

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL

JOSEPH RUGGIERI and MICHAEL
RUGGIERI,

Plaintiffs,

v.

YVONNE WILLIAMS,

Defendant.

FEBRUARY TERM, 2024

No. 3154

COMMERCE PROGRAM

CONTROL NUMBER 24043997

ORDER

AND NOW, this 24th day of October 2024, upon consideration of the petition to open confessed judgment of defendant Yvonne Williams, and the response, it is **ORDERED** that the petition is **DENIED**.

Plaintiffs Joseph and Michael Ruggieri may not execute on this judgment unless and until they serve a written notice substantially in the form prescribed by Rule 2964 of the Pennsylvania Rules of Civil Procedure, serve it as required by Rule 2958.1(b), and file a return of service as provided by Rule 405.

BY THE COURT:

ASS FTR

ABBE FLETMAN, J.

ORDOP-Ruggieri Etal Vs Williams [FJB]



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COMMERCE PROGRAM

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OPINION

Before the Court is the petition to open or strike the confessed judgment of defendant Yvonne Williams. For the reasons that follow, the petition is denied.

Plaintiffs Joseph and Michael Ruggieri (“the Ruggieris”) rented a commercial property to Ms. Williams. The parties executed a commercial lease (the “Lease”) for property located at 1115 S. 13th Street, Philadelphia, PA 19147 (the “Property”) on September 8, 2021. (Lease, Exhibit A to complaint in confession of judgment, Trial Docket (“Dkt.”) at 2/27/2024.) The Lease specifies that the rent is \$1400 per month, with a security deposit of \$1400. (*Id.* at ¶¶5-6.) It also states that the landlord shall bill the tenant for water and sewer costs every six months. (*Id.* at ¶51.) The Lease was set to expire on September 15, 2022, followed by automatic month-to-month renewals. (*Id.* at ¶¶3-4). Either party could terminate the month-to-month lease upon 30 days’ notice. (*Id.* at ¶4). Should the tenant hold over without the landlord’s consent, the rent would increase to 150 percent of the rent for the time the tenant remains in possession. (*Id.* at ¶32.)

On August 23, 2023, the Ruggieris sent Ms. Williams a Notice of Termination effective October 15, 2023. (Notice, Exhibit B to complaint in confession of judgment, Dkt. at 2/27/2024.)

Ms. Williams did not vacate the Property until December 1, 2023. (Complaint, ¶5; Petition to open judgment, ¶12, Dkt. at 4/17/2024.) The Ruggieris confessed judgment on February 27, 2024, for holdover rent, utilities, various costs and attorneys' fees.

Ms. Williams filed the pending petition to open on April 17, 2024. (Petition to open judgment, Dkt. at 4/17/24.) The Court issued a rule to show cause on the petition on July 29, 2024 (Rule to show cause, Dkt. at 7/29/24.)

“A judgment by confession will be opened if the petitioner acts promptly, alleges a meritorious defense, and presents sufficient evidence in support of the defense to require the submission of the issues to a jury.” *Ferrick v. Bianchini*, 69 A.3d 642, 647 (Pa. Super. 2013) (internal citations omitted).

The confessed judgment and notice of execution under Pennsylvania Rule of Civil Procedure 2958.1 were never properly served upon her; the Ruggieris filed an affidavit of non-service on March 27, 2024, and to date have not filed affidavit evidencing service of the confessed judgment or notice of execution. (Affidavit, Dkt. at 3/27/2024.) Counsel for Ms. Williams entered an appearance on April 16, 2024, and filed this petition the following day. (Entry of appearance, Dkt. at 4/16/2024; petition to open, Dkt. at 4/17/2024.)

Ms. Williams asserts that she filed the petition within 30 days of learning of the judgment (petition, ¶17, Dkt. at 4/17/2024.) The timeliness of a petition to strike or open a confessed judgment is tied to the service of the notice of execution, not the filing of the confessed judgment. *See Magee v. J.G. Wentworth & Co., Inc.*, 761 A.2d 159, 161 (Pa. Super. 2000) (“The timeliness clock has not yet begun to run against Mr. Magee, nor shall it begin until Appellees

serve the execution notice in accordance with Rule 2956.1.”) Given that there is no evidence the execution notice was ever served upon Ms. Williams, her petition was promptly filed.

Ms. Williams argues that there was a verbal agreement between the parties to extend the lease until December 1, 2024, and that the last month’s rent that the Ruggieris held should cover that month. (Petition to open judgment, ¶¶11-12., Dkt. at 4/17/2024.) No evidence of such a verbal agreement has been provided, however, in contrast to the written notice of termination she received. (Notice of Termination, Exhibit B to complaint in confession of judgment, Dkt. at 2/27/2024.) Additionally, holdover rent in the Lease is 150 percent of the regular monthly rent (Lease at ¶32). Ms. Williams has provided no evidence of a meritorious defense to the judgment; accordingly, her petition to open is denied.

The Ruggieris, however, may not execute on the judgment unless and until they serve a written notice substantially in the form prescribed by Rule 2964 of the Pennsylvania Rules of Civil Procedure, serve it as required by Rule 2958.1(b), and file a return of service as provided by Rule 405.

BY THE COURT:



ABBE FLETMAN, J.