



STATE OF DELAWARE  
JUSTICE OF THE PEACE COURT NO. 13  
1010 CONCORD AVENUE  
CONCORD PROFESSIONAL CENTER  
WILMINGTON, DELAWARE 19802

TELEPHONE: (302) 577-2550

SYSTEM ID: @2633385  
PAUL TAYLOR  
C/O DL GOUGE JR  
800 N KING STREET  
SUITE 303  
WILMINGTON DE 19801

VS.

Civil Action No: JP13-13-015262

SYSTEM ID: @2633386 / @2633387  
JAMES DAVID BLACK / ELISABETH VERNA BLACK  
308 MORGAN DRIVE  
BEAR, DE 19701

**ORDER ON TRIAL DE NOVO**

January 3, 2014. The Defendants James David Black and Elisabeth Verna Black bring this appeal to a three-judge panel from a trial court decision that awarded judgment in favor of Plaintiff Paul Taylor in the amount of \$5,473.333 plus \$40.00 court costs, possession, \$53.33 per diem until vacated and 5.75% post-judgment interest per annum. Defendants filed a timely appeal. Plaintiff is represented by Donald Gouge Jr., Esq. Defendants are represented by Brian Biggs, Esq. The three-judge panel consists of Judge Bonita N. Lee, Judge Marie E. Page and Judge James A. Tull.

At the appeal hearing, Defendant argues the judgment should be vacated and a new trial set because Plaintiff's petition for a forthwith summons was issued in error constituting a procedural defect. Defendant argues that the facts and circumstances presented by the Plaintiff did not meet the statutory requirement for a forthwith hearing pursuant of 25 Del. C. §5115, which states:

§5115 Application for a forthwith summons.

“Where the landlord alleges and by substantial evidence demonstrates to the Court that a tenant has caused substantial or irreparable harm to the landlord’s person or property, or where 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.”

Defendant argues that Plaintiff failed to demonstrate the tenant had caused substantial or irreparable harm. Consequently, by proceeding on a forthwith summons and immediate hearing, the Defendants were prejudiced by not having adequate time to prepare for trial. The Court rejected this argument, finding that a judicial officer reviewed and approved the application for a forthwith summons. Having found sufficient grounds, a forthwith summons was issued and a trial was held. The trial judge considered the testimony and evidence presented by both parties and entered judgment in favor of the Plaintiff. Defendant’s argument of prejudice due to the expedited hearing is not persuasive. Further, we do not find a procedural defect in the manner in which this case was handled. The appeal in this matter is properly before the three-judge panel.

Finally, Defendant argues they were deprived of peaceful enjoyment of the residence, due to the landlord continually showing up at the residence. They seek an unspecified amount for rent abatement. Plaintiff objected, arguing the counterclaim for abatement was not filed in the time required by 25 Del. C. 5717(b) which states in pertinent part:

#### §5717. Stay of proceedings on appeal

“(b) An appeal taken pursuant to subsection (a) of this section may also include claims and counter-claims not raised in the initial proceeding; provided, that within 5 days of the filing of the appeal the claimant also files a bill of particulars identifying any new issues which claimant intends to raise at the hearing which were not raised in the initial proceeding.”

Notwithstanding the requirement of §5715 (b) Defendants believe they should be allowed to go forward on the counterclaim because Defendants were not represented by counsel at the original trial and present counsel was not secured until December 30. <sup>1</sup> The Court rules that the counterclaim for abatement is untimely and therefore prohibited. However, Defendant is

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<sup>1</sup> The original trial was held November 22, 2013. The written order was issued November 27, 2013. The appeal was filed December 4, 2013. A *trial de novo* was scheduled January 3, 2014. On December 31, 2013 Defendant’s attorney requested a continuance; Plaintiff’s attorney opposed.

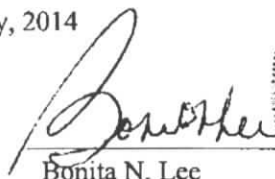
permitted to testify concerning diminished peaceful enjoyment of the premises as a defense to the original claim.

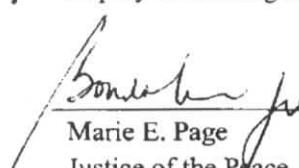
Plaintiff Taylor provided testimony concerning unpaid rent from August to present totaling \$7,606.66. This amount reflects a \$500.00 credit given to the tenants as reimbursement for illegal pet fees. Plaintiff also provided a copy of the lease agreement establishing monthly rent in the amount of \$1,600.00 and five-day demand letter dated November 13, accompanied by a certificate of mailing. Elisabeth Black testified on behalf of the defense. There was no dispute concerning unpaid rent; however, the Defendant took issue with what she characterized as harassing phone calls and frequent visits by the landlord with no advance notice. Taylor admitted to entering onto the premises on multiple occasions, but testified he was only inside the house when accompanied by the defendant. Other visits to the premises were to tend to maintenance of the outside pool.

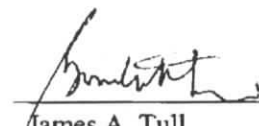
After considering the testimony and evidence by both parties, the Court finds the Plaintiff established by a preponderance of the evidence the right to unpaid rent from August to present and possession of the rental premises. Defendant E. Black admits that no rent has been paid since July. E. Black further acknowledges receipt of the November 13th five-day demand letter. The testimony does not support Defendant's claim of diminished peaceful enjoyment of the premises. The Court does not find the landlord's actions intrusive, but reasonable to prevent damage to his property.

For reasons stated, judgment is awarded in favor of Plaintiff Paul Taylor and against Defendants James Black and Elisabeth Black in the amount of \$7,606.66, \$41.50 court costs, possession with \$53.33 per diem until vacated plus 5.75% post-judgment interest.

IT IS SO ORDERED this 14th day of January, 2014

  
Bonita N. Lee  
Deputy Chief Magistrate

  
Marie E. Page  
Justice of the Peace

  
James A. Tull  
Justice of the Peace

