

**IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
COURT NO.13**

PLAINTIFF

East Pointe Apartments
Ana Rodriguez, Agent
2610 Philadelphia Pike B-6
Claymont De 19703

CIVIL ACTION: JP13-13-016266

DEFENDANT

Kim McManus
PO Box 43
Claymont, De. 19703

ORDER

Trial De Novo Appeal is heard March 12, 2014. The Plaintiff East Pointe Apartments is represented by Form 50 agent Ana Rodriguez; Defendant is pro se. This is an appeal on a summary possession trial heard January 9, 2014 between Plaintiff East Pointe Apartments and Defendant Kim McManus. The Court below issued a decision on February 10, 2014 entering judgment in favor of the Plaintiff East Pointe Apartments for \$2,356.60 in unpaid rent and possession.

The following procedural history is detailed here as the parties have had numerous cases before this Court, all of which were appealed as well.

A summary Possession action (Case JP13-13-007849) was filed January 24, 2013 by East Pointe for rent and possession. A Judgment was issued August 1, 2013 in favor of Plaintiff for rent and possession. On Appeal September 12, 2013 the De Novo Court awarded unpaid rent to the Plaintiff, but not possession, ruling the five day letter was defective. Defendants' counter claim for retaliatory eviction based on her complaints of termites was denied as not substantiated by the evidence.

A second summary possession action (JP 13-13-14076) was filed October 23, 2013 by East Pointe for rent and possession. Trial was heard December 9, 2013 and a decision rendered December 12, 2013 whereby the Court ruled the Plaintiff's case Dismissed as it had a defective complaint. The Defendants counterclaim for retaliation was ruled as *res judicata* in that it had been heard in the previous trial de novo appeal. On Appeal the De Novo Court ruled the

Plaintiff's complaint was deficient and dismissed their case without prejudice. This Court also ruled the defendants' counterclaim for retaliation was *res judicata* and dismissed her counterclaim with prejudice. The appeal decision was rendered March 12, 2014.

Now comes the instant case between the parties on appeal. East Pointe seeks unpaid rent back to October 2013 and possession. Defendant McManus attempts once again to argue retaliation as a defense but the Court does not allow her to present evidence as two previous Appeal decisions ruled it as *res judicata*.

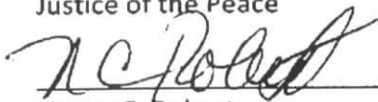
The evidence presented by East Pointe is confusing. The amount sought in the five day letter conflicts with the testimony given by the representative. The amount of rent allegedly owed does not match the balance after reviewing the payment record. The defendant presents evidence of payments made since October that nearly totals the amount being sought. Apparently the landlord applied the \$4,200.00 in payments to previous judgments. It was not applied to current rent. And although the landlord sent reservation of rights letters, these letters are vague and did not notify the tenant that her monies were applied to previously rendered judgments. In fact she made those payments after the five day letter that this case rests on.

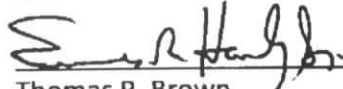
The Court finds the payments should have been applied to the monies sought in the five-day notice which the plaintiff relies here. After giving the defendant credit for her \$4,200.00 in payments, a balance due is \$142.20. The Court further awards possession based on a legally sufficient 60-day non-renewal notice sent during this period.

Consequently, Judgment is awarded in favor of the Plaintiff East Pointe Apartments for \$142.20 plus per diem rent of \$26.83 from March 13, 2013 and possession and court costs.

IT IS SO ORDERED this 27th day of March, 2014


Sean P. McCormick
Justice of the Peace


Nancy C. Roberts
Justice of the Peace


Thomas P. Brown
Justice of the Peace

