



10-1-2020

Recent Developments: Pettiford v. Next Generation Trust Services

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Recommended Citation

Snyder, Craig (2020) "Recent Developments: Pettiford v. Next Generation Trust Services," *University of Baltimore Law Forum*: Vol. 51 : No. 1 , Article 10.

Available at: <https://scholarworks.law.ubalt.edu/lf/vol51/iss1/10>

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RECENT DEVELOPMENT

PETTIFORD V. NEXT GENERATION TRUST SERV.: A TENANT IS NOT REQUIRED TO OBJECT TO PRESERVE THE RIGHT TO APPEAL WHEN THERE WAS NO CONSENT JUDGMENT, IS ENTITLED TO RAISE THE DEFENSE OF WARRANTY OF HABITABILITY WITHOUT THE THREAT OF AN IMMEDIATE EVICTION, AND IS NOT LIMITED TO RAISING A RENT ESCROW DEFENSE BASED ON CERTAIN CONDITIONS OR THE TIME OF THE YEAR.

By: Craig Snyder

The Court of Appeals of Maryland held that where there is no consent judgment, a tenant is not required to object to its entry to preserve her appeal, but rather can just appeal. *Pettiford v. Next Generation Trust Serv.*, 467 Md. 624, 649, 226 A.3d 15, 29 (2020). The court held that a tenant is entitled to raise a defense based on the warranty of habitability during a summary ejectment proceeding without the threat of immediate eviction. *Id.* at 663, 226 A.3d at 37. The court held that a tenant is not limited to raising a rent escrow defense during certain times of the year. *Id.* at 667, 226 A.3d at 40.

First, on November 13, 2018, Next Generation Trust Services (“Next Generation”) filed a complaint in the District Court of Maryland against Latisha Pettiford (“Pettiford”), alleging that Pettiford had failed to pay rent for five months and requesting repossession of the property. During trial, Pettiford asserted a defense based on the warranty of habitability. The court responded to Pettiford’s defense by saying that if the property is uninhabitable, then Pettiford will be “out by midnight[.]” Pettiford’s counsel responded that they could not move forward with the defense of warranty of habitability if Pettiford would be forced to vacate the property.

Next, Pettiford raised a rent escrow defense based on the heating issue with the property. Pettiford claimed that the last time that her heat worked was in February. Pettiford stated that she contacted maintenance personnel and the furnace was never fixed. The court informed Pettiford that she did not need heat through the months in question but that she could open an escrow for November.

After oral arguments, the parties discussed a possible resolution, but advised the court that they had not reached an agreement. The court asked if Pettiford owed the four months she did not pay, and she responded by saying “Mmm-hmm.” The court then entered a consent judgment for Next Generation. Pettiford appealed to the Circuit Court of Baltimore.

On April 18, 2019, the circuit court affirmed the district court’s judgment. Pettiford petitioned for a writ of certiorari on May 23, 2019, which the Court of Appeals of Maryland granted on August 26, 2019.

Fist, the court held that the district court's judgment was not a consent judgment, and Pettiford did not need to preserve her appeal by objecting. *Pettiford*, 467 Md. at 649, 226 A.3d at 29. Both parties advised the court that they had not come to an agreement to resolve the issue. *Id.* at 650, 226 A.3d at 30. The consent judgment was not a judgment entered at the consent of the parties, rather, it was initiated by the district court. *Id.* 467 Md. at 651–52, 226 A.3d at 30–31. No consideration was exchanged in the agreement because the parties never had an agreement. *Id.* at 652, 226 A.3d at 31. Additionally, Pettiford never gave a valid consent to the proposed judgment by the district court. *Id.* Pettiford's response of "mmm-hmm" falls short of a valid consent to a consent judgment. *Id.* at 652–53, 226 A.3d at 31.

Second, the court held that Pettiford is entitled to raise the defense of warranty of habitability during a summary ejection proceeding without being threatened with immediate eviction. *Pettiford*, 467 Md. at 663, 226 A.3d at 37. The implied warranty of habitability states that a landlord's "premises shall not have any conditions which endanger the life, health[,] and safety of the tenants involving . . . lack of heat." *Id.* at 663, 226 A.3d at 37 (quoting PLL § 9-14.2(a)(4)). An action for breach of the implied warranty of habitability may be "maintained as a defense in an action of summary ejection[.]" *Pettiford*, 467 Md. at 663, 226 A.3d at 37 (quoting PLL § 9-14.2(b)). The landlord must be given notice of the alleged breach and given reasonable time to repair the issue. *Pettiford*, 467 Md. at 664, 226 A.3d at 37–38 (citing PLL § 9-14.2(c)).

Pettiford was entitled to raise the defense of habitability. *Pettiford*, 467 Md. at 663, 226 A.3d at 37. Pettiford notified Next Generation that there was no heat on the premises since February. *Id.* at 634, 226 A.3d at 20. By trial, the heat had not been fixed for nine months. *Id.* Because Pettiford gave notice and a reasonable amount of time had passed, Pettiford was entitled to raise the defense of warranty of habitability. *Id.* at 665, 226 A.3d at 38. Therefore, the district court improperly threatened Pettiford with an immediate eviction and was required to consider the defense. *Id.* at 665, 226 A.3d at 38–39.

Third, the court held that Pettiford was allowed to raise a rent escrow defense because there were no temporal limitations requiring it to be filed at certain times of the year. *Pettiford*, 467 Md. at 667, 226 A.3d at 40. When a landlord, after a reasonable amount of time, has not repaired a defect or condition, the tenant may refuse to pay rent and raise the existing defect as an affirmative defense to a summary ejection action. *Pettiford*, 467 Md. at 667, 226 A.3d at 40 (citing MD. CODE ANN., Real Prop. §8-211 (West 2020)).

The Court of Appeals of Maryland disagreed with the district court's dismissal of Pettiford's rent escrow defense. *Pettiford*, 467 Md. at 666–67, 226 A.3d at 39-40. Instead, this court found that the district court improperly stated that the rent escrow issue needed to be raised in a separate action. *Id.* at 666–67, 226 A.3d at 39. Specifically, the Court of Appeals of Maryland found that the district court's instruction asking Pettiford to go to the clerk's

office and open the escrow for November was evidence of the court's misunderstanding. *Id.* The district court was incorrect because a rent escrow affirmative defense can be raised against Next Generation's summary ejectment action. *Id.* at 668, 226 A.3d at 40.

The district court's decision is improper because Pettiford was permitted to raise a rent escrow defense for any month as long as there is evidence of the defect. *Pettiford*, 467 Md. at 667, 226 A.3d at 40. The district court reasoned that since heat would not be needed from June to September, Pettiford could not open a rent escrow until November. *Id.* at 667, 226 A.3d at 39. However, there is nothing in the rent escrow statute that sets forth a temporal limitation or states that the hazardous defect must impact the tenant during the months that rent was withheld. *Id.* at 667, 226 A.3d at 40.

The court's holdings in this case protects future tenants from landlord mistreatment and incentivizes landlords to repair hazardous defects or conditions. A tenant can now raise multiple defenses to fight summary ejectment actions brought by landlords. A tenant can raise a rent escrow defense for a defective condition not repaired by the landlord even when the condition is not immediately impacting the tenant. Most importantly, a tenant can raise the defense of implied warranty of habitability without being threatened of immediate eviction. The holdings in this case provide more protections to tenants and promote safety in rental properties.