

## HOW TO FILE AND DEFEND A SUMMARY POSSESSION ACTION IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE

*(This information is not binding on the court if incorrect or misunderstood. This information is not legal advice and is not a substitute for seeking legal advice from an attorney. If you need help in obtaining an attorney, you may contact the Legal Help Link at (302) 478-8850 or at <https://delegalhelpink.org>. A copy of this booklet is also available online at <http://courts.state.de.us/jpcourt/html/landlord.htm>.*

### WHAT DOES THIS BOOKLET EXPLAIN?

This booklet explains the special procedures which apply in an action to obtain possession of a rental unit, known as an action for **summary possession**. **A summary possession action should only be filed if possession alone is sought or if both possession and money (such as back rent) are sought.** If only money is sought from the other party in a landlord-tenant case (for example, the return of a security deposit), a debt action should be filed and different procedures will apply. Before filing an action for summary possession, it is important that you decide whether you want to ask the Court to give you possession of the unit.

### WHAT OTHER RESOURCES ARE AVAILABLE?

This booklet is intended to help only with Court procedures in summary possession actions. For further information on summary possession, and for information on the substantive rights and obligations of landlords and tenants, you should consult the **Residential Landlord Tenant Code** (contained in Part III of Title 25 of the Delaware Code). A summary may be obtained from the Consumer Protection Unit of the Attorney General's Office or a copy of the Code may be obtained by contacting Legislative Council in Dover. The Code is contained at any public library in the State and on the internet at <https://delaware.gov>. Under "Government & Services" select "General Assembly"; select "Delaware Laws" from the ribbon at the top of the screen then select "Landlord Tenant Code".

If you are a landlord or tenant of a manufactured home or manufactured home lot, you should also consult the **Manufactured Home Owners and Community Owners Act** (contained in Chapter 70 of Title 25 of the Delaware Code) for further information. You may obtain this from the sources listed above for the Residential Landlord Tenant Code. The substantive rights and obligations of commercial landlords and tenants are usually governed by general contract law.

It is also important to consult your **rental agreement** to determine any specific rights or duties which are included in it. Tenants of federally subsidized housing have additional rights and obligations beyond those created by State law and should check their rental agreements for further information. Another booklet, entitled *How to File and Defend a Civil Claim in the Justice of the Peace Court*, may be obtained at any Justice of the Peace Civil Court to help with general Court procedures, including the filing of a debt action (if you are seeking money only). You may also wish to ask the Court for the booklet containing sample complaints (one of which is for a summary possession action.) In addition, you may visit a law library to review case law, Court Rules, and other statutes which may be relevant to your case. Court booklets, forms, rules, and other materials may be downloaded from the Justice of the Peace Court website at <https://courts.delaware.gov/jpcourt>.

**An option all parties should consider in any landlord-tenant dispute is mediation.** It is free, and a quick way for the parties to reach a mutually acceptable result if they want to avoid litigation. Mediation is informal and can be quickly scheduled and heard. It often helps a situation where the parties hope or expect to continue an agreement or relationship. Trained mediators are available in all three counties at no charge for all types of landlord-tenant disputes. For more information on mediation contact:

New Castle County: Delaware Center for Justice (302-658-7174)

Kent & Sussex Counties: Center for Community Justice (302-424-0890)

**If you do decide to file a court action for possession of a rental unit**, you should realize that summary possession cases may be complicated to present and parties are encouraged, though not required,

to have an attorney represent them. (However, parties who are artificial entities, such as a corporation, must file a Form 50 if they choose not to be represented by an attorney.)

## WHAT IS MEANT BY SUBSTANTIVE RIGHTS AND OBLIGATIONS?

**The Residential Landlord Tenant Code and the Manufactured Home Owners and Community Owners Act** provide that landlords and tenants must do certain things and that if they do not, the other party has certain rights. For example:

- \* A landlord has the obligation to supply hot water, heat, and electricity and a tenant may, if these are not supplied, after giving written notice to the landlord, seek to keep two-thirds of the daily rent for any period when these are not supplied.
- \* A tenant has the obligation to pay rent and a landlord has the right to charge a late fee if provided for in the rental agreement (not more than 5% of the monthly rent) when rent is not paid on time, to sue for back rent and/or to seek possession of the unit for unpaid rent.
- \* A tenant has the obligation not to damage the unit and the landlord has the obligation to return the security deposit or the difference between the security deposit and the amount set forth in a list of damages within 20 days of termination of the rental agreement. If the landlord does not return the security deposit and/or a list of damages within 20 days of the termination, the tenant may seek the return of double the security deposit, **but only if** the tenant has provided the landlord with a forwarding address at or prior to the termination of the rental agreement.

The substantive rights and obligations described above are examples of those provided by statute. **Tenants and landlords also have other rights and obligations which do not relate to summary possession actions but which may be the basis of debt actions, or which, when specified in the statute, can be enforced directly without going to court.** You should consult the Residential Landlord Tenant Code and/or the **Manufactured Home Owners and Community Owners Act** for further information.

## WHO MAY FILE AN ACTION FOR SUMMARY POSSESSION?

An action for summary possession may be filed by either a tenant who has been wrongfully put or kept out of his or her rental unit; by the next tenant of the premises whose term has begun and the former tenant refuses to leave; by a landlord; or by an owner. *25 Del.C. § 5703*. The person or organization who files the action is known as the **plaintiff** and the person against whom the action is filed is the **defendant**.

## MAY ACTIONS FOR SUMMARY POSSESSION BE BROUGHT FOR COMMERCIAL RENTAL AGREEMENTS?

Summary possession procedures apply to commercial, as well as to residential, rental agreements. (However, the substantive rights and obligations of landlords and tenants will be determined by the rental agreement and general contract law and not by the Residential Landlord Tenant Code **Manufactured Home Owners and Community Owners Act**.) In addition to those actions discussed elsewhere in this booklet, landlords of commercial properties may file a distress for rent. (Distress for rent actions are not allowed for residential rental agreements.) This action permits a levy upon (i.e., a seizure, which may, or may not, include a physical removal) and sale of the tenant's goods if back rent is owed and there is reason to believe that the tenant would dispose of the goods in the absence of the levy. *25 Del.C. Ch. 63*.

## WHAT ABOUT MANUFACTURED HOMES OR MANUFACTURED HOME LOTS?

A summary possession action may also be brought to recover possession of manufactured homes and manufactured home lots. 25 *Del.C.* § 7002(b). The residential Landlord Tenant Code also governs the renting of manufactured homes. Chapter 70, Subchapter I governs issues pertaining to the rental of lots in manufactured home communities.

## ARE THERE RENTAL AGREEMENTS FOR WHICH AN ACTION FOR SUMMARY POSSESSION MAY NOT BE BROUGHT?

Summary possession actions may **not** be brought for the following types of rental agreements: (1) nonrenewable rental agreements of 120 days or less in certain areas of Sussex County; (2) institutional, fraternal, or hotel-type lodgings; (3) rental agreements for ground upon which improvements were made or installed by the tenant and used as a dwelling where the tenant retains ownership or title thereto, or obtains title to the improvements; (4) rental of ground which a recreational vehicle is placed; and (5) rental of ground within the category of seasonal property. 25 *Del.C.* § 5102; 25 *Del.C.* § 7004.

## WHAT ARE THE GROUNDS FOR SEEKING SUMMARY POSSESSION?

Unless otherwise agreed in a written rental agreement, an action for summary possession may generally be brought:

- 1) **by a tenant** because the tenant has been wrongfully removed from or kept out of the unit (for example, the landlord has changed the locks and kept the tenant out of the unit without a court order permitting this).
- 2) **by a new tenant** because the old tenant is unlawfully continuing in possession of the unit.
- 3) **by a landlord** because the tenant has:
  - stayed in all or part of the unit after the expiration of the rental agreement without permission of the landlord;
  - wrongfully failed to pay the agreed rent;
  - wrongfully deducted money from the agreed rent;
  - breached a lawful obligation relating to the tenant's use of the premises;
  - stayed in the unit for more than 15 days after dismissal when the housing was supplied by the landlord as part of the compensation for labor or services;
  - refused to give possession of a rental unit which has been damaged by fire or other casualty when the landlord needs to repair the unit;
  - been convicted of a class A misdemeanor or any felony during the term of the rental agreement which caused or threatened to cause irreparable harm to any person or property;
- 4) **by an owner** when the tenant has:
  - stayed in the unit for more than 5 days after the property has been duly sold upon the foreclosure of a mortgage.

In addition, a summary possession action for a **commercial rental unit** may be brought upon any grounds provided for in the rental agreement and a summary possession action for a manufactured **home**

or manufactured **home lots** may be brought for any of the grounds set forth in the Manufactured Home Owners and Community Owners Act. *25 Del.C. § 5702.*

### **SHOULD ANYTHING BE DONE BEFORE FILING FOR POSSESSION?**

**Yes. A landlord of a residential unit, or of a manufactured home or rental of lots for manufactured homes should notify the tenant in writing that the rental agreement is being terminated or, if for cause, will be terminated, if corrective action is not taken.** The amount of notice which the landlord must give the tenant depends upon the reason for terminating the rental agreement and type of rental. A complaint should not be filed until the time allowed in the notice has passed and the tenant has either not paid the amount due, or stopped the violation, as appropriate.

For failure to pay rent – A written demand for payment and notice that payment for rent owed must be made within the time mentioned in the notice must be given or sent to the tenant before bringing an action for summary possession for failure to pay rent. The time specified to make the payment must be at least 5 days after the date of the notice for residential units. *25 Del.C. § 5502(a)* (residential units); (See *25 Del.C. § 7010 A* for rental of lots for manufactured homes). For example, if the notice is given Friday, August 1, the landlord must give the tenant until at least August 8 to pay the rent before filing an action for summary possession. (Weekends and legal holidays are excluded when a time period is less than 7 days). The court action could then be filed August 9<sup>th</sup> or later.

For violation of rules – Advance written notice specifying the rule allegedly violated and providing an opportunity for the tenant to correct rule violations must generally be given or sent to the tenant before bringing a summary possession action for violation of rules.

(a) *Residential units.* The notice must specify the rule allegedly violated and advise the tenant that, if the violation continues after 7 days, the landlord may terminate the rental agreement and bring an action for summary possession. The notice may also state that it is given pursuant to *25 Del.C. § 5513* and that if the tenant commits a substantially similar violation within 1 year, the landlord may rely upon such advance notice as grounds for initiating an action for summary possession. However, **no advance notice is required if a breach by a tenant causes or threatens to cause irreparable harm to any person or property, or the tenant is convicted of a class A misdemeanor or felony during the term of the tenancy which caused or threatened to cause irreparable harm to any person or property.** *25 Del.C. § 5513.*

(b) *Rental lots for manufactured homes.* The notice must specify the acts or omissions constituting the violation, and advise the tenant that if the violation continues 12 days or more following receipt of the notice, the landlord may terminate the rental agreement. *25 Del.C. § 7010 A.*

Termination at expiration of rental agreement – Unless otherwise provided in the rental agreement, the tenant should be given or sent **written** notice of termination at least 60 days before the end of the rental term. If the rental agreement is for a manufactured home lot only (and does not include the manufactured home), in the absence of tenant misconduct, the landlord may only refuse to renew a rental agreement if there will be a change in the land use. In that situation, the landlord must follow the special notification requirements contained in *25 Del.C. § 7010(b)*. (Tenants of residential units must provide at least 60 days' written notice of termination for residential units, manufactured homes, and manufactured home lots to avoid possible liability for additional rent, unless otherwise provided in the rental agreement.) *25 Del.C. § 5106 (c)* (for residential units); *25 Del.C. § 7007* (for manufactured homes and manufactured home lots).

Termination of month to month rental agreements – The tenant must be given at least 60 days' written notice with the 60-day period beginning the first day of the month following the day of

actual notice. (Tenants must provide the same notice to landlords to avoid liability for additional rent.) 25 Del.C. § 5106(d).

For federally subsidized units - if there is any conflict in notice provisions between the Landlord-Tenant Code and any federal law, regulations, or guidelines covering subsidized units, the latter controls.

For commercial rentals - notice requirements are determined by the specific rental agreement.

## **HOW ARE THE TIME PERIODS MENTIONED COMPUTED?**

For all the time periods mentioned in this booklet, the day of the event from which the period of time runs is not included, unless specifically stated. The last day of the period is included, unless it is a Saturday, Sunday or legal holiday. In that event, the time period will run until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time is less than 7 days, intermediate Saturdays, Sundays and legal holidays are not included in calculating the period of time. For example, a summary possession appeal must be filed within 5 days of the Court's judgment. If the judgment is entered on Friday granting possession to the plaintiff, the defendant has until the following Friday to file an appeal (5 days excluding the Saturday and Sunday). If a party has the right or is required to take some act within a prescribed period after service by mail, 3 days are added to the prescribed period.

## **HOW DOES AN ACTION FOR POSSESSION BEGIN?**

The action should be filed in the Justice of the Peace Court closest to the rental property. "Filing" consists of filling out and returning to the Court the necessary papers. You will need to fill out a complaint form (J.P. Civ. Form No. 1) which you can obtain from the Court or online at <https://courts.delaware.gov/jpcourt/>. If you are a corporation, partnership, or other "artificial entity" and do not wish to use an attorney to represent you in court, you will also need to file a Certificate of Representation (Form 50). You may obtain the form 50 from the Court or online at the Justice of the Peace Court website listed above. (Both forms may be filled out online, but may not be filed with the Court online. The Complaint Form, along with the filing fee should be mailed or delivered directly to the Court which will hear your case. A Form 50 is also required to be filed with the complaint form. The Form 50 should be mailed with a check or money order for the required fee to the Office of the Chief Magistrate at the address listed on the form.)

The information which is required to be contained in/attached to the Complaint is described below. Once the Court receives your paperwork, it will serve the papers on the other party unless you wish to hire a special process server to serve the papers. (The filing fee includes service by the Court.)

Remember, that if the action is for money only, such as a claim for rent or return of a security deposit, a debt action, rather than a summary possession action, must be filed. However, if seeking both money and possession, a summary possession action should be filed.

## **WHAT INFORMATION MUST THE COMPLAINT CONTAIN?**

### **All Complaints:**

The complaint form (J.P. Civ. Form No. 1) is used for all civil complaints in the Justice of the Peace Court and, therefore, does not specify what must be contained in a summary possession action. However, the Landlord-Tenant Code (25 *Del.C.* § 5707) requires that certain specific information be included in a summary possession complaint. Therefore, in all complaints, the following should be included in the section of the complaint entitled “Concise Statement of the Facts.”

1. The interests of the plaintiff and the defendant and their relationship to each other with regard to the rental unit (for example, landlord and tenant);
2. A statement of the facts upon which the action is based. *Example 1:* “The tenant has failed to pay rent for the last two months, a written notice was sent to the tenant on September 15th, and the tenant has not paid any rent.” *Example 2:* “The landlord changed the locks on September 15th and has unlawfully kept the tenant out of the rental unit since that date. The rent per day is \$15.75 and the tenant seeks three times the amount of the rent for the period the tenant has been kept out of the unit.” (See 25 *Del.C.* § 5313 for more information on tenants unlawfully kept out of a unit.)

**A copy of any written notice sent to the tenant must be attached to the complaint.** For example, if you are a landlord seeking possession of a residential unit, including a manufactured home or manufactured home lot, for failure to pay rent, you must attach a copy of the notice which you gave to the tenant stating that unless payment is made within the time specified the rental agreement will be terminated. (See the discussion above in the section entitled “Should Anything Be Done Before Filing for Possession” for more information on the notice.)

3. A statement of what the plaintiff seeks in the action (for example, possession of the unit or possession and back rent).

In addition, you should be sure to include the **address of the rental unit** in the special space provided on the complaint a few lines below the space for the defendant’s name and address.

### **Special Requirements for violations of rules or provisions of the rental agreement:**

A landlord claiming that the tenant has violated a rule or rental agreement provision relating to the tenant’s use of the rental unit must also include the following information in the complaint (25 *Del.C.* § 5708):

1. The rule or provision of the rental agreement allegedly broken, the date the tenant was told of the rule, and the way in which the tenant was told about the rule (for example, handed to tenant, mailed). **A copy of the rule or provision as initially provided to the tenant must be attached.**
2. Facts showing that the rule was broken and that the landlord gave the tenant the required notice. (See the notice requirements for breach of rules discussed earlier.)
3. Facts showing a continued or recurring violation of the rule.
4. A statement of the purpose served by the rule.
5. If the rule did not exist when the tenant entered into the rental agreement, a statement that it does not work a substantial modification of the tenant’s bargain, or if it does, that the tenant consented knowingly, in writing, to the rule.

**If you (plaintiff) wish to have a jury trial:**

Unlike other actions in the Justice of the Peace Court, jury trials may be held in summary possession actions. **To have a jury trial, you must be sure to check the “trial by jury” box on the complaint.** Parties are particularly encouraged (though not required) to have an attorney represent them when there is a jury trial.

### **WHAT HAPPENS AFTER I FILL OUT THE PAPERS?**

Your action for possession will be scheduled for trial and the defendant will be served with the complaint and summoned to appear at trial. You will receive a notice in the mail giving the date and time of the trial. It may take several weeks before your trial will be held, depending on the number of cases filed in that court.

### **HOW ARE THE COMPLAINT AND SUMMONS SERVED?**

If possible, the complaint and summons will be served by the constable handing these papers to the defendant. If not, the constable will leave the papers with a person of suitable age and discretion who resides or is employed in the rental unit. If neither of these methods is possible, and the defendant is a person, the papers are posted on a conspicuous part of the rental unit and sent by either certified or first class mail with certificate of mailing to the rental unit or any other address known to the plaintiff at which it is likely the defendant will receive the papers. If the defendant is an artificial entity, such as a corporation or partnership, after posting, the papers must also be sent by certified or first class mail with certificate of mailing to the principal place of business of the defendant, if known, or to any other place known to the plaintiff at which it is likely the defendant will receive the papers. *25 Del. C. § 5706.*

### **DO I HAVE TO WAIT SEVERAL WEEKS FOR A TRIAL IF THE OTHER PARTY IS DAMAGING MY PROPERTY?**

If a landlord or tenant has substantial evidence that the party from whom summary possession is being sought is causing substantial or irreparable harm to the other’s person or property, the injured party may apply to the Court for a forthwith summons so that the case will be heard at an earlier date. *25 Del.C. § 5115.*

### **WHAT DO I DO IF I AM THE DEFENDANT IN AN ACTION FOR SUMMARY POSSESSION?**

1. A defendant does not have to file any written answer in a summary possession case, but a **defendant must appear in court at the time and place specified in the summons or the defendant will lose by default.** (However, a defendant in a case in which only money is being sought, such as an action for back rent or for the return of a security deposit, i.e., a debt action, will receive an answer form (J.P. Civ. Form No. 7) and this answer must be filed within the time specified or the case will be lost by default.)
2. **To have a jury trial, a demand for a trial by jury must be made within 10 days of being served with the papers.** There is no special form for this. The demand should be made by stating on a piece of paper, which includes the name of the case and its case number, that a jury trial is demanded. The demand should be signed and dated and filed with the Court. The defendant must make the demand for the jury trial within 10 days of being served with the notice of the suit. Parties are particularly encouraged (though not required) to have an attorney represent them when there is a jury trial.
3. **The defendant may file a counterclaim.** A counterclaim is a claim by the defendant against the other party. For example, if the landlord is suing for possession and back rent, the tenant may file a counterclaim for the value of furniture ruined when the roof leaked if it was the landlord’s responsibility to

fix the roof and the landlord failed to do so. Generally, counterclaims must be filed at least 5 business days before the trial.

The Justice of the Peace Court cannot award more than \$25,000 on any claim or counterclaim. If more than \$25,000 is sought, the counterclaim may be filed in the appropriate court within 60 days of the entry of judgment in the summary possession action. 25 Del.C. § 5711(b). Alternatively, if the counterclaimant is willing to accept an award limited to \$25,000, the counterclaim may be filed in the Justice of the Peace Court.

4. A third party action against a party who may be liable for all or part of the damages (along with, or instead of, the defendant) may be filed at least 5 days before the trial.

More information on filing a counterclaim or a third party complaint is contained in the booklet *How to File and Defend a Civil Claim in the Justice of the Peace Court of the State of Delaware* or on the internet at <https://courts.delaware.gov/forms/>. For additional information go to our home website <https://courts.delaware.gov/jpcourt/> and select “Topics A to Z”

## **HOW SHOULD I PREPARE FOR TRIAL?**

The booklet, *How to File and Defend a Civil Claim in the Justice of the Peace Court of the State of Delaware*, provides general information on preparing for trial and what you may expect at trial. This information is also available on the internet at <https://courts.state.de.us/jpcourt> under the Civil (General) section. Also, remember, that summary possession cases may be complicated to present and the parties are encouraged to have an attorney represent them in court.

A few points to remember which are specific to Summary Possession cases are:

1. A copy of the rental agreement should be brought to court.
2. A landlord seeking possession should bring a copy of the notice of rental agreement termination which was given or sent to the tenant.
3. Any dates that may be important to your case (for example, the date you discussed the rental, the move in date, the date the first payment of rent was made, etc.) should be noted for easy reference in court.
4. Tenants and landlords should be sure to review the Residential Landlord-Tenant Code or Manufactured Home Owners and Community Owners Act, as appropriate, and the rental agreement to determine whether there is anything the other party is required to do that he or she hasn't done. If it can be proven that the landlord or tenant has failed to fulfill his or her duties, this failure can be part of the other party's claim or defense.
5. Each party (tenant and landlord) should think, in advance, about what they want and how they will explain and prove that to the judge at trial. Also, each party should think about what the other party might want and how they would respond at trial.

## **CAN I RECOVER THE COSTS OF MY SUIT FROM THE OTHER PARTY?**

When the Court enters judgment in the case, the Court will order the losing party to pay the court costs of the suit. However, attorneys' fees, by law, may not be awarded with regard to residential units in summary possession cases.

## **WHAT CAN I DO IF A NON-SUIT OR DEFAULT JUDGMENT IS ENTERED AGAINST ME?**



A non-suit judgment is a judgment against a plaintiff which is entered when the plaintiff, after proper notice, fails to appear at the date and time for trial. A default judgment is a similar judgment against a defendant when the defendant fails to appear.

In summary possession cases, a party may file a motion to vacate a non-suit or default judgment. In most cases, this motion must be filed within 10 days of the entry of the judgment. 25 *Del.C.* § 5712. In seeking to vacate a non-suit or default judgment, a party should explain why he or she let the judgment go to a non-suit or default.

## **HOW DO I APPEAL A DECISION?**

A written request to appeal the decision must be made **within 5 days** after the judgment of the Justice of the Peace Court in which your case was heard. The appeal will be heard by a special panel of 3 justices of the peace which will not include the justice of the peace who originally heard the case. If the original trial was a non-jury trial, a new trial before the special panel will be held. When a new trial is held, the appeal may also include claims and counterclaims which were not raised in the original proceeding. **However, to have new claims or counterclaims considered, the claimant must file, within 5 days of filing the appeal, a bill of particulars identifying the new issues which the claimant intends to raise at the hearing.** Information on filing a Bill of Particulars is available online at [https://courts.delaware.gov/help/proceedings/jp\\_respond.aspx#billpart](https://courts.delaware.gov/help/proceedings/jp_respond.aspx#billpart) or in the booklet *How to File and Defend a Civil Claim*.

If the original trial was a jury trial, the special panel will review the record of the case and the person appealing the decision must specify to the panel the legal issues that the person appealing believes were decided incorrectly. 25 *Del.C.* § 5717

There is a fee for an appeal of a summary possession case (see <https://courts.delaware.gov/help/fees/jpfees.aspx> for complete list of civil fees for the Justice of the Peace Court. In addition to the appeal fee, **a cash bond may be required to prevent eviction from taking place during the appeal.**

**In a case in which the judge has ruled that failure of the tenant to pay the rent arose out of a good faith dispute,** the tenant may usually stay all proceedings on the judgment by paying all rent due at the date of the judgment and the court costs. Alternatively, the tenant may stay the proceedings by filing a statement and such security as the Court orders that all rent and costs will be paid within 10 days of the judgment. If payment is not made within ten days, a writ of possession may be requested by plaintiff and issued by the Court. 25 *Del.C.* § 5716. A good faith dispute means one in which there was an honest difference of opinion relating to the rights of the parties pursuant to the rental agreement or the Residential Landlord Tenant Code. 25 *Del.C.* § 5141.

## **WHAT IF I CAN'T AFFORD THE FEES TO FILE A CASE OR AN APPEAL OR I CAN'T AFFORD THE COSTS OF A BOND?**

An application (called an "in forma pauperis" application) may be made to the Court for these costs to be waived for persons the court determines are unable to pay. The clerk can provide the necessary forms. 25 *Del.C.* § 5718.

## **HOW DOES A WINNING PLAINTIFF ACTUALLY GAIN POSSESSION OF THE UNIT?**

If the party in possession of the unit does not vacate it on his or her own, the plaintiff may ask the Court to issue a writ of possession. There is an additional fee for issuing this writ. The writ of possession

is an order to the constable to remove all persons who have been found to be wrongfully in the unit. The Court will not issue the writ of possession until 10 days from the date of the judgment have passed. In addition, if the defendant has appealed and has posted a bond and/or any other assurances required by the Court, the Court will wait to order the eviction to determine whether or not the plaintiff is successful upon appeal. *25 Del.C. § 5715*. If the defendant has appealed but has not filed a bond or assurances, the Court may issue the writ of possession upon the plaintiff's request. However, if the tenant is evicted, but is ultimately successful on appeal, the plaintiff will be responsible for reasonable damages for the period while the tenant was evicted from the unit (including but not limited to the costs of substitute housing and moving), plus court costs and fees.

If an eviction is ordered, the person(s) to be removed will be given at least 24 hours' notice that they must vacate the premises. *25 Del.C. § 5715 (b)*.

### **WHAT IF THE PERSON EVICTED LEAVES HIS OR HER PERSONAL PROPERTY IN THE UNIT?**

If an evicted tenant leaves his or her personal property on the premises, the landlord may remove and store such property at the evicted person's expense. Such property shall be stored for 7 days by the landlord if no appeal of the summary possession action is taken and for 7 days after the decision on the appeal, if there is an appeal. Following that time, if the person whose property has been stored has failed to claim it and to provide reimbursement for the expense of removal and storage, such property will be deemed to be abandoned. *25 Del.C. § 5715(e) and (f)*.

### **IF THE LANDLORD IS AWARDED POSSESSION OF A MANUFACTURED HOME AND THE MANUFACTURED HOME IS NOT LEASED FROM THE LANDLORD, MUST THE TENANT REMOVE THE MANUFACTURED HOME WITHIN 24 HOURS?**

The Court may extend the time for removal from 24 hours to 7 days if the tenant prepays a storage fee for the manufactured home to the landlord in an amount equivalent to 7 days' rent. However, the tenant may not inhabit the home after the first 24 hours of the notice period.

### **WHAT IF THE TENANT DOES NOT REMOVE THE MANUFACTURED HOME FROM THE LOT WITHIN THE REQUIRED TIME?**

If the tenant does not remove the manufactured home during the 7-day period (or during the original 24-hour period if no storage fee is paid), the landlord may remove the unit. The landlord must store the unit (at the tenant's expense) for a period of 30 days before disposing of it through further legal action. The tenant may remove the manufactured home from the storage location only if the tenant reimburses the landlord for any judgment amount and the reasonable cost of removal and storage of the manufactured home. *25 Del.C. § 5715*.

For additional information go to our home website <https://courts.delaware.gov/jpcourt/> and select "Topics A to Z"

## ATTACHMENT NO. 1 – FILING FEES

Justice of the Peace Court Civil Fees	TOTAL
Filing Fee for Landlord/Tenant	\$45
Distress for Rent Claim	\$60
Filing Fee for Debt Claims where the amount in controversy is less than \$1,000	\$35
Filing Fee for Debt Claims where the amount in controversy equals or is between \$1,000-\$5,000	\$40
Filing Fee for Debt Claims where the amount in controversy exceeds \$5,000	\$45
Filing Fee for Trespass Claims where the amount in controversy is less than \$1,000	\$35
Filing Fee for Trespass Claims where the amount in controversy equals or is between \$1,000-\$5,000	\$40
Filing Fee for Trespass Claims where the amount in controversy exceeds \$5,000	\$45
Filing Fee for Debt Interpleaders where the amount in controversy is less than \$1,000	\$35
Filing Fee for Debt Interpleaders where the amount in controversy equals or is between \$1,000-\$5,000	\$40
Filing Fee for Debt Interpleaders where the amount in controversy exceeds \$5,000	\$45
Filing Fee for Replevin Action	\$50
Alias (Second Attempt at Service)	\$20
Attachment in Lieu of Summons	\$20
Execution (Wage Attachment/Levy)	\$30
Subpoena	\$10
Filing a Garage Keeper Case	\$45
Motion to Vacate a Default/Nonsuit Judgment	\$15
Landlord/Tenant Appeal	\$60
Constable Sale (Vendition Exponas)	\$20
Transcript	\$10
Service of Writ of Summary Possession	\$40
Revival of Judgment (Scire Facias)	\$20
Third/Fourth/Fifth Party Action for Landlord/Tenant Claims	\$40
Third/Fourth/Fifth Party Action for Debt Claims	\$35
Third/Fourth/Fifth Party Action for Trespass Claims	\$35
Third/Fourth/Fifth Party Action for Replevin Claims	\$50
Filing Fee for an Abandoned Property Suit	\$40

JP Civil Court Fees – Effective 8/15/18