



On July 21, 2015 this Court, comprised of the Honorable Ernst M. Arndt, the Honorable James A. Murray and the Honorable William J. Sweet, acting as a special court pursuant to 25 *Del. C.* § 5717(a)<sup>1</sup> held a trial *de novo*<sup>2</sup> in reference to a Landlord/Tenant Summary Possession petition filed by Delaware State Housing Authority (hereinafter referred to as Plaintiff), against Yolanda Bouyer-Bello (hereinafter referred to as Defendant). For the following reasons the Court enters judgment in favor of **PLAINTIFF** but also finds a **GOOD FAITH DISPUTE** exists.

### **Factual and Procedural Background**

Plaintiff filed a Landlord/Tenant Summary Possession petition with Justice of the Peace Court No. 16 seeking possession, court costs, accrued rent, late fees and payment for utilities. This action is based on Defendant's failure to pay rent. Trial was held on July 1, 2015, and judgment was entered in favor of the Plaintiff.<sup>3</sup> Defendant filed a timely appeal of the Court's Order pursuant to 25 *Del. C.* § 5717(a). Consequently, trial *de novo* was thereafter scheduled and held.

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<sup>1</sup> 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....

<sup>2</sup> *De novo* trial. Trying a matter anew; the same as if it had not been heard before and as if no decision had been previously rendered. Black's Law Dictionary 435 (6<sup>th</sup> ed. 1990).

<sup>3</sup> *Delaware State Housing Authority v. Bouyer-Bello*, Del. J.P., C.A. No. JP16-15-003273, Sherlock, J. (July 2, 2015).

## Testimony and Evidence

Plaintiff called the Defendant as her only witness and presented six exhibits. All exhibits were entered into evidence without objection. Through direct examination, Defendant acknowledged she entered into a lease agreement on April 2, 2015 with Plaintiff.<sup>4</sup> Monthly rent of \$510.00 is due on the first day of each month.<sup>5</sup> Should she not pay the rent by 4:00p.m. of the seventh work day then Plaintiff is entitled to a late fee<sup>6</sup> in accordance with 25 *Del. C.* § 5501.<sup>7</sup> Upon signing the lease agreement, Defendant also received; “Delaware State Housing Authority Apartment Rules and Regulations”<sup>8</sup> as well as “Post Leasing Checklist.”<sup>9</sup> Defendant further confirmed receiving Plaintiff’s demand letter<sup>10</sup> dated May 12, 2015 demanding payment of \$510.00 rent for May.<sup>11</sup> Defendant testified she did not open the letter until sometime on June 1<sup>st</sup>. She testified this was result of a medical issue which had her out of the rental for a period of time.

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<sup>4</sup> Plaintiff’s exhibit #1.

<sup>5</sup> Plaintiff’s exhibit #1 @ page 2, paragraph 2(a).

<sup>6</sup> Plaintiff’s exhibit #1 @ page 3, paragraph 2(g).

<sup>7</sup> § 5501(d). Where the rental agreement provides for a late charge payable to the landlord for rent not paid at the agreed time, such late charge shall not exceed 5 percent of the monthly rent. A late charge is considered as additional rent for the purposes of this Code. The late charge shall not be imposed within 5 days of the agreed time for payment of rent....

<sup>8</sup> Plaintiff’s exhibit #2.

<sup>9</sup> Plaintiff’s exhibit #3.

<sup>10</sup> Plaintiff’s exhibit #4.

<sup>11</sup> Plaintiff also included proof of mailing as part of her exhibit #4 demand letter.

Plaintiff's final two pieces of evidence are a "Resident Account Listing" thru July 21, 2015<sup>12</sup> and a statement from TD Bank<sup>13</sup> notifying Plaintiff of Defendant's returned check (#1015) for non sufficient funds.

During Defendant's presentation of testimony she elaborated as to the medical issue behind delaying her rent payment. An unforeseen circumstance led to her children being removed from the home and separated from her. This event triggered a medical situation which required the Defendant to be out of the home for an extended period of time.<sup>14</sup> During this time she did not have access to her incoming mail, hence the reason she opened the demand notice on June 1<sup>st</sup>. Thereafter, she submitted funds for May and June's rent. Defendant also testified that she believed she has until the tenth of the month before rent was late.

### **Discussion**

Based on the above testimony, the Court is satisfied that a Landlord/Tenant relationship exists between the Parties pursuant to 25 *Del. C.* § 5101(a)<sup>15</sup> and that a valid written lease agreement was executed.<sup>16</sup>

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<sup>12</sup> Plaintiff's exhibit#5.

<sup>13</sup> Plaintiff's exhibit #6.

<sup>14</sup> Defendant's exhibits #1 & #2. Medical billing statements for services provided during the month of May. These services took place at an out-of-state facility.

<sup>15</sup> 25 *Del. C.* § 5101(a). This Code shall regulate and determine all legal rights, remedies and obligation of all parties and beneficiaries of any rental agreement of a rent unit this State, wherever executed....

<sup>16</sup> Plaintiff's exhibit #1.

Defendant incurred a situation at no fault of her own which required her children to be placed outside of her care.<sup>17</sup> This placement had devastating short term effects on Defendant's mental health. In fact, it triggered a medical situation which resulted in her displacement from the home for an extended period of time. During this time she had no support person (she is a single parent) to assist her with such things like obtaining and paying bills (electricity, rent, etc.).

Defendant resolved her medical situation and now is in the position to reunite the family. Her first step in this reunification process was to bring her rent current. She submitted funds to Plaintiff in June for rent which Plaintiff did not provide a reservation of rights letter after acceptance. Ultimately, the check portion of the funds did not clear and was returned to Plaintiff as "non sufficient funds." Defendant explained this occurred as result of an automatic withdraw by the bank which was unaccounted for. Secondly, Defendant has secured State rent assistance to cover any rent which she is unable to meet.

Based on the events which led to the Defendant becoming delinquent in her rent, the Court believes a Good Faith Dispute exists. Black's Law Dictionary (6<sup>th</sup> Edition) states in pertinent part:

"Good faith is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the design to defraud or to seek an unconscionable advantage...." Doyle v. Gordon,

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<sup>17</sup> This family had been homeless for over a year before establishing residence at the above location.

158 N.Y.S.2d 248, 259, 260. "...[I]n common usage this term is ordinarily used to describe that state of mind denoting honesty of purpose, freedom from intention to defraud, and, generally speaking, means being faithful to one's duty or obligation." Efron v. Kalmanovitz, 249 Cal.App. 187, 57 CalRptr. 248, 251.

The Court finds no malice or intentional behavior to avoid paying rent or to defraud the Plaintiff on the part of the Defendant.

### 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 enters *JUDGMENT for the PLAINTIFF* but finds a *GOOD FAITH DISPUTE* exists.

The Court hereby enters *JUDGMENT* as follows:

Judgment amount: **\$1,914.00** (\$510.00 monthly rent for May, June, July, August, \$2,040.00 + \$25.50 Late Fees for May, June, July, August, \$102.00 - \$228.00 credit payment in June = \$1,914.00).<sup>18</sup>

Possession of rental unit @ **1160 School Street, Houston, DE, 19954**.

Per diem rent @ **\$17.00** beginning September 1, 2015 until possession is relinquished.

Court Costs: **\$43.00**.<sup>19</sup>

Whereas the Court has determined that a Good Faith Dispute exists between the Parties, the above Judgment is hereby *STAYED*.<sup>20</sup> Defendant shall have **ten (10) days** from the date of this order to pay Plaintiff the amount of **\$1,914.00** plus

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<sup>18</sup> Judgment amount is through August 31, 2015.


<sup>19</sup> \$3.00 e-filing document fee, \$30.00 J.P. Landlord/Tenant Dispute filing, \$10.00 Court Security fee.

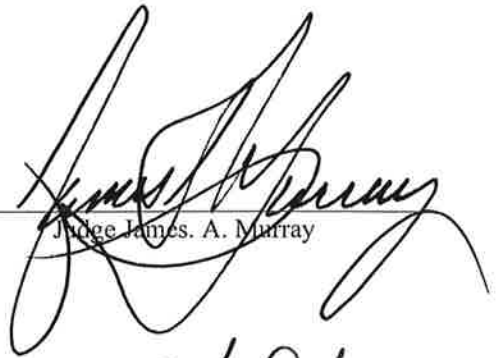
<sup>20</sup> 25 Del. C. § 5716. Stay of proceedings by tenant; good faith dispute.

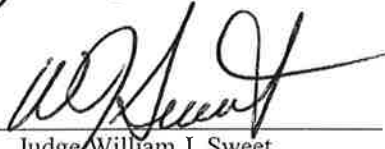
court cost of **\$43.00**. Defendant shall provide proof of said payment to the court. Should Defendant pay the amount in full within ten (10) days, then she **SHALL** retain possession of the rental unit.

Should Defendant fail to pay the above captioned amount within ten (10) days, Plaintiff has the right to immediately seek a Writ of Possession.

**IT IS SO ORDERED**, this 21<sup>st</sup> day of August, 2015.

  
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Judge Ernst M. Arndt

  
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Judge James A. Murray

  
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Judge William J. Sweet