

On February 6, 2017, this Court comprised of The Honorable James Murray, The Honorable Pamela Darling, and The Honorable William Sweet acting as a special court pursuant to 25 *Del. C.* § 5717(a)¹ convened a trial *de novo*² in reference to a Landlord/Tenant Summary Possession complaint filed by Keller Williams Realty (Plaintiff) against Aaron Nehler and Lischen Toloe (Defendants). For the following reasons, the Court enters judgment in favor of the **Plaintiff**.

Factual and Procedural Background

Plaintiff filed a Landlord/Tenant Summary Possession Complaint in Justice of the Peace Court 16 on December 21, 2016 seeking possession, back rent, per diem rent, post judgment interest and court costs. Trial was held on January 11, 2017 and judgment was entered in favor of Plaintiff. Defendants filed a timely appeal of the Court's order pursuant to 25 *Del. C.* § 5717(a)³ on January 19, 2017. Trial *de novo* was scheduled and held on February 6, 2017.

Evidence and Testimony

At trial, evidence⁴ and testimony developed the following:

- By mutual concurring testimony, the parties entered into a landlord/tenant relationship in July 2016.
- Defendants admitted to paying rent late three (3) times since the relationship was established. Evidence exists supporting two (2) of those times. A check carbon shows September 2016 rent was paid September 26, 2016 (D Ex 4) and the demand for delinquent rent for December 2016 (P Ex 1).
- December 7, 2016, Plaintiff sent to both defendants USPS Certificate of Mailing (P Ex 3) a letter demanding payment of delinquent rent within five (5) days (P Ex 1). The demand letter also contained a reservation of rights regarding acceptance of payments.

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, on the original complaint..."

² A new trial on the entire case — that is, on both questions of fact and issues of law — conducted as if there had been no trial in the first instance. *Black's Law Dictionary*, 6th Edition, West Publishing Co. (1990)

³ *Id.*

⁴ Plaintiff's Exhibits: 1. Five day demand letter; 2. Acknowledgment of receipt of the summary of the Landlord/Tenant Code; 3. USPS certificate of mailing.

Defendants' Exhibits: 1. Letter from Wells Fargo Bank w/ account statement; 2. Letter listing deficiencies at the rental unit; 3. Postings on door; 4. Check carbon.

- Defendants did not pay the delinquent rent until December 30, 2016. Plaintiff claimed Wells Fargo Bank would not cash the check proffered by Defendants. Defendants presented a letter defining the bank's policy regarding checks made out to businesses which is they must be deposited to the business account and not cashed (D Ex 1).
- January 1, 2017, Defendants sent a letter detailing issues with the rental unit (D Ex 2) and claiming the issues had been ongoing.
- Defendants claim Plaintiff is trying to evict them because the house is in foreclosure (D Ex 3) and a team from the mortgage company came to winterize the house believing it to be empty.

Discussion

Based on the evidence and testimony of the Parties, the Court is satisfied a Landlord/Tenant relationship exists between the Parties pursuant to 25 *Del. C.* § 5101(a)⁵. Plaintiff seeks possession of the rental unit, court costs, and unpaid and accruing rent, and post judgment interest. Plaintiff properly constructed and served a demand for payment of rent notice⁶ on December 7, 2016 giving Defendants five (5) days to cure the deficiency in rent. Defendants failed to do so. The letter gave notice of the lease termination, possible court proceedings and reserved the right to proceed even after full payment.

The late payment of rent is the sole issue before the Court. No counterclaims were raised. The issue of deficiencies in the rental unit is not relevant as no proof of communications with Plaintiff prior to the filing of this complaint was entered and Defendants' acknowledgment of receipt of the Landlord/Tenant Code summary precludes any good faith dispute.

No evidence of foreclosure was entered. D Ex 3 is not proof of foreclosure and even if the property was in a foreclosure proceeding, it's not relevant to this case.

Findings

No lease was entered into evidence and no testimony establishing the amount due and owing as of the date of trial was presented. Consequently, any additional rent, per diem rent, or late fees, beyond the amount claimed on the initial complaint are DENIED.

⁵25 *Del. C.* § 5101 (a) "This Code shall regulate and determine all legal rights, remedies and obligations of all parties and beneficiaries of any rental agreement of a rental unit within this State, wherever executed. Any rental agreement, whether written or oral, shall be unenforceable insofar as the agreement or any provision thereof conflicts with any provision of this Code, and is not expressly authorized herein. The unenforceability shall not affect other provisions of the agreement which can be given effect without the void provision."

⁶ 25 *Del. C.* § 5502(a) "A landlord or the landlord's agent may, any time after rent is due, including the time period between the date the rent is due and the date under this Code when late fees may be imposed, demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in such notice, to be not less than 5 days after the date notice was given or sent, the rental agreement shall be terminated. If the tenant remains in default, the landlord may thereafter bring an action for summary possession of the dwelling unit or any other proper proceeding, action or suit for possession."


Plaintiff has proven its case, less that described above, by a preponderance of the evidence. Findings and rationale were announced in open Court.

Find for Plaintiff:

Possession of 143 Periwinkle Dr. Dover, DE 19904 to Plaintiff, and
\$43.75 Court costs, and

The Clerk of the Court will release the bond of \$1,200.00 to Plaintiff.

IT IS SO ORDERED.



William J. Sweet, Justice of the Peace
For the Court