

**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: JP17-13-004613**

**CARVEL GARDENS ASSOCIATES VS CATHERINE WAPLES**

**SYSTEM ID: FA302  
BETTY CARMEAN  
CARVEL GARDENS  
PO BOX 635  
LAUREL DE 19956**

Case Heard: November 1, 2013

Case Decided: November 12, 2013

Appearances: Michael Morton, Esq. appeared for the plaintiff. The defendant appeared pro se.

**ORDER OF THE THREE JUDGE PANEL**

This case was initially filed by the plaintiff on September 6, 2013, seeking possession of the premises located at 1601 Daniel Street, Laurel, DE, accrued rent, late charges and damages for the breakage of two windows in the community building. The trial below was held on September 23, 2013 before the Hon. John J. Adams, with a decision being rendered on September 26, 2013. Plaintiff appealed that decision on October 1, 2013 and a trial de novo before a three judge panel consisting of the Hon. Sheila G. Blakely, the Hon. Richard Comly and the Hon. William P. Wood was held on November 1, 2013. This is the decision of the three judge panel.

**DECISION**

Plaintiff outlined three separate grounds for which the plaintiff is seeking possession. The first is for failure to pay August rent within the required 5 days as outlined in the 5 day notice marked Exhibit P-1. The second is for failure to pay the rent for September within the required 5 days as outlined in the 5 day notice marked Exhibit P-5. The third is for the conduct of the defendant's young son and failure to pay \$612 in damages for two large windows which were broken and had to be replaced in the community building. (See Exh. P-4.) The total amount sought by the plaintiff for these damages and back rent and late fees is \$710.00 and \$42.50 in court costs. The defendant disputed all these claims.

**FACTS**

The parties entered into this lease in subsidized or Section 8 housing on January 2, 2013. Both parties understood that the amount of rent due would be based on the defendant's income. Sometime at the end of July 2013, the defendant's wallet was stolen. Rent for August was not paid on time and Plaintiff sent a five day notice to Defendant dated August 6, 2013. Both parties agree that on or about August 7, 2013, the defendant Catherine Waples (hereinafter "Waples") came into the office and told the assistant office manager, Betty Carmean (hereinafter "Carmean" ) that her wallet had been stolen and that she had to get a new debit card. Waples testified that Carmean said this was okay and that she already knew the wallet had been stolen. Carmean's testimony was that Waples said she would get a

new debit card in 7 to 10 days and would pay her August rent within that time period. Waples testified that she thought everything was okay with the rent being late until her 6 year old son was accused of breaking the windows in the community building. Sometime between September 6<sup>th</sup> and September 13, 2013, Waples paid a money order of \$150.00 which covered the August rent.

Both parties agree that sometime in early August, Waples was terminated from her employment. Waples testified that because her wallet was stolen she had no money for gas and could not drive to work and this was the reason that she lost her job. Waples also testified that because she had lost her job in August, she did not believe that she owed rent for September. Carmean testified that this would have been correct if the defendant had gotten her paperwork in prior to the end of August. Although it appears that the office may have known the defendant lost her job prior to September 1<sup>st</sup>, the actual paperwork needed to adjust her rent was not completed and turned in by the defendant until September 3, 2013. Therefore the defendant's rent did not actually go down to \$0.00 per month until October 1<sup>st</sup>.

Evidence introduced by the plaintiff at the trial de novo indicated that two windows in the community building were broken on July 29, 2013. Carmean testified that Laurel Police Department initially did an investigation which determined that Waples's son broke the two windows; however the Department of Justice would not prosecute due to the age of the child. Carmean testified that she viewed the tape which showed that defendant's son broke the windows. Waples argued at trial that she was never allowed to view the tape to determine for herself whether her child had broken the windows. She therefore refused to pay for the damages.

#### DISCUSSION

Although it is not totally clear from the testimony, it appears that some type of leeway was given to the defendant by the plaintiff to pay her August rent because of the stolen wallet. The plaintiff believed at best this gave her until 10 days from August 7<sup>th</sup>. It is not clear what the defendant believed. She testified that she thought everything was okay until her son was accused of breaking the windows. The evidence would lead one to believe that the August rent was paid sometime between September 6<sup>th</sup> and September 13<sup>th</sup>. Normally an extension of time to pay should have been reduced to writing, although there is a small notation on Exhibit P-1 regarding the 7 to 10 days to get the new bank card. However it is not clear who wrote this or when they wrote it. Consequently the preponderance of the evidence is that Plaintiff enlarged the period of time in which to pay her rent and that the Defendant failed to pay within that time frame.

As to the September rent, the Court can understand Waples's confusion, since she lost her job in early August. However since no paperwork was filled out or handed in until September 3, 2013, the defendant would still owe the September rent and late fees of \$98.00.

Regarding the damages due for the broken window, the Court finds for Waples on this issue. Without seeing the tape, or having any eye witnesses testify at trial, the Court is not convinced by a preponderance of the evidence that the window was broken by Waples' son.

Accordingly judgment is awarded Carvel Gardens Associates against Catherine Waples for 98.00, possession of the rental unit and court costs of \$42.50. Post judgment interest shall accrue at the legal rate of 5.75% per annum.

It is so order this 12th day of November, 2013.

*W-P. Wood*

Hon. William P. Wood  
For the Three Judge Panel  
Hon. Richard D. Comly concurring  
Hon. Sheila G. Blakely dissenting



#### DISSENTING OPINION

This member of the Panel agrees with the decision of the other members of the panel, but finds that this case arose out of a good faith dispute as to (1) exactly when the rent for August 2013 must be paid and (2) the fact that the defendant owed rent for September 2013 even though she had lost her job in August, 2013. 25 Del. Code, Sec. 5716 provides for a stay of the proceedings when the Court finds that there is a good faith dispute under this section. However since this dissenting opinion is in the minority, the parties are bound by the majority opinion of the panel above.

It is so ordered this 12<sup>th</sup> day of November, 2013.

*Sheila Blakely (WB)*

Hon. Sheila G. Blakely  
Justice of the Peace



#### 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.

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**COURT ADDRESS:  
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GEORGETOWN DE 19947**

**CIVIL ACTION NO: JP17-13-004613**

**CARVEL GARDENS ASSOCIATES, LLC, PLAINTIFF  
VS  
CATHERINE WAPLES, DEFENDANT**

**Plaintiff Parties:**

ATTORNEY FOR PLAINTIFF  
SYSTEM ID: 002492  
MICHAEL P MORTON  
MICHAEL P. MORTON, P.A.  
1203 NORTH ORANGE STREET  
WILMINGTON, DE 19801

**Defendant Parties:**

DEFENDANT  
SYSTEM ID: @2613619  
CATHERINE WAPLES  
1601 DANIEL STREET  
LAUREL, DE 19956

PLAINTIFF  
SYSTEM ID: @2550680  
CARVEL GARDENS ASSOCIATES LLC  
PO BOX 635  
LAUREL, DE 19956

**Other Case Parties:**

AGENT  
SYSTEM ID: FA302  
BETTY CARMEAN  
CARVEL GARDENS  
PO BOX 635  
LAUREL, DE 19956

AGENT  
SYSTEM ID: FA2172  
JUNE E WOODWARD  
CARVEL GARDENS  
PO BOX 635  
LAUREL, DE 19956

## JUSTICE OF THE PEACE COURT CIVIL POST-JUDGMENT PROCEDURES

*[This information is not legal advice and not a substitute for seeking legal advice from an attorney. This information is not binding on the court if incorrect or misunderstood. It relates to frequently asked questions concerning post-judgment procedures but does not address all of the possible procedures and may not apply in your particular case. Forms for these procedures may be obtained from any Justice of the Peace Civil Court. All motions must include the name of the court, the names of the parties, the case number, the date the motion is filed with the Justice of the Peace Court and a title indicating the reason for the motion. Court costs or fees must accompany the motion, unless the person has requested, and the court determined, that the person may proceed in forma pauperis (without paying costs or fees because they have no money to pay).]*

### **FOR CIVIL ACTIONS IN DEBT, TRESPASS OR REPLEVIN:**

#### **DEFAULT JUDGMENTS**

Default judgments are normally entered against a defendant who fails to appear in court on the scheduled trial date or to provide a written answer to a complaint as required by the summons. If a default judgment has been entered, the defendant has 15 calendar days, starting the day after the judgment is ordered by the court, to enter a motion asking that the judgment be vacated and the case be reopened so the defendant may present evidence on the case. If service was made by certified mail, return receipt requested, and the certified mail was returned unclaimed, the defendant has 30 calendar days to file a motion to vacate a default judgment. This motion must be in writing and should briefly state the reason for the request to vacate the judgment as provided by 10 Del. C. § 9538. (Copies of the complete Delaware Code, which include this Code section, are available in public libraries throughout the State.) The time allowed to appeal a judgment continues to run even after a motion to vacate the default judgment is filed (see below for additional information on appeal procedures). **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

#### **NON-SUIT JUDGMENTS**

Non-suit judgments are entered against a plaintiff who fails to appear in court on the scheduled trial date. Non-suit judgments against the plaintiff are similar to default judgments against the defendant. (See above section.) If a non-suit judgment has been entered, the plaintiff has 15 calendar days, starting the day after the judgment is ordered by the court, to enter a motion requesting that the judgment be vacated and the case reopened so the plaintiff may present evidence on the case. This motion must be in writing and should briefly state the reasons for the request, as provided by 10 Del. C. § 9539. (Copies of the complete Delaware Code, which include this Code section, are available in public libraries throughout the State.) **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

**APPEALS** - Either party has 15 calendar days, starting the day after the judgment is ordered by the court, to appeal the judgment to the Court of Common Pleas for a trial de novo (new trial). 10 Del. C. § 9571. To file an appeal, the appellant (party seeking the appeal) must go to the Court of Common Pleas, fill out the appeal form and comply with other Court of Common Pleas requirements, within 15 days after the judgment is entered. A certified transcript of the Justice of the Peace Court record and the filing fee of \$125.00 plus a \$10.00 court security fee must be filed by the appellant with the Court of Common Pleas within 10 days after the appeal was filed (within 25 days after the Justice of the Peace Court judgment). A certified transcript of Justice of the Peace Court record may be obtained from the Justice of the Peace Court which ordered the judgment at least five (5) days prior to the final date of filing the transcript with the Court of Common Pleas. **A FEE OF \$10.00 MUST ACCOMPANY A CERTIFIED TRANSCRIPT REQUEST.** To prevent execution on the judgment during the time of the appeal, an appellant must apply to the Court of Common Pleas for a bond to stay the execution.

**MOTION FOR A NEW TRIAL** - Either party has 10 days, starting the day after the judgment is signed by the judge, to file a motion for a new trial as provided under Justice of the Peace Court Civil Rule 59. This motion shall be in writing and shall briefly state the reasons for the request. A motion for a new trial will be heard by the Justice of the Peace who originally heard the case. The ability of the Justice of the Peace to grant a motion for a new trial is limited. For example, the reason given for requesting a new trial may be newly discovered evidence. However, for a judge to grant a motion for a new trial based upon newly discovered evidence, the party requesting the new trial must show all of the following: (1) the newly discovered evidence is important enough to change the result in the case; (2) the evidence could not have been discovered prior to the original trial with reasonable investigation; and (3) the evidence does not merely repeat or dispute evidence presented in the original trial. **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

In civil cases, if a motion for a new trial is filed after 10 days from the date of judgment, the time for filing the appeal continues to run and the 15 days allowed for the appeal may pass before any action is taken by the Court. If that happens, the party may be unable to file an appeal. If the motion is filed within 10 days from the date of judgment, the 15-day time for appeal does not include the days between the filing of the motion for a new trial and the judge's decision on the motion.

### **FOR LANDLORD/TENANT POSSESSION ACTIONS:**

#### **APPEALS**

**FOR POSSESSION OF RENTAL UNIT** - Either party has five (5) business days, starting the day after the judgment is signed by the judge, to appeal the judgment of a Justice of the Peace which relates to the possession of a rental unit and other rental matters (including back rent due) to a special Justice of the Peace court. The special court trial will be a completely new trial before three other Justices of the Peace, unless the original trial was a jury trial. The appellant (seeking to appeal to the three-judge special court) must appear in the originating Justice of the Peace Court and make the appeal in writing. **A FEE OF \$50.00 MUST ACCOMPANY THIS MOTION.** To prevent execution on the judgment during the time of the appeal, the appellant must provide a bond or other assurances, as required by the court, to demonstrate the ability to pay all court costs, money damages, and other payments ordered by the court.

**FOR DEBT (Rent Only)** - The procedures for appealing or filing a motion for a new trial in a civil debt action explained above apply to an appeal of a landlord/tenant action involving rent or money damages only (and not possession of the rental unit).

**DEFAULT OR NON-SUIT JUDGMENTS** - If the possession of the rental unit was obtained by default judgment or nonsuit in a landlord/tenant possession action, the motion to vacate the default judgment or nonsuit must be filed within 10 days from the date the judgment was entered. **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.** (This applies only to cases filed after July 17, 1996. Motions to vacate a default judgment or nonsuit in cases filed before July 17, 1996 must comply with the same time periods as for default and nonsuit judgments in civil actions in debt, trespass or replevin (see front page).)