

IN THE JUSTICE OF THE PEACE COURT OF
THE STATE OF DELAWARE, IN AND FOR NEW CASTLE COUNTY
COURT NO. 13

MS.MARTHA E CRUZ	§	
Plaintiff Below,	§	
Appellee	§	
VS	§	
	§	C.A. No. JP13-18-001637
	§	
MR.MITCHELL EVANS	§	
MS.NAKIA DONYEL EVANS	§	
Defendant Below,	§	
Appellant	§	

TRIAL DE NOVO

Submitted: April 25, 2018

Decided: May 7, 2018

APPEARANCES:

MS.MARTHA E CRUZ, Plaintiff appeared by and through Andres G. De Cos, Esq
MR.MITCHELL EVANS, Defendant failed to appear
NAKIA DONYEL EVANS, Defendant failed to appear

Sean P. McCormick, Deputy Chief Magistrate
Nina M. Bawa, Justice of the Peace
Gerald Ross, III, Justice of the Peace

IN THE JUSTICE OF THE PEACE COURT OF
THE STATE OF DELAWARE, IN AND FOR NEW CASTLE COUNTY
COURT NO. 13

CIVIL ACTION NO: JP13-18-001637

MARTHA CRUZ VS MITCHELL EVANS ET AL

ORDER ON TRIAL DE NOVO

This matter comes before a three-judge panel as an appeal of a summary possession case pursuant to 25 Del. C. 5717. The case was originally heard before a single Judge (Ferrell, J.) on March 13, 2018. On April 4, 2018, a judgment was entered against Defendants Evans in favor of Plaintiff Cruz in the amount of \$6000.00 plus court costs and post-judgment interest. Plaintiff Martha Cruz filed a timely appeal from that judgment.

It is clear from the record of the trial below that Defendants asserted a verbal counterclaim. However, as this counterclaim was not filed by Defendants in writing and Defendants failed to appear at the *de novo* hearing to raise the counterclaim, the panel takes no action on the Defendants' counterclaim.

At the time of the *de novo* hearing Plaintiff seeks a default judgment for possession, back rent of \$14,366.50, per diem rent, court costs and post-judgment interest. Plaintiff asserts that she seeks possession based on both the demand for rent and the 60-day notice provision on the notice dated January 22, 2018.

The panel awards a default judgment for rent from October 2017 through April 25, 2018 at \$2000.00 per month plus late fees of \$100.00 per month from October 2017 through April 2018 totaling \$14366.50. However, the panel held that the 5-day notice was overstated because it demanded NSF fees, which are not considered as rent.

Rent is not specifically defined in the definition section of the Code at 25 Del.C. § 5141. However throughout the Code, there are references to what may be considered rent, if so stated in a written lease. *...A late charge is considered as additional rent for the purposes of this code...* pursuant to 25 Del.C. §5501(d). *Charges for utility services made by a landlord to a tenant shall be considered rent for all purposes under this Code...* pursuant to 25 Del.C. §5312 (e).

Other fees are permitted under the Code; but none of the language permitting these fees state such fees are considered rent under the Code. As a result, if a tenant fails to pay these other fees, the landlord may not use this failure to pay as a premise for seeking possession for failure to pay rent pursuant to 25 Del.C. §5702(2).

Since the Plaintiff's 5-day letter of demand was inflated, it was therefore insufficient for the purpose of eviction. Possession therefore remains with Defendant.

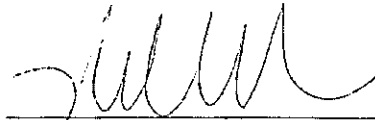
Regarding the termination of the month-to-month lease provision included in the notice dated January 22, 2018, the Court does not award possession as this claim was not ripe at the time this action was filed and Plaintiff failed to file an amended complaint when this claim became ripe. As such, Defendants were not on notice that Plaintiff intended to raise this claim during this court action.

2 | Page

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Default judgment is entered in favor of Plaintiff Martha Cruz against Defendants Mitchell Evans and Nakia Donyel Evans in the amount of \$14,366.50 plus \$40.00 court costs plus 7.25% post-judgment interest per annum.

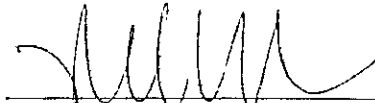
IT IS SO ORDERED 07th day of May, 2018



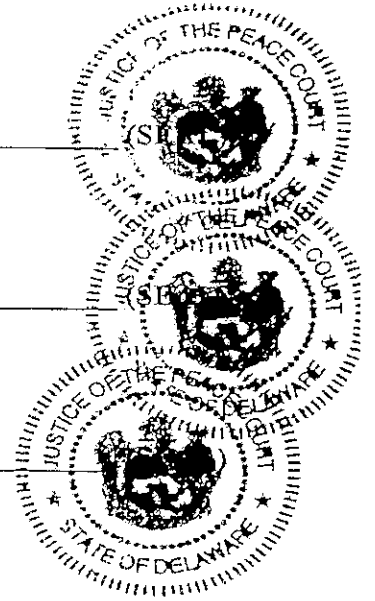
(for) SEAN P. MCCORMICK
Deputy Chief Magistrate



NINA M. BAWA
Justice of the Peace



(for) GERALD ROSS, III
Justice of the Peace



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).

IN THE JUSTICE OF THE PEACE COURT OF
THE STATE OF DELAWARE, IN AND FOR NEW CASTLE COUNTY
COURT NO. 13

COURT ADDRESS:
1010 CONCORD AVE
WILMINGTON DE 19802

CIVIL ACTION NO:
JP13-18-001637

MARTHA CRUZ
VS
MITCHELL EVANS
NAKIA DONYEL EVANS

Plaintiff Parties:

ATTORNEY FOR PLAINTIFF
SYSTEM ID: 005000
ANDRES G DE COS
ANDRES DE COS, LLC
5211 W. WOODMILL DRIVE
SUITE # 36
WILMINGTON, DE 19808

PLAINTIFF
SYSTEM ID: @3051482
MS. MARTHA E CRUZ
C/O ANDRES G DE COS ESQUIRE
5211 W WOODMILL DRIVE
STE # 36
WILMINGTON, DE 19808

Defendant Parties:

DEFENDANT
SYSTEM ID: @3051483
MR. MITCHELL EVANS
13 PERSIMMON DRIVE
SYLVAN PARK
BEAR, DE 19701

DEFENDANT
SYSTEM ID: @3051484
MS. NAKIA DONYEL EVANS
13 PERSIMMON DRIVE
SYLVAN PARK
BEAR, DE 19701

Other Case Parties:

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4 | Page

JUSTICE OF THE PEACE COURT
CIVIL POST- JUDGMENT PROCEDURES
THREE JUDGE PANEL

[This information is not legal advice and not a substitute for seeking legal advice from an attorney. This information is not binding on the court if incorrect or misunderstood. It relates to frequently asked questions concerning post-judgment procedures but does not address all of the possible procedures and may not apply in your particular case. Forms for these procedures may be obtained from any Justice of the Peace Court civil location. All motions must include the name of the court, the names of the parties, the case number, the date the motion is filed with the Justice of the Peace Court and a title indicating the reason for the motion. Court costs or fees must accompany the motion, unless the person has requested, and the court determined, that the person may proceed in forma pauperis (without paying costs or fees or posting bond because they have no money to pay).]

All payments should be made directly to the prevailing party. The Court does not accept payment on judgments.

Pursuant to 10 Del. C. § 9567(b), prevailing parties are reminded of their duty to file a satisfaction of the judgment within 90 days of payment in full.

FAILURE OF A PARTY TO APPEAR FOR THE PANEL TRIAL

As provided by Justice of the Peace Civil Rule 72.1(f), if the Appellant (the party who requested the appeal trial) or both parties fail to appear for the trial, the judgment of the court below shall stand unless the Appellee appears and has filed a counterclaim.

If the Appellee (the party against whom the appeal was taken) fails to appear and a DEFAULT JUDGMENT is entered, that party may file a Motion To Vacate the judgment pursuant to Justice of the Peace Civil Rule 60. The Motion must show; (1) the Appellee's failure to appear was the result of actions of a reasonably prudent person; and (2) the outcome would be different if the trial were held; and (3) the party that appeared would not be prejudiced by having the trial. The Motion must be filed within 10 days, starting the day after the judgment was signed by the De Novo Panel. **A FEE OF \$15.00 MUST ACCOMPANY THIS MOTION.**

MOTION FOR A NEW TRIAL

Either party has 10 days, starting the day after the judgment was signed by a Judge, to file a Motion For A New Trial as provided under Justice of the Peace Court Civil Rule 59. This Motion shall be in writing and shall briefly and succinctly state the reasons for the request. A Motion For A New Trial will be heard by the Panel of Judges who originally heard the case. The reasons for which a new trial may be granted are limited. For example, the reason given for requesting a new trial may be newly discovered evidence. However, for the Panel to grant a motion for a new trial based upon newly discovered evidence, the party requesting the new trial must show all of the following: (1) the newly discovered evidence is important enough to change the result in the case; (2) the evidence could not have been discovered prior to the original trial with reasonable investigation; and (3) the evidence does not merely repeat or dispute evidence presented in the original trial. **A FEE OF \$15.00 MUST ACCOMPANY THIS MOTION.**