

Superior Court Repossesses Tenant

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So you're a landlord who has a tenant who has not paid rent. You send them a timely notice of termination of the lease and a notice of eviction. The next logical step is to file suit at the magisterial judge level seeking possession and award of the damages for the unpaid rent. Right? Well, "not so fast," said the Pennsylvania Superior Court in the recent decision of *Frempong v. Richardson*, issued in April of 2019.

The tenant had failed to pay rent and the landlord pursued the tenant as relayed above. A notice to terminate the lease and notice of eviction was issued in November 2017, effectively terminating the lease in December 2017. The landlord then proceeded to file a landlord tenant complaint seeking possession and judgment for rent in arrears. Initially, the municipal court judge in Philadelphia who would be the magisterial judge in all other counties entered judgment granting the landlord's possession only. The tenants appealed to the Philadelphia Court of Common Pleas. The landlords proceeded to file a claim in ejectment and a breach of the lease for failure to pay rent and utilities in the amount of \$2,100.

The hook in this particular case was the Philadelphia Code relating to rental licenses. Chapter 9-3900, subsection 9-3902(1)(a) requires that the owner of any dwelling let for occupancy to obtain a rental license should not collect rent with respect to any property that was required to be licensed unless a valid rental license had been issued for the property. The subsequent section requires that the landlord provide the tenant with a certificate of rental suitability as well as a copy of the Philadelphia Partners for Good Housing Handbook.

It was established at trial that the landlords did not have a certificate of rental suitability. The trial court seemingly providing for what it deemed to be an equitable solution under the circumstances, provided that the landlord was granted possession but the tenant was not required to pay the back rent due to the noncompliance with the ordinance by the landlord.

The Superior Court took a more technical view of the requirements of the Philadelphia Code. The pertinent section of the Philadelphia Code provided that any owner who fails to obtain a rental license regarding certificate of rental suitability or whose license had been suspended shall be denied the right to recover possession of the premises or to collect rent for the period of noncompliance. After careful review, the Superior Court determined that that particular section of the Philadelphia Code prohibited landlords from recovering rent as well as possession of the property.

With more and more of these types of local ordinances popping up, particularly with regard to tenants' rights and stricter code enforcement, landlords should beware of not only technical compliance with such ordinances to ensure dispossession of the property by the tenants but also the potential for protracted litigation should tenants' rights groups feel the need to interject themselves in these types of proceedings.

For additional information contact Kevin L. Hall. Kevin regularly handles residential and commercial landlord-tenant disputes.