

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

HECTOR DELOSSANTOS
Plaintiff Below,
Appellee

VS

LATISHA JACKSON
SHAWN MITCHELL
Defendant Below,
Appellants

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C.A. No. JP13-18-002510

TRIAL DE NOVO

Submitted: June 13, 2018

Decided: June 21, 2018

APPEARANCES:

John R. Weaver, Jr., P.A., 831 North Tatnall Street Suite 200, Wilmington, DE 19801. Attorney for Plaintiff/appellee Hector Delossantos.

Latisha Jackson and Shawn Mitchell, 232 Cobble Creek Curve, Newark, DE 19702. Defendants *Pro Se*.

Sean P. McCormick, Deputy Chief Magistrate.

Nina Bawa, Justice of the Peace.

Thomas Brown, Justice of the Peace.

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

CIVIL ACTION NO: JP13-18-002510

HECTOR DELOSSANTOS VS LATISHA JACKSON

ORDER ON TRIAL DE NOVO

Procedural Posture

This matter was filed initially on February 22 instant alleging the Defendants were delinquent in payment of rent and consequently sought possession of the rental unit located at 224 6th Avenue, Wilmington, DE 19805. After a continuance granted the Defendants (seeking time to subpoena witnesses and granted over the Plaintiff's objection) a trial took place on April 16 instant before a single Magistrate, who reserved judgment on the matter. A judgement was published on May 14 instant finding in favor of the Plaintiff for both his rental claim and possession of the unit. A singular issue of import to the hearing below was the Magistrate below disallowed a verbal counterclaim brought at the time of trial by the Defendants. At that time and in response to Plaintiff's objection to the counterclaim's consideration, the Magistrate below held that since the counter claim was not raised at the time the Defendants sought a continuance, the counter-claim was at that juncture untimely filed and therefore would not be considered. Upon notice of judgment, Defendant Shawn Mitchell filed timely the necessary paperwork seeking to appeal the matter. A three-judge panel was convened consisting of Deputy Chief Magistrate McCormick and Judges Bawa and Brown, who in turn heard the matter on June 13 instant. This is the Panel's decision after trial. For the reasons stated below, judgment was entered in favor of the Plaintiff/appellee for a monetary judgment. It should be noted that possession of the rental unit was no longer at issue at the time of the hearing *de novo*.

The Pre-Trial Motions

Three motions were raised before the panel pre-trial which substantially decided the outcome of the case. Firstly, Plaintiff moved the panel to again disallow the Defendants' counterclaim, arguing that it was not filed timely pursuant to the requirements specified within 25 Del. Code § 5717(b)¹ nor procedurally with Justice of the Peace Court Civil Rule No. 26(b) in that it was not notarized and generally procedurally non-compliant. Secondly, Plaintiff moved the panel to disallow consideration of Ms. Jackson as an appellant, noting that only Mr. Mitchell's name and signature were on the documentation necessary to seek appeal. Thirdly, the Defendants sought a continuance due to the fact that one of their subpoenaed witnesses was not present despite proper service. They averred that his testimony was critical to their claims. Both parties opposed the other's pre-trial applications.

¹ 25 Del. Code § 5717(b) states: An appeal taken pursuant to subsection (a) of this section may also include claims and counter-claims not raised in the initial proceeding; provided, that within 5 days of the filing of the appeal, the claimant also files a bill of particulars identifying any new issues which the claimant intends to raise at the hearing which were not raised in the initial proceeding.

The Panel's Consideration of the Motions

A review of the appellate documentation indicated that Ms. Jackson had never filled in her personal capacity with the clerk any intent of appeal. While Mr. Mitchell may have thought he could act jointly on their behalf, he was mistaken in that belief. Accordingly, Ms. Jackson was stricken from the appeal as a listed party. As for the need of a continuance, that pre-supposed that the counterclaim would be heard. In support of his motion, Counsel argued that, since the oral counterclaim was not considered at the hearing below², it was not raised in the legal sense. If it was not formally raised, then 25 Del. Code § 5717(b) must be adhered to in order to raise the issue at the appellate level. He reminded all that the Justice of the Peace Court is a court of statutory jurisdiction. If the statute is not complied with, the panel lacks jurisdiction to consider the counterclaim and must therefore disallow it. Mr. Mitchell applied for an appeal of May 21; he filed his counterclaim on June 5 – clearly more than 5 days after he sought appeal. Further, a review of the document filed indicated that it did not conform to Justice of the Peace Rule No. 26. In response, Mr. Mitchell advised that he had voiced his intent to present a counterclaim at the hearing below, but was disallowed because he had not raised it when he initially sought a continuance – which he thought was unfair. The question for the panel's consideration then became, did the Defendant raise his counterclaim properly at the hearing below? Upon consideration, it was clear from a legal sense that he did not.

Discussion

25 Del. Code §5709 allows that:

At the time when the petition is to be heard, the defendant or any other person in possession or claiming possession of the rental unit may answer orally or in writing. If the answer is oral, the substance thereof shall be endorsed on the complaint. The answer may contain any legal or equitable defense or counterclaim . . .”

Clearly statute allows a tenant to raise orally a counterclaim at the time of trial. But 25 Del. Code §5709 must be taken in conjunction with 25 Del. Code §5710, the pertinent part of which states:

“When triable issues of fact are raised, they shall be tried by the court. At the time when the issue is joined, the court, at the application of either party and upon proof to its satisfaction by affidavit or orally that an adjournment is necessary to enable the applicant to procure necessary witnesses or evidence . . ., may adjourn the trial . . .”

In this matter, Mr. Mitchell had sought a continuance for the purpose of obtaining necessary witnesses, but never put the court below on notice of his intent to raise a counterclaim. And although he voiced his desire to raise a counterclaim at the hearing below, it was disallowed – and thus, wasn't raised to the meaning proscribed of the word in 25 Del. Code § 5717(b). Accordingly, it would be considered a new counterclaim for the purpose of the panel's consideration; since clearly Mr. Mitchell's counterclaim was filed as untimely pursuant to statute, the panel held that it be rejected. Since the

² The judgement from the Magistrate below reads in part that “As the Court did not hear the Counterclaim, it cannot award any rent abatement for issues that may have existed or may continue to exist . . . In other words, the Court is making no determination here regarding any potential presence – or lack thereof – of legitimate claims for withholding of rent by Defendants”.

counterclaim was disallowed in its entirety, the need for a continuance due to the absence of Mr. Mitchell's witness was rendered moot.

Facts

Through the testimony of Mr. Delossantos, it was established that the Defendants had moved into the unit in late October of 2017 and paid both November's rent and the security deposit. A lease renting the unit at the rate of \$1,300/month – and which also contained a late-fee clause -- was agreed upon, although not ultimately signed until 12/5/17. After November, no further rent was paid by the Defendants. A five-day letter was sent by Plaintiff's counsel in February in conformance with 25 Del. Code § 5502. The Plaintiff testified that the electric was turned off by the City of Wilmington on or about May 12. Further, he testified that he met the Defendants on May 26 to allow them entry into the unit in order to obtain a few remaining personal items. Although he understood that, since the electric had been turned off as of May 12, the Defendants could no longer be residing in the property, since their possessions were still there through May 26 Plaintiff believed he was due rent through that date. It was unclear if the Defendants turned in their keys to Plaintiff; he advised he never received them, but clearly as of May 26 they were no longer in possession of them if they needed assistance in entering the unit.


Mr. Mitchell contended that they had moved out sometime within the first two weeks of April, and that rent should not be due beyond that time-period. He believed the keys had been turned in to Plaintiff. In response to Mr. Mitchell's testimony, Counsel pointed out that possession of the unit was still at issue on the date of the hearing below (April 16) and that clearly then Mr. Mitchell was not out of the unit within the first two weeks of April. In consideration of this fact, the panel concluded that Mr. Mitchell was responsible for rent through the month of April in its entirety. As for late fees, the panel held the language contained within the lease allowing for late fees did not conform with the language of 25 Del. Code § 5501(d), and therefore disallowed them pursuant to 25 Del. Code § 5101(a).


Conclusion

Judgment was then entered against Mr. Mitchell in the amount of \$6,500.00 plus the costs of filing and post-judgment interest at the rate of 7.5% per annum. Possession, as was previously noted, is no longer at issue.

IT IS SO ORDERED 21st day of June, 2018


SEAN P. MCCORMICK
Deputy Chief Magistrate


NINA M. BAWA
Justice of the Peace


THOMAS P. BROWN
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).