

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

PREFERRED PROPERTIES INC  
Plaintiff Below,  
Appellee

VS

SANTOS AUTO SALES INC  
Defendant Below,  
Appellant

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C.A. No. JP13-18-000795

TRIAL DE NOVO

Submitted: May 30, 2018

Decided: June 8, 2018

**APPEARANCES:**

Plaintiff Preferred Properties Inc. is represented by Michael Morton, Esq.

Defendant Santos Auto Sales Inc. is represented by Form 50 Agent Henry Santos

Nina M. Bawa, Justice of the Peace

Beatrice A. Freel, Justice of the Peace

Amanda Moyer, Justice of the Peace

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

**CIVIL ACTION NO: JP13-18-000795**

**PREFERRED PROPERTIES INC VS SANTOS AUTO SALES INC**

**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 (Ross, J.) on March 12, 2018. On April 10, 2018, a judgment by argument was entered against Defendant Santos Auto Sales Inc. in favor of Plaintiff Preferred Properties Inc. Defendant Santos Auto Sales Inc. filed a timely appeal from that judgment.

Possession was not at issue on appeal as possession of the rental unit once occupied by Defendant Santos Auto Sales Inc. was terminated on March 12, 2018.

Plaintiff Preferred Properties Inc. and Defendant Santos Auto Sales Inc. entered into a commercial rental agreement for a term of three years on October 27, 2015 for a garage at 2100 Rodman Road, Wilmington DE 19808. The rent for the first year was \$500.00 per month. The second year rent increased to \$545.00 per month, and the third year rent increased to \$591.00 per month. The commercial lease provided for a late fee of 10% after the 10<sup>th</sup> of the month.

A five-day letter, dated December 20, 2017, was sent via special process server to Defendant demanding \$140.20. According to the letter, it was comprised of:

“balance of rent due in the amount of \$22.00 for December 2017, a late fee for November 2017 in the amount of \$59.10 and a late fee for December 2017 in the amount of \$59.10. Please note that the balance of rent due for December 2017 was calculated from you owing a balance of \$41.00 for November 2017 and a balance of \$41.00 for December 2017, which totaled \$82.00. However, you overpaid \$5.00 a month on your 2016/2017 rent before the change, which gave you a credit of \$60.00, which therefore leaves a balance of \$22.00.”

A reservation of rights letter, dated January 2, 2018, was sent via special process server to Defendant after a payment was made on December 29, 2017 resulting in a zero balance.

Plaintiff seeks \$5684.62 including rent for February and March 2018, window and toilet repairs, water bills, and attorney's fees. Plaintiff argues that there was a sharp increase in water usage due to fraud and abuse by Defendant, and therefore Defendant should be responsible for the water bills for December 2017 and January 2018. Plaintiff argues that Defendant did pay a deposit but it was for a different rental unit and not this rental unit.

Defendant disputes the water bills because the water bill includes all usage for the entire property including other tenants' and common areas and because the commercial lease specifies the owner and not the tenant is responsible for the water bill. Defendant disputes the damages for the toilet and window. Defendant disagrees with the attorney's fees. Defendant admits he did not pay February 2018

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rent. Defendant argues he paid a security deposit and first month's rent which have not been credited to his account. Defendant asserts he did not rent any other unit from Plaintiff.

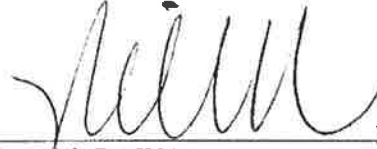
It is the role of the Court to apply law to the facts of the case as presented at trial, judging the credibility of testimony and exhibits. The Court finds that Plaintiff failed to meet the burden of proof on some of the items. Regarding the window, toilet and sink damage, the Court had insufficient evidence as to these repairs or damages. Therefore, these items will not be awarded.

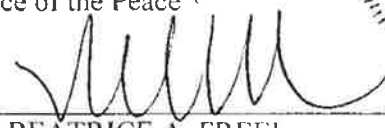
In addition, the Court finds Plaintiff failed to meet the burden of proof as to the water bills. It is clear from Plaintiff's evidence that there was an increase in usage, but there is insufficient evidence that this increase was due to Defendant. Plaintiff's own testimony admits that the water bill is for the entire property and not just Defendant's unit. In addition, no water bill was submitted into evidence for the January 2018 bill. For these reasons, the water bills will not be awarded.

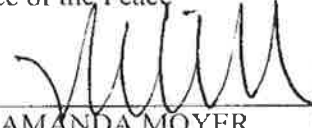
On the issue of rent, the Court finds that Plaintiff met the burden of proof. The Court awards to Plaintiff February 2018 rent of \$591.00, as the Defendant admits he did not pay February rent. The Court also awards the per diem rent from March 1, 2018 through March 12, 2018 when possession was surrendered totaling \$236.40. However, the Court credits Defendant with the November 2017 late fee of \$59.10 as the Plaintiff admits Defendant had a credit from the overpayments in the second year of the lease and therefore November 2017 rent was not late. Defendant's payment records indicate he made the payment for November 2017 rent on November 7, 2017. While Defendant showed financial records for two checks from his account, he did not provide sufficient proof to show to whom these checks were actually paid, and therefore the Court does not award any additional credit to Defendant.

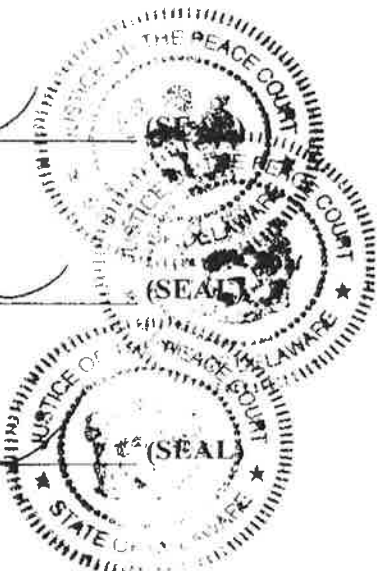
By a preponderance of the evidence presented at trial, the Court finds in favor of Plaintiff Preferred Properties, Inc. Judgment is entered for Plaintiff Preferred Properties Inc. and against Defendant Santos Auto Sales Inc. in the amount of \$768.30 plus \$41.50 court costs plus \$2349.00 attorney's fees plus post judgment interest at the legal rate of 7.25% per annum.

IT IS SO ORDERED 08th day of June, 2018

  
NINA M. BAWA  
Justice of the Peace

  
(for) BEATRICE A. FREEL  
Justice of the Peace

  
(for) AMANDA MOYER  
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).

**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:**  
JP13-18-000795

**PREFERRED PROPERTIES INC PLAINTIFF  
VS  
SANTOS AUTO SALES INC DEFENDANT**

**Plaintiff Parties:**

ATTORNEY FOR PLAINTIFF  
SYSTEM ID: 002492  
MICHAEL P MORTON  
MICHAEL P. MORTON, P.A.  
3704 KENNETT PIKE  
SUITE 200  
GREENVILLE, DE 19807

PLAINTIFF  
SYSTEM ID: @3044040  
PREFERRED PROPERTIES INC  
209 CHERRY BLOSSOM PLACE  
HOCKESSIN, DE 19707

**Defendant Parties:**

DEFENDANT  
SYSTEM ID: @2893603  
SANTOS AUTO SALES INC  
PO BOX 2648  
WILMINGTON, DE 19805

DEFENDANT  
SYSTEM ID: @2893603  
SANTOS AUTO SALES INC  
2100 RODMAN ROAD  
ELSMERE, DE 19805

**Other Case Parties:**

AGENT  
SYSTEM ID: FA10248  
HENRY SANTOS  
SANTOS AUTO SALES INC  
PO BOX 2648  
WILMINGTON, DE 19805

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Form: CF143J (Rev 5/19/17)

**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.**