

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

VIKAS GUPTA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
CONSOLIDATED PROPERTIES, LLC	:	
	:	
Appellant	:	No. 810 MDA 2017

Appeal from the Judgment Entered April 25, 2017  
In the Court of Common Pleas of Cumberland County  
Civil Division at No(s): 12-7444

BEFORE: GANTMAN, P.J., SHOGAN, J., and OTT, J.

MEMORANDUM BY GANTMAN, P.J.: **FILED NOVEMBER 21, 2017**

Appellant, Consolidated Properties, LLC (“Landlord”), appeals from the judgment entered in the Cumberland County Court of Common Pleas, in favor of Appellee, Vikas Gupta (“Tenant”), in this landlord-tenant action. We affirm in part, vacate in part, and remand for modification of damages.

In its opinion, the trial court set forth the relevant facts and procedural history of this case. Therefore, we have no reason to restate them. We add that the court denied Landlord’s motion for reconsideration on April 19, 2017, and entered judgment in favor of Tenant on April 25, 2017. On May 18, 2017, Landlord filed a timely notice of appeal. On May 23, 2017, the court ordered Landlord to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b), and Landlord timely complied.

Landlord raises the following issues for our review:

[WHETHER THE TRIAL COURT ERRED WHEN IT DETERMINED] A LANDLORD [DOES NOT HAVE] AN OPPORTUNITY TO REMEDY AN ALLEGED DEFECT IN RESIDENTIAL RENTAL PROPERTY UNDER PENNSYLVANIA'S IMPLIED WARRANTY OF HABITABILITY?

[WHETHER THE TRIAL COURT ERRED WHEN IT DETERMINED] [TENANT] SUSTAIN[ED] HIS BURDEN OF PROOF THAT A PROPERTY VIOLATED PENNSYLVANIA'S IMPLIED WARRANTY OF HABITABILITY WHERE [TENANT]'S PHOTOGRAPHIC EVIDENCE WAS INCONSISTENT WITH HIS TESTIMONY?

[WHETHER THE TRIAL COURT ERRED WHEN IT DETERMINED] A WRITTEN, EXECUTED ACCORD AND SATISFACTION [DID NOT] BAR [TENANT] FROM PURSUING A CLAIM WHERE [LANDLORD] RETURNED THE SECURITY DEPOSIT AS CONSIDERATION?

[WHETHER THE TRIAL COURT ERRED WHEN IT AWARDED TENANT LOST WAGES?]

(Landlord's Brief at 5).

After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable Merle L. Ebert, Jr., we conclude Landlord's issues one through three merit no relief. The trial court opinion comprehensively discusses and properly disposes of the questions presented. (**See** Trial Court Opinion, filed July 17, 2017, at 5-10) (finding: **(1-2)** insects heavily infested apartment; Tenant and Tenant's wife credibly testified regarding degree of infestation; Tenant submitted documentary evidence showing insects remained in apartment after several extermination treatments and cleanings; Landlord failed to eliminate insect infestation for approximately one-third of lease period; evidence presented

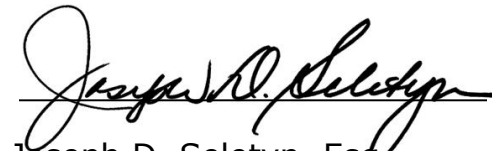
at trial indicated Landlord had notice of insect infestation, and reasonable opportunity to remedy infestation, but failed to do so in reasonable time frame; degree of insect infestation prevented Tenant from using apartment for intended purpose of habitation; Tenant had reasonable concerns for health and safety of his family due to conditions inside apartment; record does not support Landlord's contention that trial court created separate standard of habitability between lower-income and higher-income rental housing; court properly found Landlord breached implied warranty of habitability and correctly awarded damages to Tenant; **(3)** first, no reasonable dispute existed between parties; Tenant was unable to live in residence due to insect infestation; Tenant did not breach lease agreement when Tenant vacated residence because apartment was uninhabitable; second, Landlord gave up nothing in consideration of accord and satisfaction; Landlord owed Tenant return of security deposit regardless of whether parties purportedly reached meeting of minds; finally, Tenant did not accept and retain Landlord's offered payment; Tenant initially accepted Landlord's return of security deposit but immediately rejected it; Tenant communicated his rejection to Landlord and refused to cash check; therefore, Landlord failed to establish accord and satisfaction). We accept the court's analysis and affirm as to issues one through three on the basis of the trial court opinion.

On the issue on damages, however, the trial court and the parties

agree that the court should not have considered or awarded anything for lost wages and travel expenses. The trial court asks us to remand the case to allow the court to modify the judgment to remove the amount awarded to Tenant for lost wages and travel expenses. Accordingly, we affirm the trial court's decision in part; but we vacate the judgment in part and remand for modification of the damages to exclude lost wages and travel expenses.

Judgment affirmed in part and vacated in part; case remanded for modification of damages. Jurisdiction is relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 11/21/2017