

On December 16, 2014, this Court, comprised of the Honorable Ernst M. Arndt, the Honorable Debora Foor and the Honorable James A. Murray, acting as a special court pursuant to 25 Del. C. § 5717(a),¹ held a trial *de novo*² in reference to a Landlord/Tenant Summary Possession petition filed by Karen L. Dill and John M. Dill (hereinafter referred to as Plaintiff or Plaintiffs), against Mylana R. Harrison and Edward C. Vance (hereinafter referred to as Defendant or Defendants). For the following reasons the Court enters judgment in favor of the **Plaintiffs**.

Factual and Procedural Background

Plaintiffs filed a Landlord/Tenant Summary Possession petition with Justice of the Peace Court No. 16 with a *forthwith summons*³ application⁴ seeking possession, court cost, accrued rent (at 1 ½ times the monthly rent beginning 9/1/14) and post-judgment interest at the current legal rate. This action is based on the Defendants' failure to pay rent and allegedly causing substantial or irreparable

¹ 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....

² *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 Ed. 1990).

³ 25 Del. C. § 5115. **Application for a forthwith summons**. Where the landlord alleges and by substantial evidence demonstrates to the Court that a tenant has caused substantial harm to landlord's person or property, or the tenant alleges and by substantial evidence demonstrates to the Court that the landlord has caused substantial or irreparable harm to the tenant's person or property, the Justice of the Peace Court shall issue a forthwith summons to expedite the Court's consideration of the allegations.

⁴ The Court denied Plaintiffs application for expedited scheduling in this matter as consistent with § 5115, finding; "plaintiffs have not demonstrated that 'substantial and irreparable harm' has been done to the landlord's property...." *Dill et al v. Harrison et al*, Del. J.P., C.A. No. JP16-14-004813, Foor, J. (Sept. 5, 2014).

harm to the rental unit as well as being holdover tenants pursuant to 25 *Del. C.* § 5515.⁵ Trial was held on September 22, 2014, and judgment was entered in favor of Plaintiffs and against Defendants Edward Vance and Mylana Harrison. Subsequently, Defendants filed a timely appeal of the Court's Order pursuant to 25 *Del. C.* § 5717(a).

Defendants' Notice and Allowance of Appeal includes as a named Defendant, Kenneth Harrison III.⁶ Kenneth Harrison III, was a Defendant at the original trial; however, he failed to appear and the Court entered a default judgment against him.⁷ Thereafter, he filed a Motion to Vacate that default judgment and was granted a hearing. After a hearing on November 12, 2014 the Court denied Defendant, Kenneth Harrison's motion.⁸ As such, he has no further appeal in the Justice of the Peace Court, and therefore, he is not party before the Court.

Plaintiffs' Testimony/Evidence

Plaintiff, John Dill, testified and presented the following exhibits in support of Plaintiffs case. First, he testified to sending a termination notice dated March 27,

⁵ 25 *Del. C.* § 5515(b). Whenever the term of the rental agreement expires...if the tenant continues in possession of the premises after the date of termination without the landlord's consent, such tenant shall pay to the landlord a sum not to exceed double the monthly rental under the previous agreement...the holdover tenant shall be responsible for any further losses incurred by the landlord as determined by a proceeding before any court of competent jurisdiction.

⁶ Mr. Harrison III appeared at the *de novo* trial. The *De Novo* Court gave Mr. Harrison an opportunity to address the Court. The Court inquired if Mr. Harrison III, wished to make any motions/application regarding the default judgment or request to participate as a party at the *de novo* trial. He declined and stated that he did not have anything to say at that time.

⁷ *Dill et al v. Harrison et al*, Del. J.P., C.A. No. JP16-14-004813, Sweet, J. (Sept. 22, 2014).

⁸ *Dill et al v Harrison*, Del. J.P., C.A. No. JP16-14-004813, Foor, J. (Nov. 14, 2014).

2014 to each of the Defendants.⁹ He provided three separate Certificates of Mailing, one addressed to each individual tenant.¹⁰ As his second piece of evidence he presented a rental agreement¹¹ dated February 27, 2012 and signed by all parties.

Plaintiff, Karen Dill, testified that Defendants knew the lease terminated effective May 30, 2014 and still remain in possession of the unit this date. Defendants have failed to pay any rent whatsoever since September 2014. Plaintiff stated, she and her husband have tried to work with the Defendants by extending the termination date to provide Defendants with additional time to secure a new residence. They extended this courtesy due to the Defendants having seven children, but ultimately, Defendants have not relocated and have refused to relinquish possession or pay rent for the last four months.

Defendants' Testimony/Evidence

Defendant, Mylana Harrison, began her testimony stating; "I asked for a little more time before I moved. I have seven children." She stated she wanted to leave but did not do so because Plaintiffs indicated they would attach her wages in order to collect back rent. Defendant presented further direct testimony but none of which was germane to the case before the Court.

⁹ Plaintiff's exhibit #1.

¹⁰ *Id.*

¹¹ Plaintiff's exhibit #2.

Under cross examination, Defendant was asked if she paid rent for the months of September, October, November and December (2014); to which she replied “no”. Thereafter asked if she has the money in her possession to pay she replied, “I do not have the money.”¹²

Defendant, Edward Vance’s testimony concurs with that of Defendant, Harrison. He stated that they owed back rent and agreed they did not take possession of another unit due to Plaintiffs asserting they were going to attach their wages.

Discussion

The Court is satisfied Plaintiffs have proven a Landlord/Tenant relationship exists between the parties and that Defendants are in rent arrears for the months of September, October, November and 24 days of December (2014). The lease agreement¹³ indicates rent is \$1,200.00 monthly and provides for a 5% late fee if rent is not paid in full on or before sixth day of the month. Such late fees are permissible pursuant to 25 *Del. C.* § 5501(d).¹⁴

¹² “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.).

¹³ Plaintiffs’ exhibit #2.

¹⁴ 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....

The Court finds Plaintiffs' demand letter meets the minimum requirements of 25 *Del. C.* § 5506(d)¹⁵ as well as the notice requirements of 25 *Del. C.* § 5113(b).¹⁶

Plaintiffs are seeking 1 ½ times the monthly rent pursuant to 25 *Del. C.* § 5515(b) as they believe Defendants are holdover tenants. Plaintiffs failed to provide any testimony or evidence which indicates Defendants were provided with a summary copy of the Delaware Landlord/Tenant Code as required pursuant to 25 *Del. C.* § 5118.¹⁷ Section 5118 states:

“A summary of the Landlord/Tenant Code, as prepared by the Consumer Protection Unit of the Attorney General's Office or its successor agency, **SHALL BE GIVEN** [emphasis added] to the new tenant at the beginning of the rental term. If the landlord fails to provide the summary, the tenant may plead ignorance of the law as a defense.”

Whereas Defendants never received a summary of the Landlord/Tenant Code, Defendants were never placed on notice that by remaining in the unit they would be liable for a sum not to exceed double the monthly rent as holdover tenants. Therefore, the Court declines to award additional rent to Plaintiffs.

¹⁵ 25 *Del. C.* § 5506(d). Where the term of the rental agreement is month-to-month, the landlord or tenant may terminate the rental agreement by giving a minimum of 60 days' written notice, which 60-day period shall begin on the 1st day of the month following the day of actual notice.

¹⁶ 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....

¹⁷ Plaintiffs' exhibit #2 (lease agreement) does not contain either a paragraph or reference that Plaintiffs provided a summary of the Landlord/Tenant Code to the Defendants.


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 PLAINTIFFS.***

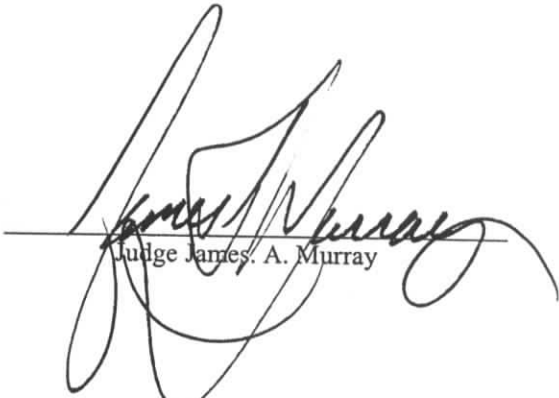
The Court hereby enters ***JUDGMENT*** as follows:

Judgment amount: ***\$4,800.00*** (\$3,600 monthly rent (Sept. Oct. Nov.) + \$240.00 late fees for those months and Dec. + \$960.00 rent for Dec. (\$40.00 per diem x 24 days = \$960.00).)
Possession of rental unit @ ***421 East Wind Drive, Dover, DE 19901.***
Per diem rent @ ***\$40.00*** until possession is relinquished.
Post-Judgment Interest @ ***5.75%***.

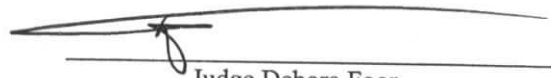
IT IS SO ORDERED, this 24th day of December, 2014.¹⁸



Judge Ernst M. Arndt



Judge James A. Murray



Judge Debora Foor

¹⁸ The Court announced its decision in open court on December 16, 2014 and reduced it to writing effective the above date. This constitutes the Court's full decision and rationale.