

**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: JP16-13-003874

DOVER HOUSING AUTHORITY VS PANDORIA M BENBOW

**SYSTEM ID: @2596446
DOVER HOUSING AUTHORITY
76 STEVENSON DRIVE
DOVER DE 19901**

ORDER

On October 25, 2013, the Court had before it a trial *de novo* for a Landlord/Tenant Summary Possession action filed by Dover Housing Authority (“Plaintiff”) against Pandoria Benbow (“Defendant”). This Special Court, comprised of the Honorable Robert Wall, the Honorable Dwight D. Dillard and the Honorable R. Hays Grapperhaus, convened pursuant to 25 *Del. C.* § 5717(a).¹

Factual Background

Plaintiff filed a Landlord/Tenant Summary Possession on July 2, 2013 seeking possession and court cost. On August 21, 2013 Plaintiff filed an alias petition seeking possession, accrued rent, holdover rent and court cost. Trial was held on September 23, 2013 and judgment was entered in favor of Defendant.² Plaintiff filed a timely appeal and a trial *de novo* was scheduled and held on October 25, 2013.

Discussion

Plaintiff’s petition for possession is based on Defendant violating the lease agreement³ ‘One Strike and You’re Out’ drug and criminal activity zero tolerance policy. Plaintiff introduced evidence of a police report⁴ which reflected firearms and drugs were found in Defendant’s rental unit. Defendant’s adult son was charged with criminal offenses pursuant to the items found in the rental unit. Defendant testified her adult son does not reside with her and provided evidence of her son being removed from the lease by a notice⁵ dated February 13, 2006. On cross examination, Defendant testified her son does not live with her and she never saw any guns or drugs.

¹ 25 *Del. C.* § 5717(a). Stay of proceedings on appeal. 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 *Dover Housing Authority v. Benbow*, Del. J.P., C.A. No. JP16-13-003874, Cox, J. (September 23, 2013)

³ Plaintiff’s exhibit #1

⁴ Plaintiff’s exhibit #2

⁵ Defendant’s exhibit #7

The Court finds Plaintiff's evidence of a police report does not adhere to Delaware Uniform Rules of Evidence 803(8)(a) which reads:

Hearsay exceptions; availability of declarant immaterial.

The following are not excluded by the hearsay rule, even though the declarant is available as a witness: (8) Public records and reports. To the extent not otherwise provided in this paragraph, records, reports, statements or data compilations, in any form, of a public office or agency setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law. The following are not within this exception to the hearsay rule: (A) Investigative reports by police and other law-enforcement personnel;

Plaintiff proffered a police report in lieu having the arresting police officer testify. As the Court finds this evidence to be hearsay, no weight will be given to this evidence. Plaintiff provided no other evidence of rules violation by Defendant.

Plaintiff sought accrued rent and holdover rent. Plaintiff introduced evidence of a 14 day letter dated October 11, 2013. The letter requested \$2264.00 in unpaid rent, late fees, work order and excess utilities and gave Defendant a \$450.00 credit for a payment.

The Court finds the Plaintiff notice gave the Defendant fourteen (14) days to pay overdue charges or her lease would be terminated and appropriate legal action for eviction would be initiated. The 14 day clock would begin the date after the notice was sent or delivered. The notice is dated October 11, 2013 and is marked hand delivered. This notice gives Defendant the end of business October 25, 2013 to pay overdue charges. Based on this notice, Plaintiff could not seek overdue charges until October 28, 2013. The Court finds Plaintiff has not afforded Defendant proper time to cure outstanding debt.

Conclusion

Therefore, based on the Court's fact finding inquiry and by a preponderance of the evidence, the Court by unanimous vote finds in favor of the **Defendant**.

The Court announced its decision in open court.

IT IS SO ORDERED this 25th day of October, 2013

 (SEAL)
The Honorable Dwight D. Dillard for the Court