IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

NANCY VEENEMA,	)	
	)	
Defendants Below	)	
Appellants,	)	
	)	
v.	)	C.A. No. 2001-01-401
	)	
ELBERT COPELAND	)	
NANCY COPELAND	)	
	)	
Plaintiffs Below	)	
Appellee.	)	

Submitted: February 1, 2002
Decided: April 22, 2002

Larry D. Sullivan, Esquire
Attorney at Law
111 Barksdale Professional Center
Newark, DE 19711
Attorney for Appellants

Richard S. McCann, Esquire
125 East Delaware Avenue
Newark, DE 19711
Attorney for Appellees

ORDER
ON APPELLANT'S MOTION FOR SUMMARY JUDGMENT

In these proceedings, Elbert Copeland and Nancy Copeland, Plaintiffs Below, Appellees (hereinafter "the Copelands"), bring this action to recover the sum of $11,926.57 for damages to a leased property and the inadvertent return of double the security deposit at the end of the lease agreement.

Debbie Veenema and Ray Veenema, Defendants Below, Appellants (hereinafter "the Veenemas"), deny the allegation and in these proceedings move for summary judgment.

The facts set forth in the pleadings indicate that on or about March 30, 1998, the Veenemas entered into a residential lease agreement with the Copelands for a term of May 1, 1998 to April 30, 2001. In the spring of June 2000, the Veenemas exercised their right to terminate the lease agreement as of June 30, 2000. The Copelands on July 23, 2000, sent the Veenemas a list of damages to the property they had leased, outlining the cost to cover repairs. The notice also stated the security deposit would be utilized to cover the cost of such repairs. However, later the Copelands returned double the amount of the security deposit, which equaled $1,700 to the Veenemas on the belief that they had not timely given the Veenemas notice as required by the Landlord Tenant Code.

On November 12, 2000, the Copelands brought action in the Justice of the Peace Court to recover the security deposit and additional amounts for damages done to the leased premises. This action was taken because the Copelands later learned they had complied with the statute and were not liable for double the security deposit. Following a trial in the Justice of the Peace Court on January 18, 2001, judgment was entered for the Copelands for the amount of $6,644.80. On January 31, 2001, the Veenemas docketed this de novo appeal to this Court.

The Veenemas now move for summary judgment on the basis that the Copeland's cause of action is controlled by the provisions of the Delaware Landlord Tenant Code under *25 Del. C. § 5101* et seq. Pursuant to those provisions and relying specifically upon Section 5514(f), the Veenemas argued that the Copelands were required to provide an itemized list of all damages to the premises and estimated cost of repairs within 20 days after the termination of the rental agreement. Therefore, the Veenemas argued that since the itemized list was not provided until July 24, 2000, and their lease term terminated on June 30, 2000, the Copelands cannot recover in these proceedings since the Code provisions provide that failure to provide the list within 20 days shall constitute an acknowledgement by the landlord that no payment for damages is due. Further, the Veenemas argue that Section 5514(g), provides that where the landlord fails to set forth a list of damages within 20 days from the expiration of the rental agreement and fails to return the security deposit, the tenant is entitled to double the amount of the security deposit wrongfully withheld.

The Veenemas conclude based on these two provisions, that they are entitled to double the return of the security deposit and that under Section 5514 (f), because the landlord failed to provide the itemized list within 20 days, it is implied that no damages exist. Moreover, even if there were damage, since the Copeland's letter is dated July 23, 2000 and mailed July 24, 2000, it does not meet the statutory deadline, therefore the Copelands plaintiffs are now estopped from bringing this action. On these bases, the Veenemas move for summary judgment.

The Copelands do not dispute the fact that the rental agreement was terminated on June 30, 2000 nor that notice was sent on July 23, 2000. Also, they do not contest the fact that $1,700, which is double the security deposit, was paid to the Veenemas. The Copelands however, contend that pursuant to *25 Del. C. § 5514(h)*, their duty to provide a listing of the damages and return the security deposit is conditioned upon the tenant providing the landlord with a forwarding address at or prior to termination of the rental agreement. The Copelands therefore argue, that since the Veenemas did not provide a forwarding address under the Code, they are relieved of the requirement, to provide the listing within 20 days.

The Veenemas respond that on July 1, 2000, they hand delivered a notice of their new address to Nancy Copeland along with the keys of the rental property. Mr. Veenema has provided the Court an affidavit indicating that an address was provided when the keys were accepted. Further, the Veenemas argue that the issue of the forwarding address is a new argument for the Copelands, which did not surface at any point during prior proceedings in the Justice of the Peace Court, therefore, the Court should give it little merit.

A motion for summary judgment requires the Court to examine the record to determine whether any genuine issues of material fact exist. After reviewing the record in the light most favorable to the non-moving party where the Court finds no genuine issue of material fact, summary judgment is appropriate. However, summary judgment may not be granted when the record indicates a

material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the circumstances. *Merrill v. Crothall-American, Inc., Del. Supr. 606 A.2d 96 (1992)*. In essence, the Court will grant summary judgment only if the pleadings and the record show that there are no genuine issues as to any material fact and the moving party is entitled to judgment as a matter of law.

In these proceedings, the Veenemas move for summary judgment on the basis that the statute precludes the Copelands from bringing this action because they failed to comply with the statutory 20-day provision set forth in § 5514(f). That section provides that within 20 days after the termination or expiration of any rental agreement, the landlord shall provide the tenant with an itemized list of the damages. In these proceedings, it is clear that the landlord did not provide the list until July 23, 2000. The Copelands do not dispute the Veenemas representation that the notice was not mailed until July 24, 2000. However, the Copelands point to § 5514(h) which governs communications between the parties. They argue based on that section that their duty to provide the itemized list of damages is contingent upon the tenant providing the landlord with a forwarding address at or prior to termination of the rental agreement. The Copelands argue the Veenemas did not provide a forwarding address; therefore, the 20-day prohibition has no application. In particular, Section 5514(h) in relevant part provides as follows:

> ". . . Failure by the tenant to provide such address shall relieve the landlord of landlord's responsibility to give notice herein, and the landlord's liability for double the

> amount of the security deposit as provided herein. But the landlord shall continue to be liable to tenant for any unused portion of the security deposit; provided, that the tenant shall make a claim in writing to the landlord within one year from the termination or expiration of the rental agreement."

Therefore, the Copelands argue they are not liable for double the security deposit nor are they precluded from seeking damages to the leased premises.

Each party has submitted an affidavit in support of their position on the issue of notice. The Veenemas have provided an affidavit, which indicates when the keys were returned on July 1, 2000, a handwritten change of address was given to Mrs. Copeland. The Copelands have provided an affidavit which indicates that the Veenemas called on July 22, 2000 and gave their forwarding address by telephone.

In reviewing all of the documents in the records, there is a dispute regarding the issue of notice and when it was provided. Under the statute, the liability of the Copelands is contingent upon whether notice was timely given in accordance with the statutory provisions. Moreover, the Veenema's right to double security deposit and whether they should be held responsible for any damages is contingent upon whether notice was given within the 20-day period.

Because there is a dispute, which I am unable to resolve from the documents in the record, I conclude that there are material facts which must be resolved at trial and summary judgment is inappropriate at this stage of the

proceeding. Accordingly, the Veenema's motion for summary judgment is hereby denied.

SO ORDERED this 22nd day of April 2002

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Alex J. Smalls
Chief Judge

Veenema-Ord