

**JUSTICE OF THE PEACE COURT OF THE STATE OF
DELAWARE IN AND FOR KENT COUNTY
COURT NO. 16**

FAITHWORK, LLC

Plaintiff Below/
Appellant,

v.

FRANK WASHINGTON,

Defendant Below/
Counterclaimant/
Appellee.

C.A. No. JP16-17-007758

TRIAL DE NOVO

Appearances:

Faithwork, LLC, Plaintiff/Appellant, represented by Tolano D. Anderson,
Form 50 Agent.

Frank Washington, Defendant/Counterclaimant/Appellee, represented by
Victoria J. Hoffman, Esquire.

ORDER

Cox, J.
Darling, J.
Hutchison, J.

On February 19, 2018 this Court, consisting of the Honorable D. Ken Cox, Honorable Pamela A. Darling and the Honorable Cathleen M. Hutchison, acting as a special court pursuant to 25 Del. C. § 5717(a)¹ convened for a trial *de novo*² in reference to a Landlord/Tenant Summary Possession petition filed by Faithwork, LLC ("plaintiff") against Frank Washington ("defendant").

Pre-trial, defendant by and through counsel, presented a Motion to Dismiss. Defendant contends that the 5-day letter is overstated because it includes the security deposit in the demand. In addition, defendant contends that the amount of arrears listed is not itemized as required by *Lasocha v. Weir*.³

A review of the 5-day notice dated November 6, 2017 reads in part:

As of this notice, **your rental arrears total \$2,775.00** (NOT including late fees). In addition, your security deposit in the amount of **\$650.00** was also due to be paid in full in August... Please remit the total amount due within five (5) business days from the date of this notice.

A review of the Complaint filed on December 5, 2017 reflects the amount of money claimed is \$3,425.00. The Court questioned plaintiff to determine if this amount included the security deposit. Plaintiff contends that this amount includes \$650 for December rent. However, a review of the lease agreement reflects that rent is payable in bi-weekly installments of \$325.00 due on the

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 *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 (6th ed. 1990).

³ *Lasocha v. Weir*, Del. J.P., C.A. No. JP16-08-003647, Arndt, J., Murray, J. and Pennella, J. (Sept. 2, 2008).

1st and the 15th of each month. Therefore, the claim amount should reflect \$3,100.00 instead of \$3,425.00. Pursuant to *Lasocha v. Weir*, the notice must contain, "... 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)." ⁴ *Lasocha* further states, "Any monetary claim contained in the five (5) day notice which is *not rent* artificially inflates the balance of said notice and renders the five (5) day notice defective thereby barring the landlord from receiving judgment." ⁵

Plaintiff's 5-day notice shows the rental arrears and security deposit in bold type. The last sentence of that paragraph states, "Please remit the total amount due within five (5) business days from the date of this notice." With both figures in bold on the notice the Court unanimously finds that the reference to the security deposit artificially inflates the balance and renders the notice defective. Therefore, Defendant's Motion to Dismiss must be granted on the grounds that plaintiff has failed to comply with 25 Del. C. § 5502(a).

For the foregoing reasons, Defendant's **Motion to Dismiss is hereby GRANTED**. After the Court's ruling, defendant withdrew the claim on the Bill of Particulars.

IT IS SO ORDERED, this 19th day of **February, 2018**.

For the Court,

 (seal)
Judge Cathleen M. Hutchison

⁴ *Lasocha v. Weir*, Del. J.P., C.A. No. JP16-08-003647, Arndt, J., Murray, J. and Pennella, J. (Sept. 2, 2008), at 5.

⁵ *Id.* at 7.