

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

KELLAM & COMPANY, INC.,)	
)	C.A. No. 03-04-0138AP
Plaintiff-Below,)	
Appellee)	
)	
v.)	
)	
K.O. SIMMS,)	
)	
Defendant-Below,)	
Appellant.)	

Submitted: November 2, 2005
Decided: November 10, 2005

Timothy Reisinger, Esq.
19 South State Street, Suite 103
Dover, DE 19901

Mr. K. O. Simms
8 Darien Court
New Castle, DE 19720

DECISION AFTER TRIAL

Defendant-Below, Appellant K.O. Simms (“Simms”), has filed a civil appeal with this Court for a trial *de novo* of a final order of a Justice of the Peace Court on a debt action pursuant to 10 *Del. C.* §9571. The Plaintiff-Below, Appellee Kellam & Company, Inc. (“Kellam”), contends that it is entitled to an award of damages against Simms as a result of Simms’s breach of a lease that he had with it. Simms contests that he breached the lease and the amount due to Kellam. I find for Kellam and against Simms and award damages in the amount of \$2,200.00, plus interest at the legal rate from March 1, 2003.

FACTS

Simms entered a verbal lease to rent an apartment on State Street, in Dover, Delaware, from Kellam in September of 2002. The verbal agreement was that Simms would rent the apartment on a month to month basis for \$550.00 per month. He could take possession of the apartment in late September 2002 and his rent would start with the month of October 2002.

Simms moved into the apartment in late September 2002. By late October 2002, he was having financial difficulties and it did not appear as though he would be able to pay his rent. Therefore, he entered into another verbal agreement with Kellam whereby he agreed to paint a mural on an inside wall in the building that his apartment was located in exchange for Kellam forgiving the rent due for the months of October and November of 2002. Simms painted the mural, but, he never made any additional rent payments. A few months later, in February 2003, he decided to move out of the apartment. He surrendered possession of the apartment back to Kellam on or about February 11, 2003, without any prior notice of his intention to terminate his lease.

Kellam filed this suit seeking payment for rent due, but, not paid, from Simms in the amount of \$2,200.00, plus interest and court costs. Simms contends that the wall mural that he painted for Kellam is worth at least \$3,500.00 and that the full value of the mural should be credited against the rent due to Kellam. Additionally, Kellam seized some of his paintings that were hanging in the building where his apartment was located. Kellam has indicated that it will return the paintings as soon as the rent issue has been resolved. However, Simms contends that the value of the paintings should also be credited against any rent due.

DISCUSSION

There can be little dispute that Simms breached his lease with Kellam for the apartment when he failed to pay any rent for the period that he lived there after November 2002. Additionally, Simms is responsible for another sixty days rent, beginning on the first day of the month following the day of actual notice, due to the fact that he did not provide Kellam with a minimum of sixty days written notice of the termination of the rental agreement. *See 25 Del. C. §5106(d)*. Therefore, Simms is liable to Kellam for the months that Kellam is seeking payment of rent, for the period of December 2002 through March 2003, in the total amount of \$2,200.00.

It is apparent from the record below and from the record at trial that Simms did not file a counterclaim or request a set off in the trial court below against the amount of rent due for the paintings that Kellam seized when Simms vacated the apartment. Therefore, the court cannot now consider such a claim pursuant to the “mirror image rule”, which bars any consideration of new issues.¹ The court also will not now consider any argument by Simms as to the true fair market value of the mural he painted on the wall for Kellam and whether this amount should be credited against the rent due, since Simms was paid the agreed upon amount of two months rent. The court concedes that Kellam got a bargain on the mural. But, it was a bargain to which Simms agreed.

¹ Delaware courts have long interpreted 10 *Del. C. §9571* to require any party filing an appeal pursuant to that section to comply with what is referred to as the “mirror image rule”. The mirror image rule requires that if “an appeal from a Justice of the Peace Court fails to correspond to the process on which the action is founded and the names of the parties, the numbers of the parties, or in the character of the suit, the variance is fatal and the Court does not have jurisdiction to hear the appeal”. *Rockford Builders, Inc. v. Caceras*, 2001 WL 1557503, at *1 (Del. Com. Pl. August 29, 2001) (citing *Dzedzej v. Prusinski*, 259 A.2d 384, 385 (Del. Super. 1969)). *See also* Rule 72.3 of the *Civil Rules Governing the Court of Common Pleas*.

CONCLUSION

As a result of the Court's finding of fact, which is based on the entire record, including all direct and circumstantial evidence, and the references therefrom, and the Court's above-referenced conclusions of law, the Court awards judgment for Plaintiff Kellam & Company, Inc., against Defendant K.O Simms as follows:

- (a) Damages in the amount of \$2,200.00; and
- (b) Pre and post judgment interest at the legal rate from March 1, 2003.²

IT IS SO ORDERED this _____ day of November, 2005.

CHARLES W. WELCH
JUDGE

² Kellam also requested the reimbursement of court costs for this action. However, that request for reimbursement must be denied pursuant to 10 *Del. C.* §5102 since Kellam brought the action in Kent County, Delaware, and Simms resides in New Castle County, Delaware.