

**IN THE JUSTICE OF THE PEACE COURT OF
THE STATE OF DELAWARE, IN AND FOR SUSSEX COUNTY
COURT NO. 17**

**COURT ADDRESS:
23730 SHORTLY ROAD
GEORGETOWN DE 19947**

CIVIL ACTION NO: JP17-08-002080

DELAWARE STATE HOUSING AUTHORITY VS JESSICA RENNER

**SYSTEM ID: 002399
JAMES G MCGIFFIN JR.
840 WALKER ROAD
DOVER DE 19904**

NOTICE OF COURT ACTION

The Court has entered a judgment or order in the following form:
Trial de novo - Three Judge Panel

Appearances: Jeffrey J. Clark, Esquire of Schmittinger and Rodriquez, P.A. appeared or the
 plaintiff
 James G. McGiffin, Jr., Esquire of the Community Legal Aid Society, Inc. appeared
 for the defendant

Submitted: March 16, 2009
Decided: March 26, 2009

ORDER

A trial de novo before a three judge panel consisting of the Hon. Sheila Blakely, the Hon. Edward Davis and the Hon. Stephani L. Adams was held. Plaintiff seeks possession on the basis of a rules violation, in particular that the defendant has allowed unauthorized persons to live in the rental unit.

Prior to trial, counsel for the defendant presented a Motion to Dismiss alleging that this Court lacked subject matter jurisdiction due to deficiencies in the termination notice. Defense counsel argued that the notice or notices required would depend upon whether the breach was considered a serious one, or a minor one requiring repetitive violations in order to terminate the lease. The defendant contends that having unauthorized occupants is a minor violation and would require more than one notice, and further that the initial notice was deficient as it lacked the required specificity. Trial commenced and the motion was held in abeyance as the Court required time to review the case law presented, and determine from the facts presented at trial, whether or not the violation was serious in nature.

Counsel for the plaintiff called a total of 5 witnesses, beginning with Christine Kissinger, mother of the defendant. Ms. Kissinger admitted to listing Jessica Renner's address as her address on 2 documents, entered into evidence as plaintiff's exhibits 1 and 2. These were an intake form from Probation and Parole, and an application for subsidized housing respectively. Ms. Kissinger denied living with her daughter. It was her claim that she stayed several places, including with her boyfriend in the Rehoboth area, as well as the Crisis House shelter. She also testified that she had no permanent address and needed to write down a mailing address and/or an address to meet the requirements of Level III probation.

The second witness for the plaintiff, Sharnell Perry, identified herself as a neighbor of Ms. Renner until August of 2008 (beginning date unknown). Ms. Perry stated that she saw both Samantha and Christine Kissinger at the unit of Ms. Renner, both during the evening and on subsequent late mornings.

Probation and Parole officer Lisa Jones was the 3rd witness for the plaintiff. Ms. Jones provided testimony as to her interactions with both Ms. Kissinger and Ms. Renner, and her case notes were entered into evidence for the plaintiff. She testified to having conducted several home visits and curfew checks establishing Ms. Kissinger's presence at the apartment. She also testified that belongings of Ms. Kissinger to include clothing and medication were present and that it appeared to her that Ms. Kissinger was in fact living in the apartment. Officer Jones did state that on some occasions Ms. Kissinger was not present, but Ms. Renner indicated to her that Ms. Kissinger was residing there.

Ms. Corinna Fritsch, acting manager for the apartment complex, provided testimony for the plaintiff as well. She testified that she sent the 2nd letter dated May 9, 2008 after she was contacted by Officer Jones, who advised her of Ms. Kissinger's residency at the apartment. She testified that Ms. Renner came to the office and told her specifically that she would not put her mother out of the apartment, thus rendering her homeless. Ms. Fritsch testified that she told the defendant there was a two week limit on how long a guest could stay there.

Ms. Renner testified that her mother was in fact frequently at the home in order to either babysit Ms. Renner's children, or to visit. She acknowledged that her mother met with Officer Jones at the residence on several occasions.

DISCUSSION

Under the terms of the lease, an unauthorized person is a guest or visitor of the tenant who is accommodated in the unit for a period exceeding fourteen (14) days in any six (6) month period. This is what the plaintiff must show in order to prevail under the terms of the lease. The word "accommodated" is a broad term, whereas "fourteen (14) days in any six (6) month period" is specific.

Given Officer Jones' testimony and her case notes, we count 4 visits or phone contacts where Ms. Kissinger was present at the residence. While Ms. Perry did say that she observed Ms. Kissinger there on other occasions, she did not establish the criteria required by the lease of more than 14 days in any 6 month period, nor did any of the other witnesses for the plaintiff. In addition some of the times that Ms. Kissinger was observed there, could have been when she was only babysitting or visiting. There is no evidence that Ms. Kissinger's presence in the unit caused any damage to the

unit or any detriment to the other tenants.

Because the plaintiff failed to establish the elements of the breach, this court needs not address the questions as to whether or not such a breach constitutes a serious violation or one where repetitive violations would be needed in order to terminate the lease. The lease was in fact improperly terminated and this court finds for the defendant on the issue of possession.

IT IS SO ORDERED THIS 26 DAY OF MARCH 2009.

Stephani L. Adams
Stephani L. Adams
Justice of the Peace
For the Three Judge Panel



CC: Plaintiff
Defendant
File