

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

OWNERS MANAGEMENT COMPANY  
Plaintiff Below,

VS

NICOLE STEVENS  
Defendant Below,

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C.A. No. JP16-18-003202

**TRIAL DE NOVO**

Submitted: August 7, 2018  
Decided: August 10, 2018

**APPEARANCES:**

PLAINTIFF OWNERS MANAGEMENT CO., T/A SILVER LAKE ESTATES APPEARED represented by Craig T. Eliassen,  
Esquire.

DEFENDANT NICOLE STEVENS APPEARED represented by Dmitry Pilipis, Esquire.

Alexander J. Montano, Justice of the Peace  
Kevin L. Wilson, Justice of the Peace  
Michael P. Sherlock, Justice of the Peace

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

**CIVIL ACTION NO: JP16-18-003202**

**OWNER'S MANAGEMENT V. NICOLE STEVENS**

**ORDER ON TRIAL DE NOVO**

**\*\*\*\* AMENDED ORDER \*\*\*\***  
Paragraph #2 in section *TESTIMONY OF PARTIES & WITNESSES*", the years were corrected from 2018 to 2016.

**NOTICE OF JUDGMENT/ORDER**

This is a *de novo* appeal to a three judge panel from a decision dated July 13, 2018. The panel; comprised of Judges Montano, Wilson, and Sherlock, heard the new trial on August 7, 2018. The Plaintiff's evidence included the testimony of witness Keona Robinson and exhibits. The Defendant's evidence included her testimony and exhibits. At the conclusion of trial, the Court reserved decision. This is the Court's decision after trial.

**BACKGROUND**

Plaintiff filed a Landlord/Tenant Summary Possession petition on May 17, 2018 seeking back rent totaling \$2171.40, late fees, court costs, per diem, post judgment interest, and possession of the rental unit located at 23 Linstone Lane #1, Milford, Delaware 19963. Trial was held on July 11, 2018 and judgment was entered in favor of the Plaintiff in the amount totaling \$1857.10 for back rent and late fees, courts costs of \$45.00, and possession of the rental unit. Defendant filed a timely appeal on July 16, 2018 and a trial *de novo* was scheduled.

**PRETRIAL**

At pretrial the Defendant's counsel motioned for a dismissal on grounds of *Res Judicata*. The Defense argued that the matter before the court was adjudicated through case # JP16-18-000969, highlighting that the decision was "final and with prejudice and even without appeal by the Plaintiff". However, the Plaintiff's counsel countered stating that they had (2) defective items which are curable issues and they are "here anew to prove their case". Furthermore, that *Res Judicata* does not apply in this case as their matter is an "ongoing issue".

The review of the Defendant's motion to dismiss on grounds of *Res Judicata* must satisfy five elements, which are as follow:

- "(1) the court making the prior ruling had jurisdiction;
- (2) the parties to both actions are either the same or in privity;
- (3) the earlier-decided issues were the same as those raised at the case at bar;
- (4) the earlier decision was adverse to the plaintiff in the pending case; and
- (5) the prior decree was a final judgment on the merits."<sup>1</sup>:

The Court took a brief recess and determined the following:

- First, there is no dispute that the Justice of the Peace had jurisdiction over this summary possession action and the debt sought by the Plaintiff was within the \$15,000.00 jurisdictional limit of the Court.
- Second, the Defendant and Plaintiff were parties in both actions and remain in privity by way of the lease agreement.
- Third, the earlier possession and debt issues decided are not the same as the matter presently before the Court because the debt is an "ongoing issue" that has continued to accrue over time.
- Fourth, the Justice of the Peace Court ruled against the Plaintiff on the debt and possession, thus the earlier decision was adverse to the Plaintiff.
- Fifth, as it states in the order dated March 8<sup>th</sup>, 2018 the "the Plaintiff could not be awarded possession as their demand for rent notice was defective " and the "Plaintiff established a sum certain for unpaid rent but failed to provide any proof of mailing pertaining to service of their demand notice". The Court finds that a defective demand for rent notice and proof of mailing are curable matters and therefore, the prior decree was not a final judgment on the merits.

For the reasons stated above, the Defendant's Motion to Dismiss on Grounds of *Res Judicata* is Denied.

#### **TESTIMONY OF PARTIES & WITNESSES**

The Plaintiff testified that this is a summary possession action against the Defendant who has leased the aforementioned property under the Department of Housing and Urban Development (HUD) rules. The Plaintiff explained that the HUD program requires that every tenant under their assistance participates in the annual income recertification which is to be completed not later than August 1<sup>st</sup>. Failure to adhere to

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<sup>1</sup> Bailey v. City of Wilmington, 766 A.2d 477, 481 (Del.2001)

the deadline places the tenants at risk of losing the HUD assistance. Furthermore, that the Plaintiff sends out recertification reminder notices on April 1<sup>st</sup> of every year to inform HUD tenants that if they don't respond before the 10<sup>th</sup> of June, they will not be able to provide the tenants with a 30-day advance notice in case of any rent increase. Furthermore, tenants are also required to provide interim recertifications whenever their income situation changes.

The Plaintiff then testified that the Defendant was notified on April 1<sup>st</sup>, 2016 of the impending recertification requirement for August 1<sup>st</sup>, 2016. However, it was not until September 21<sup>st</sup>, 2016 that the Defendant signed a lease amendment reflecting an increase in her rent from \$88.00 per month to \$357.00 per month starting (retroactive) on August 1<sup>st</sup>, 2016. The Defendant was unable to pay the required rent and fell behind. Consequently, on November 1<sup>st</sup>, 2016, both parties entered into a repayment agreement for the difference of rent from August through October (3 months x \$269 adjustment) totaling \$807.00. The agreement stated that the Defendant agreed to pay the Plaintiff \$100.00 per month in addition to the monthly rent amount of \$357.00. Unfortunately, the Defendant did not fulfill the terms of the repayment agreement and also started to accrue late fees along with a few missed rent payments starting on October 1<sup>st</sup>, 2017.

The Plaintiff explained that the Defendant experienced a loss of wage income and filed for an interim recertification which was finalized on February 9<sup>th</sup>, 2018. Because it was initially reported in December 2017 it would apply retroactively for January 1<sup>st</sup>, 2018. The new (interim) lease amendment agreement between both parties reflected a \$79 rent decrease from \$276.00 per month to \$197.00 per month. On May 3<sup>rd</sup>, the Plaintiff provided the Defendant a 7-day notice which states that a total of \$2,171.40 in unpaid rent and late fees are due and "if payment in full is not made within 7 days of receipt of [the] letter, [the Plaintiff] will take action in court for summary possession". On May 17<sup>th</sup>, 2018, the Plaintiff filed a Summary Possession action against the Defendant. The Plaintiff submitted the following plaintiff exhibits (P.E.) into evidence without legal objection from the Defendant:

P.E. #1: 7-day Notice, dated May 1<sup>st</sup>, 2018

P.E. #2: Proof of Mailing Dated May 3<sup>rd</sup>, 2018

P.E. #3: Lease Agreement for Subsidized Programs, signed by the Defendant on June 27<sup>th</sup>, 2011 which includes:

(1) Lease Amendment, signed February 9<sup>th</sup>, 2018

(2) Repayment Agreement, signed November 1<sup>st</sup>, 2016

P.E. #4: Annual Recertification Notice, dated April 1<sup>st</sup>, 2016

P.E. #5: Lease Amendment, signed September 21<sup>st</sup>, 2016 which includes Repayment Agreement for the \$807.00 balance.

P.E. #6: Annual Recertification 3<sup>rd</sup> Notice, dated June 1<sup>st</sup>, 2017 which includes:

- (1) Certification information signed on July 14<sup>th</sup>, 2017
- (2) Lease Amendment, signed July 14<sup>th</sup>, 2017

P.E. #7: Lease Amendment, signed February 9<sup>th</sup>, 2018

P.E. #8: Annual Recertification Notice, dated April 1<sup>st</sup>, 2018

P.E. #9: Tenant Ledger, from September 1<sup>st</sup>, 2016 through August 6<sup>th</sup>, 2018

The Defense testified that the reason for the delay in the recertifications could very well have been the fault of the Plaintiff and not the Defendant. That there are no documents confirm that the Defendant is at fault for the delays. Furthermore, that the Plaintiff could have misapplied the 5% late rent fee during the course of the Defendant's recertifications and may very well cause the 7-day notice to have been overstated.

Lastly, the Defendant raised issue with the January 1<sup>st</sup>, 2018 (interim) lease amendment agreement. The Defendant explained that Plaintiff was verbally informed of the Defendant's loss of income in November 2017 but that the Plaintiff required verification from the Defendant's previous employer. Unfortunately, the Defendant was not able to provide verification to the Plaintiff until December 2017. Furthermore, that due to changes in the Plaintiff's leasing managers the Defendant's lease amendment was not handled promptly and as a result the \$79 rent decrease from \$276.00 per month to \$197.00 per month was only retroactive to January 1<sup>st</sup>, 2018 instead of December 1<sup>st</sup>, 2017. This is a significant matter since the 7 day letter fails to consider that the month of December is also subject to the \$79.00 rent decrease and therefore, overstated. The Defendant submitted the following defense exhibits (D.E.) into evidence without legal objection from the Plaintiff:

D.E. #1: Annual Recertification Notice, dated July 24<sup>th</sup>, 2018 which includes:

- (1) Lease Amendment, signed July 27<sup>th</sup>, 2018
- (2) Recertification Income Information and Computation Sheets

D.E. #2: Reference to HUD Multifamily Occupancy Handbook, Chapter 7, Recertification, Unit Transfers, and Gross Rent Changes

## DISCUSSION

### Sequence of Events:

The testimony and evidence of both parties reveal the following sequence of events:

- Jun 27<sup>th</sup>, 2011: Both parties enter into a subsidized program lease agreement in which the Defendant was required to pay rent in the amount of \$0.00 with a required annual recertification deadline of August 1<sup>st</sup>.
- Apr 1<sup>st</sup>, 2016: Plaintiff provides the Defendant an Annual Recertification Reminder Notice with deadlines and office hours.
- Sep 21<sup>st</sup>, 2016: Both parties enter into a lease amendment agreement for a \$269.00 rent increase from \$88.00 per month to \$357.00 per month starting (retroactive) on August 1<sup>st</sup>, 2016.
- Nov 1<sup>st</sup>, 2016: Both parties enter into a repayment agreement for the difference of rent from August through October (3 months x \$269 adjustment) totaling \$807.00 which is to be paid \$100.00 per month in addition to the rent.
- Jun 21<sup>st</sup>, 2017: The Plaintiff sends the Defendant a 3<sup>rd</sup> notice to remind her of the Annual Recertification requirement deadline, listing the previous reminders sent on April 1<sup>st</sup>, 2017 and May 1<sup>st</sup>, 2017.
- Jul 14<sup>th</sup>, 2017:
  1. The Defendant provides the Plaintiff with the recertification income information.
  2. Both parties enter into a lease amendment agreement for an \$81.00 rent decrease from \$357.00 per month to \$276.00 per month starting on August 1<sup>st</sup>, 2017.
- Feb 9<sup>th</sup>, 2018: Both parties enter into an interim lease amendment agreement for a \$79 rent decrease from \$276.00 per month to \$197.00 per month starting (retroactive) on January 1<sup>st</sup>, 2018.
- Apr 1<sup>st</sup>, 2018: Plaintiff provides the Defendant an Annual Recertification Reminder Notice with deadlines and office hours.
- May 3<sup>rd</sup>, 2018: The Plaintiff acquires proof of mailing for a 7-day notice mailed to the Defendant which states that a total of \$2,171.40 in unpaid rent and late fees are due.
- May 17<sup>th</sup>, 2018: The Plaintiff files a summary possession action at the Justice of the Peace Court on grounds that the Defendant failed to cure within the 7 days.
- Jul 27<sup>th</sup>, 2018:
  1. Defendant signs Annual Recertification Initial Notice
  2. Both parties enter into a lease amendment agreement for a \$70 rent increase from \$197.00 per month to \$267.00 per month starting on August 1<sup>st</sup>, 2018.

On the matter of overstatement of the Plaintiff's 7-day letter due to the possibility of the late fees exceeding 5% of the rent: The Court finds that the Plaintiff's counter confirmed that the late fees of

\$9.00 and \$13.80 were within the 5% limitation, respective to the rent due. Furthermore, in review of the tenant ledger (P.E. #9) there is no evidence of exceeding 5% late fees.

On the matter of overstatement of the Plaintiff's 7 day letter because it fails to consider that the month of December is also subject to the \$79.00 rent decrease: The Defendant's very own testimony is that she provided verification of unemployment to the Plaintiff in December 2018. The Plaintiff then, during cross examination, explained that the changes are reflected 30 days from the time it has been reported. The Court finds that there is no overstatement as December is not subject to the \$79.00 rent decrease.

On the matter of the Plaintiff's 7-day letter (P.E. #1) and proof of mailing (P.E. #2): In review of the 7-day letter, the Court finds that the letter meets the requirements of *Lasocha v. Weir*<sup>2</sup>. Furthermore, in review of the Defendant's 7-day window to cure, the Plaintiff has provided proof of mailing dated May 3<sup>rd</sup>, 2018 and then filed for action in court on May 17<sup>th</sup>, 2018. The Court finds that the Plaintiff's notice and time to cure are in compliance.

With regard to the debt in question: The Plaintiff provided the tenant ledger (P.E. #9) along with Lease Amendments and a Repayment Agreement signed by the Defendant. In review of the ledger against the lease amendments and the repayment agreement, the account of the money claimed by the Plaintiff appears to be in order of sound accounting practices. As of August 1<sup>st</sup>, 2018 the amount owed by the Defendant is \$2,200.95. However, the Plaintiff testified that the Defendant is due a credit of \$35.00. Therefore, the Court finds that the amount of \$2,165.95 is owed by the Defendant to the Plaintiff.

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<sup>2</sup> *Lasocha v. Weir*, Del. J.P., C.A. No. JP16-08-003647, (September 2, 2008) (Trial De Novo)

- (1) Notice must include the date in which said notice was written.
- (2) Notice must state specific amount of rent due. (This amount must be itemized so that the tenant may understand how the landlord determined to amount of rent being demanded).
- (3) Notice must identify the rental unit by address for which rent is being demanded
- (4) Tenant(s) must be given a time period in which to cure non-payment of rent. This time period *shall not* be less than (5) days.
- (5) Notice must be addressed and mailed separately to every tenant on the lease agreement. (When there are multiple tenants on a rental agreement, the landlord may compose 1 demand notice which includes the name of every tenant on said rental agreement but a copy of said demand notice *shall* be mailed to each tenant if the landlord chooses to obtain service via mail).
- (6) Notice must state should the tenant(s) fail to pay the outstanding balance within the timeframe mentioned the lease agreement shall be *terminated*.
- (7) Notice must state should the tenant(s) fail to pay the outstanding balance within the timeframe mentioned the landlord may bring action for summary possession in court.

**CONCLUSION**

After considering the evidence and testimony presented, the panel finds Plaintiff has proven his case by a preponderance of the evidence and issues a unanimous decision in favor of the Plaintiff Owners Management Co., T/A Silver Lake Estates and against the Defendant Nicole Stevens as follows:

***Judgment in the Amount of \$2165.95.***

***Court Costs of \$45.00.***

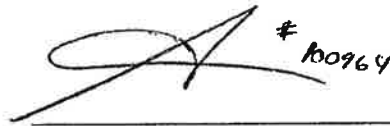
***Post Judgment Interest @ 7.50%.***

***Per Diem of \$5.40 effective August 1, 2018.***

***Possession to Plaintiff.***

The Court reserved its decision on August 7, 2018 and reduced it to writing on August 10<sup>th</sup>, 2018.

IT IS SO ORDERED this 10<sup>th</sup> day of August, 2018.



Alexander Montano  
Justice of the Peace  
FOR THE COURT

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).