

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

EMMANUELLE NEAL,	:	C.A. No. JP16-14-004279
	:	
Plaintiff Below,	:	
Appellant,	:	
	:	
v.	:	
	:	
ROBIN WATTS,	:	
	:	
Defendant Below,	:	
Appellee.	:	

TRIAL DE NOVO

Submitted: September 18, 2014
Decided: September 23, 2014

Emmanuelle Neal, Plaintiff/Appellant, *pro se*.

Robin Watts, Defendant/Appellee, *pro se*.

ORDER

Murray, J¹

¹ Judge Murray writing on behalf of the Court.

On September 18, 2014, this Court, comprised of the Honorable Ernst M. Arndt, the Honorable D. Ken Cox and the Honorable James A. Murray, acting as a special court pursuant to 25 *Del. C.* § 5717(a)² held a trial *de novo*³ in reference to a Landlord/Tenant Summary Possession petition filed by Emmanuelle Neal (hereinafter referred to as Plaintiff), against Robin Watts (hereinafter referred to as Defendant). For the following reasons the Court enters judgment in favor of the ***PLAINTIFF***.

Factual and Procedural Background

Plaintiff filed a Landlord/Tenant Summary Possession petition with Justice of the Peace Court No. 16 seeking possession, court cost, accrued rent and late fees. This action is based on Defendants failure to pay rent. Trial was held on September 8, 2014, and judgment was entered in favor of Defendant.⁴ Consequently, Plaintiff filed a timely appeal of the Court's Order pursuant to 25 *Del. C.* § 5717(a). Trial *de novo* was thereafter scheduled and held on September 18, 2014.

² 25 *Del. C.* § 5717(a). *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....

³ *De novo* trial. Trying a matter anew; the same as if it had not been heard before and as if no decision had been previously rendered. Black's Law Dictionary, 6th Edition, West Publishing Co. (1990).

⁴ *Neal v. Watts*, Del. J.P., C.A. No. JP16-14-004279, Sherlock, J. (Sept. 8, 2104).

Plaintiff's Testimony

Plaintiff testified she entered into a Landlord/Tenant relationship with Defendant for a rental unit located at 85 Mary Ella Court, Smyrna, DE, 19977. The lease agreement⁵ dated July 24, 2012, provides for monthly rent in the amount of \$1,300.00 with rent due on the first of each month. Plaintiff asserts rent not paid on or before the 5th of the month shall be subject to a late charge of \$65.00. Plaintiff further stated Defendant has failed to pay rent since July 2014. Plaintiff sent a demand letter⁶ to Defendant for unpaid rent via certified mailing⁷ on July 24, 2014. Finally, Plaintiff provided copies of text messages⁸ and emails⁹ of communications between she and the Defendant, where, Defendant admits to owing back rent.

Defendant's Testimony

Defendant testified her family had incurred a series of unfortunate events which made keeping current with rent a challenge. Defendant acknowledged she had failed to pay rent as required per the lease agreement.¹⁰ Defendant avers she vacated the rental unit on August 24th, but acknowledged she has items remaining

⁵ Plaintiff's exhibit #1.

⁶ Plaintiff's exhibit #2.

⁷ Plaintiff's exhibit #3.

⁸ Plaintiff's exhibit #4.

⁹ Plaintiff's exhibit #5.

¹⁰ "A judicial admission is a formal statement by a party in the course of judicial proceedings, which removes an admitted fact from the field of controversy." *Pesta v. Warren*, 2004 WL 1172996, at *1 (Del. Super.).

in the unit as of time of trial. After vacating the unit, Defendant sent a someone to clean the unit on August 26, 2014. Defendant advised she had not returned the keys for the rental unit to Plaintiff, but she was prepared to do so immediately.

Discussion

The Court is satisfied Plaintiff has proven a Landlord/Tenant relationship exists between the parties and that Defendant is in rent arrears for the months of July, August and 18 days of September. Defendant claimed she vacated the unit on August 25th. We disagree. At the time of trial, Defendant had failed to relinquish the keys to Plaintiff and failed to remove all items from the unit. However, Defendant did relinquish the keys to the unit in open court after the presentation of closing arguments.

The Court finds Plaintiff's demand letter meets the minimum requirements of 25 *Del. C.* § 5502¹¹ as well as the notice requirements of 25 *Del. C.* § 5113(b).¹² Plaintiff is entitled to rent due for the above referred to time frame, however, the Court finds Plaintiff is *not* entitled to late fees as Plaintiff's lease agreement does not contain a provision for late fees as required pursuant to 25 *Del. C.* § 5501(d).¹³

¹¹ 25 *Del. C.* § 5502(a). ...demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in such notice, to be not less than 5 days after the date notice was given or sent, the rental agreement shall be terminated. If the tenant remains in default, the landlord may thereafter bring an action for summary possession of the dwelling unit or any other proper proceeding, action or suit for possession.

¹² 25 *Del. C.* § 5113(b). In lieu of personal service or service by copy of the notice or process required by this Code, a copy of such notice or process may be sent by registered or certified mail or 1st-class mail as evidenced by a certificate of mailing postage-prepaid, addressed to the tenant at the leased premises....

Conclusion

Based on the Court's fact finding inquiry, the Court's above-referenced conclusions of law and by a preponderance of evidence, the Court by unanimous verdict enters ***JUDGMENT for the PLAINTIFF.***

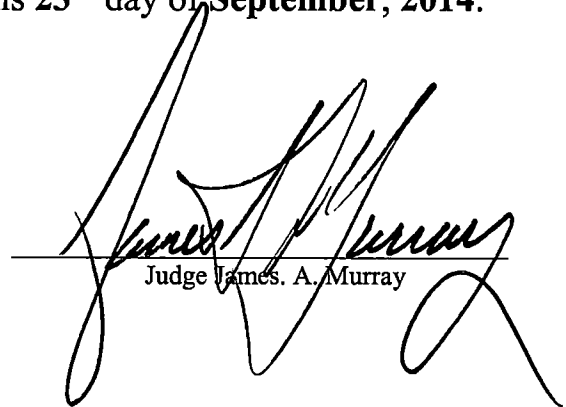
The Court hereby enters ***JUDGMENT*** as follows:

Judgment amount: ***\$3,379.94*** (\$1,300.00 monthly rent for July & August (\$2,600.00) + \$43.33 x 18 days for September (\$779.94) = \$3,379.94).

Court Cost: ***\$40.00.***

Possession of rental unit @ ***85 Mary Ella Court, Smyrna, DE, 19977.***

IT IS SO ORDERED, this 23rd day of September, 2014.¹⁴



Judge James A. Murray

¹³ 25 Del. C. § 5501(d). Where the rental agreement provides for a late charge payable to the landlord for rent not paid at the agreed time, such late charge shall not exceed 5 percent of the monthly rent....

¹⁴ The Court announced its decision in open court on September 18, 2014 and reduced it to writing effective the above date. This constitutes the Court's full written decision and rationale.