

**IN THE JUSTICE OF THE PEACE COURT OF
THE STATE OF DELAWARE, IN AND FOR SUSSEX COUNTY
COURT NO. 17**

CALLAWAY FARNELL AND MOORE INC

Plaintiff Below,

Appellee

VS

ALFRED CANNON

JAYMINE MCGLOTTEN

Defendants Below,

Appellant

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C.A. No. JP17-18-001089

TRIAL DE NOVO

Submitted: April 9, 2018

Decided: April 11, 2018

APPEARANCES:

Plaintiff represented by Don Clymer, Rule 57 Representative.

Defendants self-represented.

Alan G Davis, Chief Magistrate

Sheila G Blakely, Deputy Chief Magistrate

Christopher Bradley, Justice of the Peace

**IN THE JUSTICE OF THE PEACE COURT OF
THE STATE OF DELAWARE, IN AND FOR SUSSEX COUNTY
COURT NO. 17**

CIVIL ACTION NO: JP17-18-001089

CALLAWAY FARNELL AND MOORE VS ALFRED CANNON ET AL

ORDER ON TRIAL DE NOVO

The Court has entered a judgment or order in the following form:

Procedural Posture

This case was filed by Plaintiff on February 15, 2018, alleging rent delinquency. The trial before a single Justice of the Peace took place on March 3, with a finding in favor of the Plaintiff. Defendants appealed timely and a three-judge panel consisting of Chief Magistrate Davis, Deputy Chief Magistrate Blakely and Judge Bradley heard the trial de novo on April 9, 2018. This is the Court's decision after trial. For the reasons stated below the Court finds in favor of Plaintiff for a money judgement and in favor of the defendants on the issue of possession.

Facts

The Court finds the following facts to be pertinent to its decision. Defendants took possession of the property from their original landlord in January 2017 and immediately noted deficiencies in the housing conditions. They wrote a letter to their landlord, who indicated she would take care of them. Subsequently, the landlord turned management of the property over to the Plaintiff in this case. Plaintiff received a list of items that needed repair at some point during its management of the property. Some repairs were made, but significant deficiencies remained.

In November Defendants ceased paying rent. Plaintiff testified that it has made demands for rent and provided appropriate notice. Defendants do not deny that rent has not been paid.

Discussion

Payment of rent is a material term of a contract. The requirement of habitable living conditions is also a material term. The Delaware Landlord/Tenant Code provides a mechanism by which tenants, seeking to have the conditions improved at 25 Del. C. §5307. It provides that a tenant must put a landlord on notice of the need for repairs and, if the landlord fails to make such repairs, may do the work and deduct the lesser of \$200 or one half month's rent. It does not provide that a tenant may simply quit paying rent, no matter how frustrated the tenant may be with the inaction of the landlord.

Because of this, the Court is awarding a monetary judgment against the Defendants and in favor of the Plaintiff in the amount of \$3737.50 plus court costs. That amount is calculated as follows: \$750 per month for the months of November through March equaling \$3,750, plus late fees for those months equaling \$187.50. The Court has reduced the judgment by \$200 for any repairs made by the tenant.

The Court does not award possession to the Plaintiff, however. At trial, Plaintiff failed to produce sufficient evidence to ensure that a proper 5-day notice was given. Though a witness testified that notice had been given, there was no testimony about the form of the notice, nor were the notices introduced into evidence. As such, the Court cannot award possession.

Conclusion

For the foregoing reasons, the Court awards a money judgment in the amount of \$3737.50 in favor of the Plaintiff and against the Defendants. Possession remains with the defendants.

IT IS SO ORDERED 11th day of April, 2018



(SEAL)

Chief Magistrate
For the Three Judge Panel

Information on post-judgment procedures for default judgment on Trial De Novo is found in the attached sheet entitled Justice of the Peace Courts Civil Post-Judgment Procedures Three Judge Panel (J.P. Civ. Form No. 14A3J).