

**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: JP17-13-003334

LENA R WALLER VS KELLY PORTER ET AL

**SYSTEM ID: @2597308
SEAN PORTER
13066 NERO LANE
NERO ACRES MOBILE PARK
LAUREL DE 19956**

Appearances: William D. Chasanov, Esquire, represented the plaintiff.
The defendants appeared *pro se*.

Before: Sheila G. Blakely, Deputy Chief Magistrate; John C. Martin and
Michelle Jewell, Justices of the Peace

Martin for the Court

NOTICE OF JUDGMENT/ORDER

The Court has entered a judgment or order in the following form:

On July 8, 2013 the plaintiff filed this action seeking to recover unpaid rent and possession of the rental property located at 13066 Nero Lane, Laurel, Delaware. A trial was held on August 7, 2013 and judgment was entered on the same date. On August 13, 2013 the plaintiff filed a timely appeal of this judgment pursuant to 25 Del.C. §5717. This is the decision of the three Judge Panel hearing the appeal as a *trial de novo* on September 27, 2013.

HISTORY

In November 2012, the defendants entered into a written lease for the subject property "for a period of no less than six months in the amount of \$500.00 per month" with Brandy Banks, who they believed had "rights over the home". They actually occupied the property in December 2012. They were notified by letter dated March 15, 2012 that the owner of this property was Amy R. Mc Clintock. By letter dated July 3, 2013 Lena R. Waller notified the defendants that she was now the owner of this home and demanded that the defendants vacate the home within five days. She also notified the defendants that they owed her \$1,500.00 in unpaid rent at that time, an amount that has now risen to \$2,500.00. Ms. Waller produced a Delaware Division of Motor Vehicles title to the home in question showing her as

the owner as of April 8, 2013. The defendants did not vacate and did not pay the rent she demanded so this action was filed.

The defendants testified that they entered their lease agreement with Ms. Banks in good faith, believing that she had the right to rent the home to them; however, they had no admissible evidence to support this belief. They also stated that they spent about \$1,500.00 for materials to renovate this home while they occupied it and wanted reimbursement for this expense but had not filed any counterclaim. They also argued that they paid Ms. Banks \$250.00 rent for May and received a \$250.00 credit from her for electric work done in the home. Therefore, they do not owe May rent. In addition, they stated that Ms. Banks gave them a "free" month's rent for June because of the "problems" they were having with the home. They did not contest the plaintiff's testimony that no rent was paid for July, August or September.

DISCUSSION

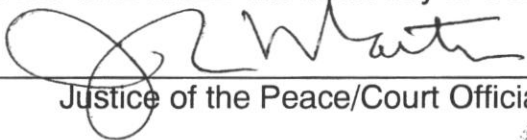
The plaintiff's notice letter to the defendants dated July 3, 2013 first demands that they vacate this property in five days then demands the payment of rent totaling \$1,500.00 within this same period. Section 5502 of Delaware's Landlord-Tenant Code provides that when rent is not paid, a landlord may demand payment with the sending of a five day notice. If the tenant remains in default, the landlord may then bring an action for summary possession. In this case, the landlord demanded both that the defendants vacate their home and pay the rent due within five days. This notice does not comply with the law just cited and so it is invalid. Because it is invalid, the Court finds that it cannot be used to further a claim for possession of the property.

No rent was paid from June to the date of trial and the defendants' assertion that they received "free" rent for June was not credible. Therefore, the defendants owe the plaintiff unpaid rent totaling \$2,000.00 through September 30, 2013.

ORDER

After considering all the evidence presented the Court finds that the plaintiff has proven its claim in part by a preponderance of the evidence and so it enters judgment on behalf of the plaintiff and against the defendant in the amount of \$2,000.00 plus court costs of \$95.50 and post judgment interest at the legal rate of 5.75% per annum. Possession will remain with the defendants because of the invalid notice letter.

IT IS SO ORDERED this 02nd day of October, 2013


Justice of the Peace/Court Official

