

**IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY
COURT NO. 17**

**COURT ADDRESS:
23730 SHORTLY ROAD
GEORGETOWN DE 19947**

CIVIL ACTION NO: JP17-12-006511

MARK ROBINSON VS DWAYNE JEFF KARR ET AL

**SYSTEM ID: 003611
DEAN A CAMPBELL
LAW OFFICE OF DEAN A. CAMPBELL
401 NORTH BEDFORD STREET
PO BOX 568
GEORGETOWN DE 199470000**

Case Heard: January 14, 2013
Case Decided: January 23, 2013

Appearances: Dean A. Campbell, Esq. appeared for the plaintiff. Defendants appeared pro se.

ORDER OF THE THREE JUDGE PANEL

Plaintiff filed this action on November 26, 2012 seeking back rent and possession under 25 Del. Code, Sec. 5702(2). Trial below was held on December 27, 2012 and a judgment for possession and back rent was entered on that date by the Hon. William P. Wood. An appeal to a three judge panel was requested on December 31, 2012. A trial de novo before a three judge panel consisting of Hon. John J. Adams, Hon. Sheila G. Blakely and Hon. Richard D. Comly, Jr. was held. Below is the opinion of this panel.

Plaintiff seeks possession of the premises located at 22365 Bunting Road, Georgetown, DE due to failure on the part of the defendants to pay rent from May 1, 2011 through the present. Plaintiff is seeking back rent in the amount of \$400 per month minus a \$1,000 payment made last February. The defendants claim that because the plaintiff had at one time told them he was planning to leave them the premises in his will, they made many improvements to the premises. Defendants presented a number of receipts most of which were from the fall of 2010.

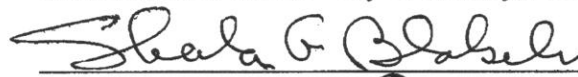
The plaintiff testified that because of these improvements (mostly new carpet and flooring) made by the defendants/tenants before moving into the premises, he forgave the back rent totaling \$5,400 that was owed him by them from a prior tenancy plus any rent due through April 2011. The defendants submitted receipts and work orders for the flooring which was installed in November 2010 totalling \$3,820.58. They also presented receipts for used appliances totaling \$297.33 from 2009 and 2010. (A receipt was also introduced for a new refrigerator in the amount of \$469.00 from Feb. 2011 which the defendants testified they planned to take with them.) The remainder of the receipts were for items purchased in May 2012 which totaled \$1,285.29 for "high dining, replacement umbrellas, candles/cintronella, live nursery - trees and roses and work lights" none of which was explained in their testimony. Defendants did not dispute the amount of rent due other than to testify that they made a couple of months cash rent payments which they were never given credit for and were told to pay in

cash without getting any receipt. This was in addition to the \$1,000 tax refund payment they made in February 2012. Both parties testified that no ledger was kept of the rent monies that were due or paid. Defendants also testified that they were not given a copy of the landlord tenant code.

After a careful review of the evidence and testimony presented, the Court finds for the plaintiff. The Court however will give an \$800 credit for two months rent for the cash payments that the tenants contend that they made and were given no receipt. A landlord has a duty to keep a ledger of the rent monies that are paid or owed and to give receipts for cash payments, which it appears the plaintiff failed to do. Plaintiff did comply with 25 Del. Code, Sec. 5502(a) and sent the defendants the proper 5 day notice as required by law.

Therefore judgment is entered in favor of the plaintiff in the amount of \$6,496.70 plus \$40.00 court costs and post judgment interest at the rate of 5.75% per annum plus possession of the premises. (This amount gives an \$800 credit to the defendants and includes per diem rent of \$12.90 for 23 days in January totaling \$296.70). Per diem rent will continue to run until the defendants vacate the premises.

It is so ordered this 23rd day of January, 2013.


Hon. Sheila G. Blakely for the Three Judge Panel



NOTICE OF APPEAL RIGHTS

Any party has 15 days starting the day after the judgment is signed by the judge to appeal the judgment of the Justice of the Peace Court to the Court of Common Pleas of the above county. If the judgment involves an action for summary possession in a landlord/tenant case, then either party has 5 business days, starting the day after the judgment is signed by the judge, to appeal the judgment to a three judge panel at the Justice of the Peace Court where the judgment was ordered. You must complete all of the appeal requirements within those periods. To prevent dismissal, the appeal must name all of the parties as they were originally named in the Justice of the Peace Court action. (This applies even if the action was dismissed in the Justice of the Peace Court against one or more of the parties.) Additional information on appeal procedures is found in the attached sheet entitled "Justice of the Peace Courts Civil Post-Judgment Procedures". (J.P. Civ. Form No. 14A) If no appeal is filed, parties may remove all exhibits from the Court no sooner than 16 days and no later than 30 days, from the date of this judgment. If not removed, the Court may dispose of the exhibits without further notice to the parties.

Final Date of Appeal of a Civil Case to the Court of Common Pleas is 15 days from the judgment.

Final Date for Appeal of a Landlord/Tenant case to a 3 Judge Panel is 5 days from the judgment.