

G. Weber

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KARINA WASHINGTON,
Plaintiff

: NO. 21-0457

:
:

vs.

: CIVIL ACTION - LAW

:
:

WCH PROPERTIES, LLC,
Defendant

: *Preliminary Objections*

OPINION AND ORDER

AND NOW, following argument held on October 1, 2021 on Defendant's Preliminary Objections to Plaintiff's Second Amended Complaint, the Court hereby issues the following OPINION and ORDER.

BACKGROUND

On May 21, 2021, Plaintiff Karina Washington ("Plaintiff") filed a Complaint against Defendant WCH Properties, LLC ("Defendant"), arising out of a landlord-tenant relationship. Plaintiff filed an Amended Complaint on June 14, 2021, and a Second Amended Complaint on July 15, 2021.

The Second Amended Complaint alleges that Plaintiff entered into a written lease agreement (the "Lease") for a residence at 1 Maple Avenue, Williamsport (the "Residence"), beginning on June 16, 2020 and purporting to terminate on June 31, 2021.¹ On December 29, 2020, Defendant purchased the Residence and assumed the Lease. On April 23, 2021, an electrical fire caused extensive damage to the Residence, requiring Plaintiff and her family to vacate the premises and rendering the

¹ Although the Lease indicates a termination date of June 31, 2021, no such date exists, as June has only 30 days; the Court construes the Lease as running through June 30, 2021.

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Residence uninhabitable. Plaintiff alleges that “Defendant was aware of electrical issues at the Residence due to a prior fire at the same apartment building in recent history.” Plaintiff avers that personal items of hers were destroyed in the fire, that she was forced to expend significant sums of money to obtain alternate housing, and that following the fire Defendant demanded Plaintiff pay utility bills that had either already been paid or were not Plaintiff’s responsibility. On May 18, 2021, Plaintiff made written demand on Defendant to provide alternative housing; Defendant has not done so.

The Second Amended Complaint contains five counts: Breach of Contract; Breach of the Implied Warranty of Habitability; Violation of Unfair Trade Practices and Consumer Protection Law; Negligence; and Breach of Contract/Statutory Claim for Security Deposit.

Defendant filed Preliminary Objections to the Second Amended Complaint on July 21, 2021. Defendant raises five preliminary objections; the first four are demurrers to Counts I through IV of the Second Amended Complaint, and the fifth is a demurrer to Plaintiff’s demand for punitive damages.²

The Court addresses Defendant’s Preliminary Objections to the Second Amended Complaint *ad seriatim*.

ANALYSIS

A. Defendant’s First Preliminary Objection

Defendant’s first preliminary objection is a demurrer to Count I of the Second Amended Complaint. Count I alleges “[t]he Lease... placed a duty upon Defendant

² Pennsylvania Rule of Civil Procedure 1028(a)(4) allows preliminary objections for “legal insufficiency of a pleading (demurrer)....”

to provide Plaintiff with a habitable residence,” but “Defendant deprived Plaintiff of the use of the leased premises by failing to properly maintain the premises, by failing to provide temporary housing for Plaintiff, and by failing to timely repair the apartment from fire and consequential smoke and water damage.”³

Defendant notes that Plaintiff has not alleged that Defendant violated any specific provision of the lease, and argues Plaintiff has instead alleged a general violation of “a duty to provide a habitable residence, which is found nowhere in the contract but is rather implied as a matter of law to all residential leases.”⁴ Defendant explicitly denies any duty, contractual or otherwise, to provide temporary housing. Ultimately, Defendant contends that a breach of contract claim must be premised on a violation of a provision found within the four corners of a contract. Inasmuch as Plaintiff has failed to identify any such provision, Defendant argues, Count I is legally insufficient to state a claim for breach of contract.

Plaintiff essentially responds that Defendant’s arguments are prematurely asserted defenses, rather than appropriate objections to the pleadings. Plaintiff argues that she has adequately pled the existence of a contract, a breach thereof, and resultant damages, and therefore the claim is sufficient to survive the pleadings stage and reach discovery.

A party that wishes to state a “true contract cause of action” must generally identify the specific provision of the contract allegedly breached.⁵ The Supreme Court of Pennsylvania has not foreclosed the possibility, however, that implied duties

³ Second Amended Complaint, ¶¶28, 29.

⁴ Defendant’s Brief in Support of Preliminary Objections, 4.

⁵ See *Hoyer v. Frazee*, 470 A.2d 990, 992-93 (Pa. Super. 1984).

may appropriately serve as the basis for breach of contract claims.⁶ Thus, the Court does not believe that the failure to explicitly cite certain numbered provisions of the Lease is necessarily fatal to Plaintiff's Breach of Contract claim, to the extent such a claim is based on an implied duty like the implied warranty of habitability.

Count I, however, does not describe the alleged breach with sufficient specificity to put Defendant on notice of the nature of the breach. It is incumbent upon Plaintiff to explicitly state the basis for the claim, be it a specific numbered provision of the lease, the implied warranty of habitability,⁷ an explicit or implied right to quiet enjoyment of the Residence, or some other legal ground. As currently pled, the nature of Plaintiff's breach of contract claim is unclear. Therefore, the Court will SUSTAIN Defendant's first preliminary objection. Plaintiff shall have twenty (20) days from the date of this Order to amend Count I to state with specificity the exact nature of the alleged breaches of the Lease, including whether each alleged breach is of an express provision of the contract or an implied contractual duty.

⁶ See *Hanaway v. Parkesburg Group, LP*, 168 A.3d 146 (Pa. 2017). In *Hanaway*, the trial court "granted summary judgment as to [the plaintiffs'] contract claim [because the plaintiffs] had failed to identify a specific term of the limited partnership agreement that had been breached." *Id.* at 150. The Superior Court of Pennsylvania reversed, holding an alleged "breach of [a] covenant of good faith and fair dealing claim was a breach of contract action...." *Id.* at 151. A divided Supreme Court of Pennsylvania reversed the Superior Court and affirmed the grant of summary judgment, but explicitly rested its ruling on the fact that "there was no duty of good faith applicable to limited partnership agreements... at the time that the parties entered into the [contract] [and] at the time that an alleged breach occurred..." *Id.* at 158. None of the Justices endorsed the trial court's reason for dismissal, and both the Majority and Dissenting Opinions suggest that, had the general duty existed, it would have formed the proper basis for a breach of contract action.

⁷ Although Count I appears to rest at least in part on a breach of the implied warranty of habitability, Count II purports to bring a separate cause of action for breach of the implied warranty of habitability. Count II is addressed in detail *infra*.

B. Defendant's Second Preliminary Objection

Defendant's second preliminary objection is a demurrer to Count II, breach of the implied warranty of habitability. Defendant does not argue that this claim is improper *per se*, but rather demurs to some of Plaintiff's requested remedies. Plaintiff avers in Count II that "damages including, but not limited to, consequential, restitution and expectation damages are suitable remedies for a breach of contract claim."⁸ Plaintiff further claims that she "should be relieved of her obligation to pay rent for this period and compensated for any damages that resulted from this breach, including additional expenses for housing, food, clothing, transportation, and other necessities; substantially in excess of her usual expenses."

Defendant readily concedes that Plaintiff's request to be relieved of her obligation to pay rent is an appropriate remedy,⁹ and in fact Defendant has not sought, nor has Plaintiff paid, any rent since the fire. Defendant argues, however, that all other remedies requested by Plaintiff are improper. Defendant cites *McIntyre v. Phila. Hous. Auth.* for the proposition that "traditional contract remedies are the only remedies available to enforce the implied warranty of habitability."¹⁰ These include "termination of the obligation to pay rent... rent abatement... the 'repair and deduct remedy'... and other traditional contract remedies, such as specific performance."¹¹

⁸ Second Amended Complaint, ¶32.

⁹ Defendant notes that the Lease explicitly provides that, "[i]f the premises are damaged through fire... Tenant will owe no rent for any period during which Tenant is substantially deprived of the use of the premises." Lease, ¶16A.

¹⁰ *McIntyre ex rel. Howard v. Philadelphia Housing Authority*, 816 A.2d 1204, 1209 (Pa. Cmwith. 2003).

¹¹ *Id.* at 1208 (citing *Pugh v. Holmes*, 405 A.2d 897, 907-08 (Pa. 1979)) (internal emphasis and numbering omitted).

Plaintiff responds that Defendant's arguments are more akin to defenses than preliminary objections, and should be addressed after discovery. Plaintiff argues that if she is able to prove a breach of the contract, and is able to show damages directly flowing from that breach, such damages are appropriate and should not be barred simply because a breach of the implied warranty of habitability substantially overlaps with breach of contract claims.

The Court agrees with Defendant that under Pennsylvania law, damages for a breach of the implied warranty of habitability are confined to "traditional contract remedies." These remedies are designed to either put a party in the same position it would be in had the contract been performed, restore the party to the position it would have been in had the contract not been made, or transfer from the breaching party to the non-breaching party the benefit the breaching party had received due to its breach.¹²

Here, Defendant has clearly not received a benefit from the alleged breach, especially because Plaintiff has been relieved of her obligation to pay rent. Inasmuch as the Lease explicitly states "[i]f the premises are damaged through fire... Tenant will owe no rent," it is clear the Lease does not impose a duty on Defendant to provide identical housing – if such a duty was imposed, the Lease would direct the Tenant to continue paying rent, which the Landlord would then be required to use to procure housing. Thus, the appropriate remedies available to Plaintiff for the alleged breach of contract are "traditional contract remedies" designed to restore Plaintiff to

¹² See 16 Summ. Pa. Jur. 2d Commercial Law § 6:36 (2d ed.).

the same position she would have been in had the Lease terminated or not been entered into.

For the foregoing reasons, the Court will SUSTAIN Defendant's second preliminary objection. Plaintiff shall have twenty (20) days from the date of this Order to specifically plead which damages she wishes to recover pursuant to traditional contract remedies.

C. Defendant's Third Preliminary Objection

Defendant's third preliminary objection is a demurrer to Count III of the Second Amended Complaint. Count III alleges a violation of the Unfair Trade Practices and Consumer Protection Law ("UTCPL"), specifically resting on three grounds:

"Defendant has engaged in an unlawful course of conduct which breached the contract with Plaintiff, by failing to properly maintain the property... thereby depriving Plaintiff of her residence which Defendant contracted to rent to her";¹³ "Defendant has failed to comply with [the] warranty given to Plaintiff to provide her a habitable residence";¹⁴ and "Defendant [has] repeatedly demanded payment of amounts that were not owed by Plaintiff, at a time when she was struggling to find emergency housing."¹⁵ Plaintiff contends these acts violated the UTCPL's prohibitions on "[k]nowingly misrepresenting that services, replacements or repairs are needed if they are not needed"¹⁶ and "[e]ngaging in any other fraudulent or deceptive conduct

¹³ Second Amended Complaint, ¶35.

¹⁴ Second Amended Complaint, ¶36.

¹⁵ Second Amended Complaint, ¶37.

¹⁶ 73 P.S. § 201-2(4)(xv).

which creates a likelihood of confusion or of misunderstanding.”¹⁷ Plaintiff avers that these violations were committed knowingly.

Defendant argues that a claim for breach of an implied warranty of habitability cannot serve as the basis for a UTPCPL claim, and further contends that “repeated[ly] demand[ing] payments” is similarly insufficient to state a UTPCPL claim. Defendant points out that, in *Brightful v. Gregory*, the District Court for the Eastern District of Pennsylvania held that a breach of the implied warranty of habitability cannot serve as a basis for a UTPCPL violation except in egregious or continuous circumstances.¹⁸

Plaintiff, as a threshold matter, cites *Com., by Creamer v. Monumental Properties, Inc.* for the proposition that the UTPCPL applies to residential leases.¹⁹ Plaintiff clarified her claims for a UTPCPL violation in her brief and at oral argument. She explained that the references to the implied warranty of habitability were not intended to duplicate the prior breach of contract claims, but were rather meant to convey that – after the fire – Defendant had repeatedly, and falsely, told Plaintiff the damage to the Residence would be fixed. She also elaborated that “[a]fter the fire... Defendant continued to demand payment for a second water bill that did not pertain to the residence rented by Plaintiff, in addition to payment for a gas bill that would never be charged to the Defendant, as a condition of performing any of Defendant’s obligations.”²⁰

¹⁷ 73 P.S. § 201-2(4)(xxi).

¹⁸ 1999 WL 812791 (E.D. Pa. 1999).

¹⁹ 329 A.2d 812 (Pa. 1974).

²⁰ Plaintiff’s Brief in Opposition to Preliminary Objections, 3.

Although UTPCPL claims in a landlord/tenant action may sometimes survive a preliminary objection, the Complaint does not allege facts with enough specificity to allow a UTPCPL claim. Therefore, the Court will SUSTAIN Defendant's third preliminary objection, and provide Plaintiff twenty (20) days to amend her Complaint to state with specificity the conduct which she alleges violates provisions of the UTPCPL.

D. Defendant's Fourth Preliminary Objection

Defendant's fourth preliminary objection is a demurrer to Count IV of the Second Amended Complaint. Count IV states that, "in the alternative to damages that may be awarded to Plaintiff for breach of contract, Plaintiff asserts a torts claim of negligence for failure to conform to its duty to provide a safe premise for Plaintiff."²¹

Defendant argues that, inasmuch as the "relationship between the parties in this case is contractual" and the conduct alleged throughout the Second Amended Complaint consists solely of breaches of the Lease, Count IV is an attempt by Plaintiff to "re-cast[] [an] ordinary breach of contract claim[] into [a] tort claim[]" and is thus barred by the "gist of the action" doctrine.²²

Plaintiff responds that the alleged duty and breach alleged in Count IV is the duty of a landlord "to protect tenants from injury or loss arising out of a negligent failure to maintain a rental property in a safe condition" as described in *Echeverria v. Holley*.²³ In *Echeverria*, following a fire at a rental property, the plaintiffs alleged

²¹ Second Amended Complaint, ¶41.

²² See *eToll, Inc. v. Elias/Savion Advertising, Inc.*, 811 A.2d 10, 14 (Pa. Super. 2002).

²³ 142 A.3d 29, 34 (Pa. Super. 2016).

“negligence claim[s]... for failure to install smoke detectors... [and] negligently fail[ing] to maintain electrical wiring at the property.”²⁴ The Superior Court concluded that the plaintiffs’ claim for failing to install smoke detectors sufficiently stated a common law negligence claim, despite the fact that the “dangerous condition (the absence of smoke detectors)... was in violation of an implied warranty of habitability or a statutory or administrative regulation....”²⁵

Ultimately, at argument, Plaintiff conceded that the Complaint did not allege her negligence theories with sufficient specificity, and requested leave to amend to clarify the basis for this theory of negligence. Thus, the Court will SUSTAIN Defendant’s fourth preliminary objection. Plaintiff shall have twenty (20) days from the date of this Order to amend her Complaint to state her theory of negligence with specificity.

E. Defendant’s Fifth Preliminary Objection

Defendant’s fifth preliminary objection is a demurrer to Plaintiff’s request for punitive damages. Defendant cites *Hutchinson ex rel. Hutchinson v. Luddy* for the proposition that an “act, or failure to act, must be intentional, reckless or malicious” to warrant punitive damages, and argues that Plaintiff has not pled sufficient facts to support punitive damages.²⁶

At argument, Plaintiff indicated that she was only seeking punitive damages under Count III, the UTPCPL claim, which does allege a “knowing” violation of the law. Plaintiff argued that, generally, it would be inappropriate to dismiss a request for

²⁴ *Id.* at 32.

²⁵ *Id.* at 36.

²⁶ 870 A.2d 766, 770 (Pa. 2005).

punitive damages before conducting discovery to determine the character of Defendant's actions.

The UTPCPL "does not confer a right to impose punitive damages."²⁷ Rather, it allows "[a]ny person who purchases or leases goods or services... and thereby suffers any ascertainable loss of money or property... as a result of the use or employment by any person of a method, act or practice [constituting unfair or deceptive acts or practices]" to "bring a private action to recover actual damages," and further provides that "[t]he court may, in its discretion, award up to three times the actual damages sustained... and may provide such additional relief as it deems necessary or proper," such as awarding to the plaintiff "costs and reasonable attorney fees."²⁸

Inasmuch as Plaintiff has disclaimed a request for punitive damages under her non-UTPCPL claims, and because punitive damages are unavailable for violations of the UTPCPL, Defendant's fifth preliminary objection is SUSTAINED. Plaintiff's request for punitive damages is STRICKEN from the Complaint. Plaintiff shall have twenty (20) days from the date of this Order to specify what damages she is seeking for the alleged violation of the UTPCPL.²⁹

²⁷ *Richards v. Ameriprise Financial, Inc.*, 152 A.3d 1027, 1035 (Pa. Super. 2016) (remanding to trial court to recalculate damages for UTPCPL violation without punitive damages).

²⁸ 73 P.S. § 201-9.2(a).

²⁹ The Court believes that Plaintiff may have intended "punitive damages" to refer to the treble damages statutorily available for a violation of the UTPCPL. Therefore, the Court will allow Plaintiff to amend her Complaint to request these authorized damages if she believes them appropriate.

CONCLUSION

For the foregoing reasons, the Court hereby ORDERS as follows:

Defendant's first preliminary objection is SUSTAINED. Plaintiff shall have twenty (20) days from the date of this Order to amend her Complaint to state with specificity the exact nature of the alleged breaches of the Lease, including whether each alleged breach is of an express provision of the contract or is implied.

Defendant's second preliminary objection is SUSTAINED. Plaintiff shall have twenty (20) days from the date of this Order to amend her Complaint to specifically plead which damages she wishes to recover pursuant to traditional contract remedies.

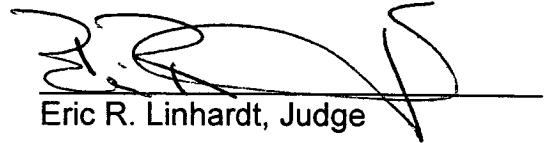
Defendant's third preliminary objection is SUSTAINED. Plaintiff shall have twenty (20) days from the date of this Order to amend her Complaint to state with specificity which conduct allegedly violated which provisions of the UTPCPL.

Defendant's fourth preliminary objection is SUSTAINED. Plaintiff shall have twenty (20) days from the date of this Order to amend her Complaint to state her theory of negligence and the specific facts in support of that theory.

Defendant's fifth preliminary objection is SUSTAINED. Plaintiff's request for punitive damages is STRICKEN from the Complaint. Plaintiff shall have twenty (20) days from the date of this Order to specify what damages she is seeking for the alleged violation of the UTPCPL.

IT IS SO ORDERED this 30th day of December 2021.

By the Court,



Eric R. Linhardt, Judge

ERL/jcr

cc: Stephanie E. Wolak-Fleming, Esq.
Gary L. Weber, Esq.