

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC.

SUPERIOR COURT

(FILED: February 20, 2014)

TRACY GREGOIRE; MARK TRAYNOR; :
CARL TRUAX :

VS. :

C.A. No. KD 13-1085

BAIRD PROPERTIES, LLC AND :
MICHAEL BAIRD :

DECISION

I

Facts and Travel

RUBINE, J. This matter was heard as a trial de novo on appeal from a judgment by stipulation in the District Court. The Plaintiffs are residents of a residential property located at 29 Spring St., West Warwick, Rhode Island (the Property). On or about November 4, 2011, Plaintiffs Gregoire and Traynor (also referred to as the tenants) entered into a residential lease agreement with Due North Investments, LLC (Due North). The lease was to commence on November 15, 2011. Plaintiff Truax did not sign the lease but resided at the Property with Plaintiffs Traynor and Gregoire and Ms. Gregoire’s two minor children. The written lease does not identify Plaintiff Truax as a person entitled to use the Property, and at no time did either Due North or Defendants give written permission for Mr. Truax to occupy the premises.

Baird Properties, LLC (Baird or landlord) held a mortgage on the Property. As a result of default by Due North, Baird foreclosed on the Property and acquired title to the Property by way of a foreclosure deed recorded on December 5, 2012. By letter dated September 7, 2012, Baird notified his tenants, including those residing at the Property, that it was acting on behalf of

Southbridge Savings Bank (Southbridge) and that as of that date all rental payments should be made to Southbridge and delivered to Baird. The letter also stated that rental payments should no longer be paid to either Due North or its principals, Robert and Linda Carye.¹ The following day, Due North sent a letter to the tenants advising that, until an actual foreclosure deed is recorded, rent must be paid to Due North, and that the letter sent the previous day from Baird should be ignored. Furthermore, the letter stated that Michael Baird and any employee or agent of Baird were forbidden from entry on the Property. Finally, Due North represented itself as owner and landlord of the Property and stated that the tenants remained tenants of Due North and that rent was timely due to Due North, with the consequence of eviction if the rent was not timely paid to Due North. As a result of this confusion and upon advice of counsel, the tenants did not pay the November 2012 rent to either Due North or Baird. The tenants were current with Due North for all rent due through October 2012. Defendant Michael Baird is the principal of the landlord, Baird, and, at all times pertinent to this action, acted as an agent of the landlord, and not individually.

Mr. Traynor and Ms. Gregoire testified credibly that, amidst this ownership confusion, Mr. Baird showed up at the Property, unannounced, on December 9, 2012. He commenced a conversation with Mr. Traynor and Ms. Gregoire on the sidewalk outside the Property. He stated that if they wished to continue their tenancy at the Property, they had to appear at his office before noon the next day to sign a new lease, pay back rent, and pay an additional security deposit. Mr. Baird stated that failure to appear at his office the following day would result in his turning off the water and electricity. Ms. Gregoire corroborated Mr. Traynor's description of what Mr. Baird had told them that morning. She characterized Mr. Baird's statement as a threat.

¹ Apparently Baird had borrowed from Southbridge, which had an assignment of rents as additional security for the loan.

Ms. Gregoire and Mr. Traynor testified that they had paid the September and October 2012 rent and the security deposit to Due North, but that, due to the conflicting letters received in September 2012, and upon advice of counsel, they did not pay the November 2012 rent either to Due North or Baird.

In his testimony, Mr. Baird admitted to the December 9, 2012 visit to the Property but denied that he threatened Mr. Traynor or Ms. Gregoire with shutting the water or electricity off. Based on credibility considerations, two corroborating witnesses, Mr. Baird's demeanor at the Property, the anger Mr. Baird exhibited subsequently when he was at the Property, and the sequence of events that followed, the Court finds the testimony of the tenants more credible concerning the content of the conversation with Mr. Baird on the morning of December 9, 2012. This Court finds that the only reason the tenants left the apartment on December 10, 2012 was because they were forced to do so by the notice from the building inspector posted at the Property. At no time did the tenants "abandon" the Property.² The only communication that the tenants or Mr. Truax had with Mr. Baird was to the contrary—that they did not intend to abandon the Property.

The tenants did not go to Mr. Baird's office the following day due to the conflicting letters of ownership, nor did they sign a new lease, pay back rent or pay a new security deposit with Baird, due to the confusing ownership issues and upon advice of counsel.

As he indicated he would, Mr. Baird returned to the Property on the morning of December 10, 2012. At this time, he went to the basement of the Property and testified that he smelled fumes. Due to the condition of the furnaces, it is reasonable to believe that the basement

² Abandonment as defined in the Residential Landlord Tenant Act results from vacating "the premises without notice to the landlord [with] no intention of returning, as evidenced by non-payment of rent for more than fifteen (15) days and removal of substantially all possessions from the premises." G.L. 1956 § 34-18-11(1).

smelled of fumes when Mr. Baird arrived. Ms. Gregoire was at home when Mr. Baird arrived on the morning of December 10, 2012. From her second floor apartment, Ms. Gregoire heard a lot of banging and swearing. Ms. Gregoire heard Mr. Baird, in a loud voice, refer to the first floor tenants, former owners of the Property, as “f...ing squatters” and that they needed to get the hell out of the apartment. She was not able to determine the source of the banging.³

Upon inspection of the basement on the morning of December 10, 2012, Mr. Baird saw that one of the furnace units was puffing smoke. As a result, Mr. Baird contacted his furnace service company, Barlow Heating. He also contacted the West Warwick Building Inspector’s office and requested an inspection. It did not appear to the Court that contacting the building inspector was necessary or prudent, in that Barlow Heating had removed the faulty burners with the intention of repairing them off premises. Both Mr. Barlow, from the heating company, and Mr. Argenti, the West Warwick electrical inspector, appeared at the Property on the morning of December 10, 2012. Mr. Barlow found the furnaces to be in disrepair and removed some parts for repair. Accordingly, the heat was shut off. Upon inspection, Mr. Argenti observed several electrical code violations, including open electrical panels in the basement. Breakers to the units on the first and second floors were shut off. He was also of the opinion that the electrical wiring from the panels was completely ripped out. According to Mr. Argenti’s professional opinion, it appeared the cause of the hanging wires indicated to him that the wiring and electrical box had been tampered with. In addition to the violations observed in the basement, Mr. Argenti observed several violations in the first and second floor apartments, including a lack of smoke detectors as required in multi-family homes. All of his observations were documented on a field

³ It should be noted that Robert and Linda Carey were the principals of Due North, the former owner and mortgagee. It was clear from the testimony that Mr. Baird and the Careys had a very acrimonious relationship, resulting from Due North’s default of the mortgage loan and the bankruptcy and foreclosure proceedings that followed the default.

inspection notice dated December 10, 2012. As a result of the inspection, he found the Property “not approved.” The electric company was contacted at 11:45 a.m. and instructed to shut off power to the Property. The West Warwick building official, Kerry Anderson, also inspected the Property on December 10, 2012, at Mr. Baird’s request. Mr. Anderson also prepared a field inspection report as a result of his inspection on December 10, 2012. He also observed the electrical panel and noted “tampering with the electrical panel.” He noted that the burner had been removed from the first floor boiler and that the safety shut-off was removed from the second floor furnace. As a result of the boilers being shut off for repairs, there was no hot water to the Property, which used a tankless hot water system. Without heat in the building, he was concerned about the possible freezing of water pipes. Mr. Anderson, therefore, contacted Kent County Water Authority instructing them to shut off water to the Property as a result of no heat or electricity. He “posted” the building as unsafe for occupancy at 4:45 p.m. on December 10, 2012. He also wrote to the tenants that they had to fully vacate the premises by 4:00 p.m. on Monday, December 17, 2012, due to unsafe conditions at the Property. He cited to the provisions of G.L. 1956 § 23-27.3-125.

It should be noted that Mr. Traynor had been in the basement of the Property weekly (most recently December 8, 2012) and observed no problems with the electrical wiring or furnaces on those occasions. The first time Mr. Baird inspected the Property after acquiring it by foreclosure was the morning of December 10, 2012. He did not go to the Property because a tenant complained of fumes or smelled fumes. He only noted the smell of fumes when he arrived, leading to the conclusion that he went to the Property on the morning of December 10, 2012 to do more than attend to repairing the oil burner units. Mr. Baird was alone in the

basement for several hours on the morning of December 10, 2012 before the heating repair company or the building officials arrived.

This Court finds as fact that Mr. Baird came to the Property on December 10, 2012 with the intent of tampering with the electrical system. His calls to the building officials that morning were for the purpose of alerting them to conditions he knew would result in an order from the Town of West Warwick that the tenants vacate the Property.

As a result of the Property being posted as unsafe, Plaintiffs Traynor, Gregoire, and Truax and the children vacated the Property on December 10, 2012. Neither Mr. Traynor nor Ms. Gregoire indicated to Baird that it was their intent to terminate the lease or vacate the Property. In fact, Mr. Truax, before leaving, placed a notice on the exterior door to the apartment that it was not their intention to abandon the Property. Upon leaving the Property, they resided with members of Ms. Gregoire's family. The tenants evidenced no intention to abandon the premises. At no time did the tenants ever indicate to Baird that they were terminating the lease or abandoning the Property. In fact, the only communications with Mr. Baird indicated no such intention.⁴

On the morning of December 10, 2012, Mr. Truax observed Mr. Baird return to the Property. He further observed Mr. Baird kick in the door to the apartment. He once again heard Mr. Baird use profanity and refer to the tenants as "squatters" and scum who had no rights to be at the Property. Mr. Truax returned to the Property on December 21, 2012. He observed a pick-up truck parked in front of the dumpster. He further stated that he observed his personal property that he kept at the apartment now disposed of in the dumpster. His description was that the

⁴ The fact that Mr. Traynor purchased less than a full tank of heating oil does not, in the Court's mind, indicate an intention to abandon the Property. Nor is there any evidence that Mr. Baird was aware of the tenants' partial oil delivery.

property was damaged in the dumpster. Mr. Truax called the police. After the West Warwick Police arrived at the Property, the activity of Mr. Baird and others concerning the disposal of personal property ceased. Based on photographs of the property in the dumpster, Mr. Truax prepared lists of his personal items appearing damaged and in the dumpster. At trial, Mr. Truax authenticated several photographs and testified that he observed in the photographs many items of his personal property. The photographs purported to show specific items which he identified as his personal property. Although the photographs appeared to show various items in disarray, the Court failed to see that the photographs corroborated Mr. Truax's testimony of specific items of personal property as identified on his written list. It was difficult to discern from the photographs entered as evidence by Mr. Truax specific items of property allegedly discarded. Mr. Truax attempted to place value on the missing items of personal property. The attempt to attach a specific value to each item was by introducing listings from www.walmart.com. The items he identified from Walmart corresponded loosely to the items he purported to identify in the dumpster. However, the testimony was lacking in terms of the condition of the item at the time of its loss, or the model or quality of the lost item.⁵ For that reason, the Court finds that Mr. Truax failed to meet his burden of establishing damage for any items allegedly destroyed, in support of his claims of malicious destruction of property and negligence.⁶

⁵ For example, Mr. Truax identified a vacuum cleaner from the dumpster photographs that he alleged was discarded by Baird. The Court has no way of knowing the model of vacuum cleaner or its condition at the time of loss. Mr. Truax testified, however, to a Walmart vacuum cleaner having a purchase price online of \$79.00 as a new product. The testimony and exhibits provided insufficient information for the Court to determine either the precise nature of the item identified in the dumpster or an accurate replacement value of the allegedly discarded item.

⁶ The Court finds that Mr. Truax cannot assert a statutory claim under the self-help provisions of the Residential Landlord Tenant Act § 34-18-44, since those remedies are only available to tenants at a residential property. Although Mr. Truax resided at the Property, the lease identified the occupants as Tracy Gregoire and Mark Traynor together with two minor children, Hunter and Summer Paquette. According to Paragraph 10 of the lease, only the previously defined

II

Analysis and Conclusions of Law

As a result of the Court's findings of fact, the Court makes the following legal conclusions:

1. Tracy Gregoire and Mark Traynor were tenants at the Property owned by Baird. Mr. Truax was not entitled to occupy the premises since the lease did not identify him as a person entitled to occupy the premises. The term "tenant" as defined in the Residential Landlord Tenant Act means a person entitled to occupy a dwelling unit to the exclusion of others. Sec. 34-18-11(17). Only Plaintiffs Traynor and Gregoire and the minor children were persons entitled to occupy the premises under the lease. Others could occupy the premises only upon the written consent of the landlord. Mr. Truax was not a tenant at the Property as defined in the Residential Landlord Tenant Act or under the lease. Neither the subjective intent of Mr. Truax or Mr. Traynor is sufficient to qualify Mr. Truax as a tenant under the lease, nor does the knowledge of the landlord of his residing at the Property result in his being a tenant under the Residential Landlord Tenant Act. At the time of the incidents complained of, the landlord at the Property was Baird. As a result of foreclosure, Baird became the landlord of the Property in accordance with a written lease dated November 4, 2011, originally entered by the tenants with Due North.

occupants were tenants under the lease. Tenants' relatives, friends and guests are prohibited from use or occupancy of the Property without the landlord's written consent. The landlord never agreed in writing that Mr. Truax could use or occupy the Property as a tenant, and the Court finds that Mr. Truax was an unauthorized occupant and not a tenant within the terms of the Residential Landlord Tenant Act. Sec. 34-18-11(17); Tambor v. Miller, 792 A.2d 744, 745 (R.I. 2002). Mr. Truax, therefore, has no standing to enforce the protections provided to tenants under the Residential Landlord Tenant Act.

2. After Baird purchased the Property at foreclosure sale, Baird became the owner of the Property and was bound by the terms of the written lease previously executed by its predecessor in title.

“In case of any foreclosure on any dwelling or residential real property after the date of enactment of this title, any immediate successor in interest in such property pursuant to foreclosure shall assume such interest subject to—the rights of any bona fide tenant, as of the date of the notice of foreclosure—under any bona fide lease entered into before notice of foreclosure to occupy the premises until the end of the remaining term of the lease.” 12 U.S.C. § 5220; see also § 34-18-23(c).⁷

In addition, Baird is deemed to be holding the security deposit and all rent paid by tenants during 2012 that was previously paid to Due North. Tenants were also bound by the written lease executed with Due North. Accordingly, it was not legally necessary for the tenants to sign a new lease with Baird or pay an additional security deposit.⁸ It was unreasonable as a matter of law for Baird to insist on the tenants signing a new lease or paying a new security deposit as a condition to the tenants remaining in possession of the leased premises. Nor could Baird insist on payment of back rent as a risk of being barred from the premises. Baird had the right to send written notice of back rent due and to commence eviction proceedings if the back rent deficiency was not cured within fifteen days from the date of such notice. Baird could not exercise a self-help remedy as a result of tenants’ failure to be current on their rent obligation. See § 34-18-44. Neither Mr. Baird nor Baird had a legal justification to threaten loss of heat and electricity for failure of the tenants to sign a new lease, pay back rent or pay a new security deposit. Since Mr. Baird made such threat to the tenants on December 9, 2012, he acted in violation of § 34-18-44.

⁷ Section 34-18-23(c) provides that the purchaser of rental property takes title subject to the same rights and responsibilities toward the tenant which the seller had.

⁸ Section 34-18-19, which deals with security deposits, provides that “[i]n the event the landlord transfers his or her interest in the premises, the holder of the landlord’s interest in the premises at the time of the termination of the tenancy is bound by this section.” Sec. 34-18-19(e).

The Court also finds that Mr. Baird acted in accordance with his threat by intentionally creating an uninhabitable condition on April 10, 2012. Mr. Baird ripped out the electrical wires and removed the door to the electrical panel serving tenants' unit. These actions led to the termination of electrical and water service to the Property during a time that the tenants had the legal right to remain in possession of the Property, pursuant to a written lease to which Baird was bound.

III

Conclusion

For the reasons set forth in this Decision, Plaintiffs Gregoire and Traynor are entitled to the statutory remedy provided by § 34-18-34 and are awarded damages jointly and severally of three months' rent, for a total of \$2955, together with Plaintiffs' reasonable attorneys' fees, to be determined, against Baird. Plaintiffs Gregoire and Traynor are also entitled to the return of the security deposit in the amount of \$985. Plaintiff Truax is not entitled to damages under § 34-18-34. Plaintiff Truax has also failed to meet his burden of proof with respect to his claims for malicious destruction of property and negligence. Accordingly, judgment shall enter for the Defendants as to the claims by Plaintiff Truax.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: **Gregoire v. Baird Properties, LLC, et al.**

CASE NO: **KD 13-1085**

COURT: **Kent County Superior Court**

DATE DECISION FILED: **February 20, 2014**

JUSTICE/MAGISTRATE: **Rubine, J.**

ATTORNEYS:

For Plaintiff: **James Moretti, Esq.**

For Defendant: **Fred J. Volpe, Esq.**