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

TRINITY PROPERTY GROUP, LLC,	§ §	
Plaintiff,	& & &	C.A. No. JP16-12-003666
v.,	\$ \$	C 1.0. 01 10 12 005000
ANTONIO TURNAGE,	8	
Defendant.	§ §	

## TRIAL DE NOVO

Case Submitted: September 18, 2012 Case Decided: October 9, 2012

Plaintiff Trinity Property Group, LLC, appeared represented by Daniel R. Losco, Esquire, Losco and Marconi, P.A., Wilmington, Delaware.

Defendant Antonio Turnage appeared pro se.

#### NOTICE OF JUDGMENT/ORDER

This is a *de novo* appeal to a three judge panel from a decision dated August 10, 2012. The panel, comprised of Judges Murray, Sweet, and Sherlock, heard the new trial on September 18, 2012. Based on the following, the panel *finds in favor of the Plaintiff and denies the Defendant's counterclaim*.

#### **BACKGROUND**

Plaintiff filed a Landlord/Tenant Summary Possession petition on July 13, 2012 seeking back rent, court costs, and possession of the rental unit located at 255 Webbs Lane, Apartment G-22 in Dover, Delaware 19904. At issue was Defendants failure to pay rent for the last half of the month of June 2012 and all of July 2012. Trial was held on August

10, 2012 and judgment was entered in favor of the Plaintiff. Defendant filed a timely appeal, as well as a Motion to Vacate, on August 13, 2012. At that point, a trial *de novo* was scheduled. Subsequently, on August 27, 2012, Plaintiff filed a Motion to Amend. Prior to the start of the *de novo* appeal, a hearing was convened to determine whether or not the Motion to Vacate needed to be heard by the original trial judge due to the simultaneous filing of Defendant's motions. The panel concluded once the trial *de novo* was requested, Defendant no longer had the right to file a Motion to Reargue/Vacate with the original court. Plaintiff's Motion to Amend was denied as not timely, pursuant to 25 *Del. C.* § 5717(b).

#### TESTIMONY OF PARTIES & WITNESSES

Plaintiff witness, Perry T. Mathias testified he had been the property manager for the complex, where Defendant resides, for approximately 16 months. Defendant has been a resident since September 2011, under a verbal sub-lease, and had always paid his rent in a timely manner. That stopped after Defendant was terminated from his employment with the complex on June 8, 2012. Witness explained collecting rent became an issue after Defendant was notified that Trinity Property Group, LLC was the new landlord. Defendant used the excuse his agreement was with a Chris Conti and he would only pay rent to him despite the change in property management. Under cross examination, witness stated Trinity was now authorized to collect rent for the complex and the Defendant knew where the rental office was as he had always paid his rent there prior.

Plaintiff entered into evidence, without defendant's legal objection, the following exhibits: Notice to Defendant regarding change of landlord, Defendant's history of account with the Plaintiff for the rental unit showing no rent had been paid since the first half of June 2012, and the five (5) day cure letter dated July 2, 2012 along with proof of mailing. Plaintiff rested.

Defense witness Roger Lee Miller could only testify to the fact he was present during the termination of the Defendant, unable to add any further information about the case at hand. Defendant then testified on his own behalf and confirmed the existence and terms of the verbal lease allowing him to pay his \$600.00 per month rent in two (2) installments of \$300.00 each month. Defendant insisted he only had this agreement with Chris Conti, not the Plaintiff. Defendant acknowledges his last payment of rent was for the first half of June 2012, as he claims he didn't know where to pay it after new management took. Under cross examination, Defendant admitted to paying rent at 51 Webbs Lane, the rental office, but insisted he only pay Chris Conti because according to his research, Trinity Property Group, LLC is not incorporated in Delaware.

During the counterclaim, Defendant Turnage testified he gave Chris Conti a total of \$1800.00 in September 2011 which was for a security deposit (\$600.00) along with first and last months rents (\$1200.00). Under cross examination, Defendant could not provide

proof of these transactions. Plaintiff then entered into evidence a document showing Trinity Property Group, LLC was registered to do business in Delaware on August 2, 2012, but effective June 1, 2012.

## **DISCUSSION**

Defendant violated an obligation under the verbal rental agreement by failing to pay rent which is governed by 25 *Del. C.* § 5501. Defendant admitted he owed back rent in the amount of \$1500.00 as well as per diem rent of \$20 beginning September 1, 2012. Defendant failed to provide any evidence or reliable testimony in support of his counterclaim that any amount of money was ever paid to the previous property manager for security deposit and two (2) months rent.

### **CONCLUSION**

After considering the evidence and testimony presented, the panel finds Plaintiff has proven its' case by a preponderance of the evidence and issues a unanimous verdict in favor of the Plaintiff and against Defendant Antonio Turnage as follows:

Judgment in the Amount of \$1500.00 Per Diem of \$20.00 beginning September 1, 2012 Court Costs of \$40.00. Post Judgment Interest @ 5.75% Possession to Plaintiff.

With regard to the counterclaim, the panel determines Defendant failed to prove his case by a preponderance of the evidence. *Therefore, the counterclaim is DENIED*.

IT IS SO ORDERED this 24th day of September, 2012.

For The Court

Michael P. Sherlock Justice of the Peace

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