

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

James Ciliberti,	:	C.A. No. 04-07-0122AP
	:	
Plaintiff below/	:	
Appellant,	:	
	:	
vs.	:	
	:	
Donald Cummings and	:	
Theresa Cummings,	:	
	:	
Defendants below/	:	
Appellee.	:	

Decision after trial.

Date of Trial: September 29, 2004

Date Decided: October 5, 2004

Judgment for the Plaintiff.

**Sandra W. Dean, Esquire, 12322 Willow Grove Road, Camden, Delaware 19934,
Attorney for Plaintiff below/Appellant.**

**Adam R. Elgart, Esquire, Mattleman Weinroth & Miller, 200 Continental Drive,
Suite 215, Newark, Delaware 19713, Attorney for Defendants below/Appellees.**

Trader, J.

In this civil action for rent I hold that 25 Del. C. Sec. 5308 does not apply because it applies to the failure of the landlord to provide hot water, heat, water, or electricity to a tenant. Hence, the landlord may recover the rent due subject to certain offsets awarded to the tenant.

The relevant facts are as follows: The landlord, James Ciliberti, leased property located at 2539 South Denneys Road, Dover, Delaware to the tenants, Donald Cummings and Theresa Cummings, at a monthly rent of \$675.00. The tenants were delinquent in the rental payments and on October 16, 2003 the landlord obtained a judgment against the tenants in the Justice of the Peace Court No. 16 in the amount of \$2397.50. The judgment was satisfied by execution process and the tenants paid the landlord \$2000.00 on November 11, 2003 and \$397.50 on December 1, 2003 to cover back rent for October, November, and December. The tenants have paid no additional rent and the landlord has a claim for rent for January 1 through June 9, 2004, plus late charges. During this period of time, it was necessary to have the septic system pumped out three times. The tenants gave written notice to the landlord of this unsanitary condition on two occasions.

The tenants first contend that landlord did not provide the tenants with a copy of the landlord/tenant code. I accept Mr. Ciliberti's testimony on this issue and I conclude that the landlord provided the tenants with a copy of the landlord/tenant code.

The defendants next contend under 25 Del. C. Sec. 5308 that they may deduct two-thirds of the per diem rate under that statute. I disagree. I construe Sec. 5308 to apply to the failure of the landlord to provide hot water, heat, water, or electricity to a tenant and does not apply to an unsanitary condition relating to the septic system. Even assuming that the statute in question applies, the landlord remedied the situation or

authorized the tenants to do so within three or four days of the written notice of the problem.

The plaintiff is entitled to back rent from January 1 to July 9, 2004 subject to certain offsets. The tenants paid the landlord \$2397.50 for the months of October through December, 2003. These payments exceeded the total rent for October through December by the amount of \$372.50. In March 2004, the landlord authorized the tenants to hire contractors to pump out and clean the septic system. The tenants expended the sums of \$187.04, \$158.00 and \$135.00 for this service. When these expenditures are offset against \$3577.50, the balance due for rent is \$2724.96. Adding the late charges of 5%, the liability of the tenants is \$2861.21.

In accordance with this decision, judgment is entered in behalf of James Ciliberti and against Donald Cummings and Theresa Cummings in the sum of \$2861.21 plus costs of these proceedings.

IT IS SO ORDERED.

Merrill C. Trader
Judge