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

COURT ADDRESS: 480 BANK LN DOVER DE 19904 CIVIL ACTION NO: JP16-12-001158

#### WILLIAM ALLEN JR VS DIANE FENWICK ET AL

SYSTEM ID: @2471966 WILLIAM ALLEN JR. 1831 S DUPONT HWY DOVER DE 19901

William Allen, Jr.,	§
Plaintiff,	\$ \$ C.A. No. JP16-12-001158
v.	§ §
Diane Fenwick,	§
Elwood Fenwick,	§
Defendants.	§ §

#### TRIAL DE NOVO

Case Heard: April 12, 2012 Case Decided: April 12, 2012

Plaintiff William Allen, Jr. appeared *pro se*. Defendant Diane Fenwick appeared *pro se*. Defendant Elwood Fenwick failed to appear.

### NOTICE OF JUDGMENT/ORDER

This is a *de novo* appeal to a three judge panel from a decision dated March 15, 2012. The panel, comprised of Judges Murray, Arndt, and Sherlock, heard the new trial on April 12, 2012. Based on the following, the panel *finds in favor of the Plaintiff*.

6CF14J (Rev. 9/15/04)

## BACKGROUND

Plaintiff filed a Landlord/Tenant Summary Possession petition on February 24, 2012 seeking back rent, court costs, and possession of the rental unit located at 133 South Kirkwood Street in Dover, Delaware 19904. At issue was Defendants failure to pay rent for the months of October 2011, November 2011, December 2011, and January 2012 totaling \$1950.00. Trial was held on March 15, 2012 and judgment was entered in favor of the Defendants. Plaintiff filed a timely appeal on March 21, 2012 and a trial *de novo* was scheduled.

## TESTIMONY OF PARTIES & WITNESSES

Plaintiff William Allen, Jr. testified on his own behalf. He stated he and Defendant Diane Fenwick have a verbal agreement in where Defendant pays \$120.00 per week to rent a room. Defendant was considered paid in full through November 21, 2011, but has refused to pay rent since. Up until recently, Defendant was a model tenant and always paid her rent, though sometimes late. He can't understand why she doesn't want to communicate with him anymore. Because of this, he finally had to file suit for back rent, court costs, and possession. There was no cross examination of this witness.

Plaintiff entered into evidence, without defendant's objection, the following exhibits: Defendant's history of account with the Plaintiff for the rental unit showing an outstanding balance of \$2472.00 and the five (5) day cure letter dated October 11, 2011. Plaintiff rested.

Defendant then testified on her own behalf and confirmed the existence and terms of the verbal lease. She stated she told Plaintiff to come by on November 25, 2011 to get the rent for that week. He never showed up then and, as of this date, has yet to show up to collect the weekly rent from her. She knew he was collecting rent from the other tenants, but didn't understand why he refuses to come by her room to collect her rent. She acknowledges she owes the past due amount of \$2472.00, but stated "all he has to do is come by, knock on my door, and pick it up. It's not my job to chase him down." Under cross examination, Defendant denied allegations she simply refused to answer the door and denied Plaintiff came by on "numerous occasions" to collect the rent. After cross, Defendant rested.

#### **DISCUSSION**

Defendant violated an obligation under the verbal rental agreement by failing to pay rent which is governed by 25 *Del. C.* § 5501. The plaintiff provided the statement of account showing what Defendant owed. Defendant admitted she owed Plaintiff back rent in the amount of \$2472.00. Plaintiff failed to establish a landlord/tenant relationship with Defendant Elwood Fenwick.

6CF14J (Rev. 9/15/04)

### **CONCLUSION**

After considering the evidence and testimony presented, the panel finds Plaintiff has proven his case by a preponderance of the evidence and issues an unanimous verdict in favor of the Plaintiff and against Defendant Diane Fenwick as follows:

Judgment in the Amount of \$2472.00. Court Costs of \$90.00. Possession to Plaintiff.

However, based on the testimony of both parties, the panel determines a good faith dispute exists as governed by 25 *Del. C.* § 5716. Plaintiff never supplied Defendant with an address to drop off the rent nor did he provide a mailing address for it to be sent. Plaintiff acknowledged his practice was to pick up rent from his tenants. Defendant never denied owing the rent. This means if Defendant pays the full amount of the judgment and court costs to Plaintiff within ten (10) days of the final judgment, and then provides proof of this to the court, possession of the rental unit will remain with Defendant. If the amounts of judgment and court costs are not paid within this time frame, a writ of possession may issue.

With regard to Defendant Elwood Fenwick, no default judgment shall issue as Plaintiff has failed to prove a landlord/tenant relationship ever existed between the two parties.

The Court announced its decision in open court on April 12, 2012 and reduced it to writing on April 18, 2012.

IT IS SO ORDERED this 18th day of April, 2012.

Trial De Novo Panel

James A. Murray / Justice of the Peage

Ernst M. Arndt

Justice of the Peace

Michael P. Sherlock Justice of the Peace