did, the Court finds that this violation of the lease would indeed be one that

would support action on the part of the landlord. At the minimum, the action of the defendant was clearly material and obviously adversely affected the health and safety of the other tenants. The lease and regulations of the complex specifically require that the action be one involving a right to cure. This procedure was not followed. It is therefore the ruling of the Court that the plaintiff failed under their own lease to present sufficient evidence to establish the forcible entry and detainer right as alleged in the complaint.

IT IS ORDERED, ADJUDGED AND DECREED that judgment is granted in favor of the defendants against the plaintiff. Court costs shall be paid by the plaintiff and are taxed against the deposit.

IT IS SO ORDERED.



Magistrate Michael J. Comella


NOTICE: Copies of this magistrate decision have been mailed to the parties or their counsel. Written objections to this magistrate decision must be filed within fourteen days of the filing date of this decision. The objections must be specific and state with particularity the grounds of the objection. If you object to a finding of fact, a copy of the transcript must be provided to the Court.

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JUDGMENT ENTRY ADOPTING  
DECISION OF MAGISTRATE

Pursuant to Civil Rule 53 and after an independent review of the record, the Court approves and adopts the above Magistrate's Decision in full. The filing of timely written objections to the Decision shall operate as an automatic stay of the execution of this judgment until the Court disposes of these objections and thereby vacates, modifies, or affirms the judgment previously entered.

IT IS SO ORDERED.

*Adj*   
Judge Mary Wade Space

cc: Attorney Gossett *B*  
Attorney Cleary *B*

FILED  
CLERK  
20 FEB 11 PM 3 40  
LISA G. ZIMMERMAN