

On August 15, 2013, this Court, comprised of the Honorable D. Ken Cox, the Honorable James A. Murray and the Honorable Robert B. Wall, Jr., acting as a special court pursuant to 25 *Del. C.* § 5717(a)¹ held a trial *de novo* in reference to a Landlord/Tenant Summary Possession petition filed by Richard C. Cathcart (hereinafter referred to as Plaintiff), against Rochelle Grove & Da’Juan Grove (hereinafter referred to as Defendant or Defendants). For the following reasons the Court *Dismisses Without Prejudice* Plaintiff’s petition.

Factual and Procedural Background

Plaintiff filed a Landlord/Tenant Summary Possession petition with Justice of the Peace Court No. 16 seeking possession, court cost, accrued rent, late fees and post-judgment interest at the current legal rate. This action is based on the Defendants failure to pay rent. Trial was held on July 29, 2013, and judgment was entered in favor of Plaintiff.² Thereafter, Defendants filed a timely appeal of the Court’s Order pursuant to 25 *Del. C.* § 5717(a). Trial *de novo* was thereafter scheduled and held on August 15, 2013.

Analysis of Review & Discussion

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 *Cathcart v. Grove et al*, Del. J.P., C.A. No. JP16-13-003827, Grapperhaus, J. (July 31, 2013).

In order for a landlord to prevail at trial when non-payment of rent is at issue, the landlord must have complied with the statutory requirements and the applicable case law. In *Lasocha v. Weir*³ the Court clearly defined those requirements and are herein set forth:

- (1) Establish that there is a landlord/tenant relationship between the plaintiff(s) and defendant(s).
- (2) Plaintiff's petition complies with 25 *Del. C.* § 5707.
- (3) Defendant(s) is properly served with notice of plaintiff's petition.
- (4) Plaintiff's five (5) day notice complies with 25 *Del. C.* § 5502.⁴
- (5) Plaintiff's five (5) day notice is properly served upon the tenant(s)/defendant(s).
- (6) Plaintiff filed their petition after the time period of the five (5) day notice has elapsed to cure the non-payment of rent.

At trial under oath, both Parties presented a number of exhibits⁵ in support of their respective positions. The Court need only to address one exhibit specifically for purposes of explaining the rationale for its decision.

³ *Lasocha v. Weir*, Del. J.P., C. A. No. JP16-08-003647, Arndt, J., Murray, J. and Pennella, J. (Sept. 8, 2008).

⁴ Such demand notice is referred to as "the five (5) day letter or notice" because the least amount of time that a landlord may give a tenant to cure non-payment of rent is five (5) days.

⁵ **RETURN OF EXHIBITS:** Justice of the Peace Court Civil Rule 77(3). **Justice of the Peace Court; clerks; records and exhibits, fees.** (3) Disposition of exhibits. After the final determination of a cause by the Court and the expiration of the period for filing a notice of appeal, if no notice of appeal has been filed, all exhibits shall be removed by the party who introduced them. Parties shall be notified at the time of judgment or later that exhibits

Plaintiff submitted a letter⁶ dated June 14, 2013, and referred to it as notice for payment (hereinafter referred to as “demand notice”). Also copied onto the bottom right corner of this document is a Certificate of Mailing addressed to “Rochelle & Dajuan Grove” stamped dated June 14, 2013, by the Delaware City United States Post Office. The Court will first address the contents of the demand notice and thereafter the manner in which it was served.

When a tenant(s) is in default of rent a landlord may demand a tenant(s) to bring said rent current upon demand pursuant to 25 *Del. C.* § 5502. The landlord’s demand for past due rent must be in written form to the tenant(s) and said notice must contain the following as set forth by § 5502 and the *Lasocha* Court:

- (1) Notice must include the date in which said notice was written.
- (2) Notice must state the specific amount of rent due. (This amount must be itemized so that the tenant may understand how the landlord determined the amount of rent being demanded).
- (3) Notice must identify the rental unit by address for which rent is being demanded.
- (4) Tenant(s) must be given a time period in which to cure non-payment of rent. This time period ***shall not*** be less than five (5) days.⁷

may be removed by the party who introduced them no sooner than 16 days and no later than 30 days, from the date the judgment is entered. If not removed, the clerk may obtain an order of the Court for their disposition.

⁶ Plaintiff’s exhibit #3

⁷ 25 *Del. C.* § 5112. **Time computation.** In computing any period of time prescribed or allowed by order of the Court or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run ***shall not be included*** [emphasis added] unless specifically included by statute, order or rule....When

- (5) Notice must be addressed and mailed separately to every tenant on the lease agreement. (When there are multiple tenants on a rental agreement, the landlord may compose 1 demand notice which includes the name of every tenant on said rental agreement but a copy of said demand notice *shall* be mailed to each tenant individually if the landlord chooses to obtain service via mail.
- (6) Notice must state should the tenant(s) fail to pay the outstanding balance within the time frame mentioned the lease agreement *shall be terminated*.
- (7) Notice must state should the tenant(s) fail to pay the outstanding balance within the time frame mentioned the landlord may bring an action for summary possession in the court.⁸

Plaintiff's demand notice fails to itemize an amount which he is demanding. Plaintiff refers to "pay the two months of back rent" however he does not state for which two months he feels he is owed back rent, nor does he provide a specific amount of rent due. Plaintiff also asserts a claim for late fees but again is none specific as to which months he is entitled to collect a late fee. Plaintiff's demand notice also fails to advise Defendants that should they fail to cure the non-payment of rent that Plaintiff will terminate their lease agreement. For these reasons Plaintiff's demand notice is defective.

the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays *shall be excluded* [emphasis added] from the computation.

⁸ More appropriately notice should state, "may bring an action for summary possession in the Justice of the Peace Court", however, notice is acceptable if it states; may bring an action in court or court action or summary possession action in court.

In addition to the above stated requirements for a five (5) day demand notice, the notice must be served upon the tenant(s) as required by 10 *Del. C.* § 9524, 25 *Del. C.* § 5113, Court Rule⁹ and consistent with case law.¹⁰ A five (5) day demand notice pursuant to 25 *Del. C.* § 5502(a)¹¹ must be served upon the tenant(s) before the landlord can *commence an action* before the court, therefore the five (5) day demand notice must be served in the same matter as consistent with that of a summons, each tenant listed on the lease agreement must receive a five (5) day notice in order to invoke the personal jurisdiction of the Court. A five (5) day notice which is addressed to each tenant but mailed in one envelope *is not* considered as service or “served” on all tenants. Such practices are addressed in *Eanes v. Custer*, Del. Super., C.A. 64C-05-019, Terry, J. (August 31, 1994). Judge Terry’s Order states in pertinent part:

“...Jurisdiction over the Defendants was attempted by substituted service pursuant 10 *Del. C.* § 9524 where a procedure is established for service of summons. One of the methods of service is by “sending a copy of the summons with accompanying papers, if any, to him by certified mail...”. Looking at the statute as a whole it is obvious that it requires a copy of the summons to be sent to each Defendant. In the case at bar, only one summons was sent in an envelope addressed to

⁹ Justice of the Peace Court Civil Rule 5. **Service and filing of pleadings and other papers.**

¹⁰ *Lasocha v. Weir*, Del. J.P., C. A. No. JP16-08-003647, Arndt, J., Murray, J. and Pennella, J. (Sept. 8, 2008). Citing *Eanes v. Custer*, Del. Super., C.A. No. 94C-05-019, Terry, J.(August 31, 1994). See also *Key Box “5” Operatives, Inc. v. Valentine*, Del. J.P., C.A. No. JP17-95-02-0224, Brittingham, J., Comly, J. and Davis, J. (May 10, 1996).

¹¹ “A landlord...any time after rent is due...demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in such notice...the rental agreement shall be terminated. If tenant remains in default, the landlord may thereafter bring an action for summary possession of the dwelling unit...action or suit for possession.

three people. The failure to send a separate summons for each Defendant violates the clear intent of Section 9524...

...If a summons is mailed to an individual at his address and someone residing there accepts it, one can fairly presume that the individual to whom it is addressed will receive it. Similarly if three summonses are mailed in three separate envelopes to three individuals residing in the same house and one person receives all three, it can still be fairly presumed that they will be delivered by that individual to the persons to whom they are addressed. However, if one summons is mailed in only one envelope addressed to three people and is received by one person, the chances that the one summons will be passed around to all three addressees is considerably more remote. For instance, the first addressee, if he gets it, might lose it or throw it away not realizing or caring that it should be shown to the others..."

The material aspects of 10 *Del. C.* § 9524 and 25 *Del. C.* § 5113 are the same and therefore if substitute service is attempted a notice must be sent to each tenant. Key Box "5" Operatives, Inc. v. Valentine, Del. J.P., C.A. No. JP17-95-02-0224, Brittingham, J., Comly, J. and Davis, J. (May 10, 1996).

Plaintiff's proof of mailing clearly indicates that he mailed one demand notice to two tenants. When mailing a *demand notice* a landlord is required to mail each tenant a demand notice and not just mail one demand notice to all tenants. For that reason Plaintiff failed to properly serve his demand notice upon all tenants.

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 vote ***DISMISSES WITHOUT PREJUDICE*** Plaintiff's petition for failing to

comply with 25 Del. C. § 5502 and to properly serve said demand notice upon all tenants.

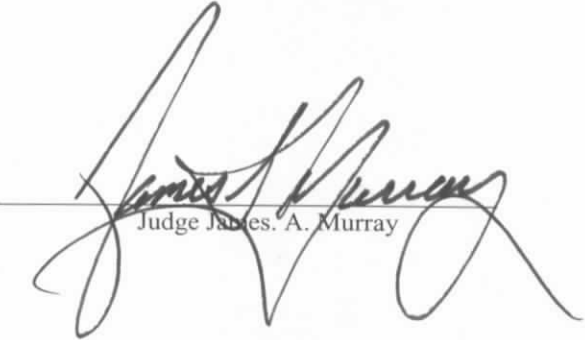
The Court announced its decision and rationale for same in open court and reduced its order to writing this date.

Parties have until September 29, 2013 to appear at Court 16 in person and take possession of their respective trial exhibits. After September 29th said exhibits will be destroyed.¹²

IT IS SO ORDERED, this 29th day of August, 2013.



Judge D. Ken Cox



Judge James A. Murray



Judge Robert B. Wall, Jr.

¹² If the panel marked upon an exhibit and it was a copy and not an original it will not be returned to the Parties.