

August 10, 2004

Ms. Kyoko Onoda
281 Beverly Road
Apartment D3
Newark, DE 19711

Ms. Corine Termonia
4 Sutton Place
Wilmington, DE 19810

**Re: Kyoko Onoda v. Corine Termonia
Case No. 2003-06-432**

LETTER OPINION

Dear Ms. Onoda and Ms. Termonia:

This is an appeal *de novo* brought pursuant to 10 Del. C. § 9570 *et seq.*, of a landlord-tenant debt action filed by Plaintiff seeking double damages for return of her security deposit. Trial in the above captioned matter took place on Monday, August 2, 2004. Following the receipt of evidence and testimony, the Court reserved decision. This is the Court's final decision and order.

The sole issue following trial is whether Kyoko Onoda ("Plaintiff") proved by a preponderance of evidence she is entitled to the return of her portion of a security deposit and therefore entitled to double damages under 25 Del. C. § 5514(f), (g). The Court will also address the following sub-issues: (1) whether appropriate notice of damages was mailed by the Defendant to a proper forwarding address, and (2) whether the Plaintiff illegally sublet the apartment under the Landlord-Tenant Code and the lease. For the reasons set forth below, the Court finds based upon the trial record that Plaintiff has not proven by a preponderance of the evidence that she is entitled to the return of her security deposit.

THE FACTS

Plaintiff testified at trial.¹ She testified that she is from Japan and was studying at the University of Delaware. She and another student rented an apartment from the Defendant. The lease she signed was for September 1, 2001 through June 30, 2002. Plaintiff's Exhibit 1. She testified that she moved out of the apartment on May 28, 2002. She sub-let the apartment to other students for the remaining term of the lease. She testified that she told the Defendant she was sub-letting the apartment. She further testified that before she left for Japan, she gave the Defendant her address in Japan and a friend's address in Philadelphia, Pennsylvania, both as forwarding addresses. On July 18, 2002 she called the Defendant from Japan to inquire about her security deposit.

On cross-examination, Plaintiff testified that she gave the Defendant her address more than once. She also testified that she told the Defendant about the sub-letters and also gave the Defendant their names. She did not give the Defendant notice of her wish to sublet the apartment in writing.

Defendant testified at trial. She testified that the Plaintiff was brought to see her by a volunteer at the University of Delaware because she often leases rental units to foreign students. She testified that because of language barriers, she explains every paragraph in the lease agreement to make sure the renters understand. Article 7 of the lease provides that a tenant cannot sub-let the rental unit without the prior written consent of the landlord. Defendant's

¹ The Court received the following exhibits into evidence: Plaintiff's Exhibit 1 was a copy of the lease agreement between the parties for the period of September 1, 2001 through June 30, 2002; Plaintiff's Exhibit 2 was a letter from the Defendant to the Plaintiff dated July 22, 2002, which lists the damages to the apartment; Defendant's Exhibit 1 was the original lease agreement; Defendant's Exhibit 2 was an unsigned Sublease Agreement; Defendant's Exhibit 3 was a Households Items Inventory List dated June 29, 2002, for the apartment rented by the Plaintiff; Defendant's Exhibit 4 was the letter sent by Defendant to Plaintiff which lists the damages; Defendant's Exhibits 5 through 9 are pictures of the apartment showing its condition at the end of the lease; Defendant's Exhibit 10 was a receipt from Air Base Carpet Mart; Defendant's Exhibit 11 was a list dated September 1, 2001, of household supplies and furniture that were provided to the Plaintiff.

Exhibit 1. Defendant also testified that Article 7 states that occupancy for the particular unit rented by the Plaintiff was not to exceed two people. Defendant testified that Plaintiff mentioned that she may possibly sub-let the apartment. Defendant told Plaintiff that would be acceptable if she followed the requirements in the lease agreement. She further testified that the Plaintiff never introduced her to any sub-letters. Defendant testified that she never had a problem with the Plaintiff prior to her sub-letting the apartment. There was damage to the rental unit after the lease expired, which Defendant attributes to the sub-letters.

On cross-examination, Defendant testified that she was never given a forwarding address in writing. She testified that she did have Plaintiff's parents' address in Japan from paperwork filled out during the application process.

Vera Wagenfurhr testified for the Defendant. She has been a host coordinator for the University of Delaware for 19 years. She testified that she has been introducing students who are looking for apartments to the Defendant for approximately 5 years. She has had a good experience with the Defendant and the Defendant is very fair in her dealings with students. She testified that she has been present when the Defendant goes over the lease with the students and to her knowledge the security deposit is always returned after an inspection of the apartment for damages.

THE LAW

The governing law of this Landlord-Tenant Code dispute is the Landlord-Tenant Code, *25 Del. C. Ch. 21, et seq* and the lease agreement between the parties. Twenty-Five *Del. C. §5514(f)* requires a landlord to provide tenants with an itemized list of damages within twenty days after the termination or expiration of the lease and failure to do so constitutes an acknowledgment on the part of the landlord that no damages exist. Twenty-Five *Del. C.*

§5514(h) provides that notice to the tenant may be sent to an address specified in the rental agreement or to a forwarding address, if provided in writing at or prior to the end of the lease. If the tenant does not give a forwarding address, the landlord is relieved of liability for notice and for double damages.

OPINION AND ORDER

Based on the record produced at trial, Plaintiff has failed to prove by a preponderance of evidence that she is entitled to double her half of the security deposit. The itemized list of damages dated July 22, 2002, was sent beyond the twenty day period; however, prior to that date, the Defendant was not sure where to send it. It was only after Plaintiff phoned the Defendant on July 18 that Defendant sent the notice to the Philadelphia address. Plaintiff failed to provide the Court with any documentation to show that she advised the Defendant in writing of her forwarding address in Japan. While she stated that she gave the Defendant a forwarding address in the United States, this address was that of a third party and not her own. There were no assurances that the third party would even forward any mail to the Plaintiff. Therefore, the Court finds that the Defendant was relieved of liability to send notice of damages.

Additionally, Plaintiff left the jurisdiction of the United States prior to the end of the lease. She herself violated the lease agreement by illegally sub-letting the apartment to two other students.

The Court therefore enters judgment in favor of Defendant and against Plaintiff. The Defendant's counter-claim was filed after the decision below was rendered. Since the counter-claim was not timely asserted below, this Court lacks jurisdiction to decide that matter.

Before concluding the Court notes that the Defendant filed a supersedeas bond in this Court to stay the execution of the judgment below. The Court hereby orders that the bond posted pursuant to *C.C.P. Civ. R. 62(c)* be returned to the Defendant.

IT IS SO ORDERED this 9th day of August 2004.

John K. Welch
Associate Judge

cc: Clerk of the Court, Civil Division
Court of Common Pleas