

IN THE JUSTICE OF THE PEACE COURT NO. 16  
OF THE STATE OF DELAWARE IN AND  
FOR KENT COUNTY

Wyndham Scott,

Plaintiff Below,  
Appellee,

v.

Jarvis Savage,

Defendant Below,  
Appellant.

CIVIL ACTION NO. JP16-16-004871

Submitted: October 7, 2016  
Decided: October 24, 2016

*Trial De Novo*

Wyndham Scott appeared represented by Peter K. Schaeffer, Jr., Esquire

Jarvis Savage appeared represented by Timothy A. Reisinger, Esquire

**ORDER**

Darling, Magistrate  
Dillard, Magistrate  
Sweet, Magistrate

On October 7, 2016, the Court held a trial *de novo* on a Landlord/Tenant Summary Possession action filed by Jarvis Savage ("Defendant") against Wyndham Scott ("Plaintiff"). This Special Court, comprised of the Honorable Pamela Darling, the Honorable Dwight D. Dillard and the Honorable W. J. Sweet convened pursuant to 25 Del. C. § 5717(a).<sup>1</sup>

### History of Petition

At issue, Plaintiff asserts Defendant failed to pay \$1300.00 monthly rent from March to July 2016. Trial was held on September 7, 2016, and the Court found in favor of Plaintiff.<sup>2</sup> Post-trial, Defendants filed a timely appeal on September 13, 2016.

### Pre-Trial

Defendant verbally motioned the Court for relief as they failed to appear for the first of two scheduled trials. Defendant stated as the trials were scheduled for 9 AM and 10 AM, they figured both trials would be heard at 10 AM. Plaintiff objected to the verbal motion. As the Court had already ruled on the 9 AM case and it was not before the current Court, Defendant's motion was denied. Defendant was given leave to file a written motion on the 9 AM case.

Defendant also motioned the Court to dismiss this matter due to a defective 5 day notice. Defendant enumerated five points they believe caused the 5 day notice to be defective. Each point was countered by the Plaintiff. The Court denied Defendants' motion to dismiss as it did not find the notice to be defective.

### Trial

Plaintiff introduced into evidence the following documents: 5 day demand for rent notice with proof of mailing<sup>3</sup> and a lease agreement.<sup>4</sup> Plaintiff testified Defendant owes \$1300.00 monthly unpaid rent from March 2016 to September 25, 2016. Plaintiff stated they obtained possession of the rental unit on September 25, 2016. Plaintiff asserted Defendant has not paid any rent since initial summary possession action was filed.

Plaintiff testified the written lease allowed a 5% late for if the tenant failed to pay rent by the fifth day of the month. Plaintiff sought \$7002.00 for unpaid rent, \$350.10 for late fees, \$38.90 per diem rent for September 1-25, 2016, \$40.00 court cost, post judgment interest and possession.

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<sup>1</sup> 25 Del. C. § 5717(a). Stay of proceedings on appeal. Nonjury trials. -- With regard to nonjury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing, within 5 days after judgment, a trial *de novo* before a special court comprised of 3 justices of the peace other than the justice of the peace who presided at the trial, as appointed by the chief magistrate or a designee, which shall render final judgment, by majority vote....

<sup>2</sup> *Scott v. Savage*, Del. J.P., C.A. No. JP16-16-004871, Sherlock, J. (Sept. 7, 2016).

<sup>3</sup> Plaintiff's exhibit #1.

<sup>4</sup> Plaintiff's exhibit #2.

On cross examination, Plaintiff testified Defendant started falling behind on rent payments two to three months into the lease. When questioned about other lawsuits between the parties, Plaintiff admitted to receiving a \$10,000.00 judgment and a \$1 judgment. Plaintiff stated since May 2016 Defendant only paid 'shop' rent and no payments for the 'house' rent.<sup>5</sup> Plaintiff testified they received \$2800.00 in rent from the Defendant but that money was shop rent and Defendant never paid a full months' rent.

After Plaintiff rested their case, Defendant testified they had multiple conversations with the Plaintiff about rent but never received a specific amount of rent due. Defendant asserted they paid rent in various amounts. Some monthly payments were \$400.00, \$500.00 and \$600.00 for rent but never received any receipts for rent paid. Defendant stated they paid a total of \$4600.00 rent from July to September 2016 but failed to pay rent in June 2016 as they were in the hospital.

On cross examination, Defendant testified they were currently behind on their rent. Defendant rested their case.

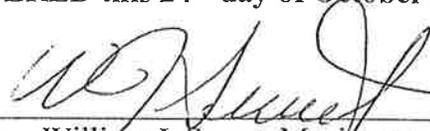
### Discussion

A Landlord/Tenant relationship was established between the Parties where monthly rent of \$1300.00 was due the first of every month commencing December 22, 2014. Five percent late fees (\$65.00) would be due if rent was not paid by the fifth of each month. Although much testimony was given concerning rent amounts paid, not paid and overdue, not one stitch of rent evidence was introduced by either party. No receipts, rent ledgers or accounting statements of any kind were presented to the Court. Therefore, the Court cannot determine a sum certain owed by the Defendant. As the Defendant has vacated the rental unit, possession is longer an issue for the Court.

### Conclusion

Based on the foregoing, the panel finds by unanimous verdict that the Plaintiff has not proven their claim by a preponderance of evidence. Therefore, judgment is entered in favor of Defendant.

**IT IS SO ORDERED this 24<sup>th</sup> day of October 2016.**



The Hon. William J. Sweet, Magistrate  
For the Court

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<sup>5</sup> Plaintiff simultaneously rented a commercial property and a residential property to Defendant.