

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

HOLLYBROOK FARMS
Plaintiff Below,
Appellee

VS

CHANDELL HAYES
Defendant Below,
Appellant

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§ C.A. No. JP17-18-004976
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TRIAL DE NOVO

Submitted: September 18, 2018

Decided: September 21, 2018

APPEARANCES:

Julie Smith represented the Plaintiff pursuant to Supreme Court Rule 57.
Chandell Hayes was self-represented.

Sheila Blakely, Deputy Chief Magistrate
Christopher Bradley, Justice of the Peace
Deborah Keenan, Justice of the Peace

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

CIVIL ACTION NO: JP17-18-004976

HOLLYBROOK FARMS VS CHANDELL HAYES

ORDER

Hollybrook Farms filed this action against the Defendant, Chandell Hayes, on August 6, 2018, seeking back rent and possession of a federally subsidized rental unit, located at 200 Pasture Lane, Unit 207, Laurel, DE. A trial before a single judge occurred on August 23, 2018 and the Court ruled from the bench in favor of the Plaintiff, and against the Defendant, for \$2,031.18, accruing rent at \$14.41 per day, court costs and possession. Additionally, the Court found that a good faith dispute did exist and allowed that if the Defendant paid rent through the end of August, late fees, and court costs, within ten days of the judgment, the Defendant would retain possession.

The Defendant appealed in a timely manner and a three-judge panel heard the case as a Trial de Novo on September 18, 2018. The panel consisted of Deputy Chief Magistrate Sheila Blakely, Judge Christopher Bradley and Judge Deborah Keenan. This is the Court's opinion after trial.

FACTS

Defendant testified that she has been a tenant at this apartment for the last seven years and has always paid her rent. Sometime in March 2018, the tenant, Chandell Hayes (hereinafter "Hayes"), reported water leaking from a light fixture in her apartment to management. A maintenance technician was sent to her apartment to fix the problem but was unable to find an active leak and so he only cleaned the water (and what appeared to be mold) out of the light fixture. Around this time, Hayes' five year old son, who has asthma and food allergies, became even sicker while staying in their apartment and Hayes was concerned that it was from the air and carpet in her apartment. In April 2018, Hayes testified that she alerted the office of her son's health problems but was basically told they were not interested and did not want the letters she had from Nemours Dupont Pediatrics which she asked to be placed in her file. Samantha Quebral (hereinafter "Quebral"), a former manager at the complex, testified that the defendant came to the office in April with regards to the recertification of her unit. At that time Hayes became disorderly with regards to a temporary rent increase and she was arrested after the police were called. At that time Hayes was told by the police not to have any further contact with the management office.

The problem in the unit continued however and the defendant contacted the Town of Laurel about the leak and mold in her apartment. In June 2018 after learning of the leak and mold, a maintenance technician from Hollybrook went to the unit. While inspecting the unit, he found an active leak above the ceiling and his foot then went through the ceiling in a soft spot. Quebral testified that when she went to the unit everything was wet from the leak and the drywall had fallen down. Quebral also testified that eventually everything wet was removed and replaced with new dry wall. These repairs took two to three weeks to complete. Quebral testified that when their contractor was finished, he tested

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the apartment and did not find any mold. However, no evidence of these test findings were presented to the Court.

Hayes testified that she began to withhold the rent in April 2018 because of these continuing issues with dampness and mold which began in March 2018. Hayes could not recollect whether she ever received a copy of the Landlord Tenant Code when she moved in. During this time frame Hayes left the unit and moved in with her mother because of the smell and mold in her unit and because she believed that it was making her two children sick. Hayes testified that she tried to tell management that the mold and dampness were making her kids sick when she went to the office in April but they were not interested in hearing what she had to say. Hayes' mother, Chanett Cannon, testified that she saw mold in the unit and that her grandchildren were healthy when they stayed with her but coughing and having breathing issues when they were in the unit. Hayes testified that even after the repairs were made there were still mold spores in her unit and she could not live there. Hayes stated that after the first trial she hired Mold Busters LLC to inspect her unit and that they did find mold in her unit when they took samples on August 30, 2018.

On July 13, 2018, a five day letter was sent to Hayes that she was behind in her rent and this action for possession was filed on August 6, 2018 when no rent was paid. (Hayes did testify that she paid \$200.00 in June when she thought the problem was being corrected.) Hayes believes the problem has still not been fixed and she does not wish to return to her residence. She testified that all her things are still in the apartment and that they have all been ruined due to the mold. Hayes also testified that the money she would have paid for rent she used for transportation to take her children back and forth to the childrens' hospital due to the mold and that she gave her mother money for letting them stay with her.

DISCUSSION

Under 25 Del. Code, Sec. 5305(a)(2) "The landlord shall, at all times during the tenancy:....Provide a rental unit which shall not endanger the health, welfare or safety of the tenants or occupants and which is fit for the purpose for which it is expressly rented." The defendant, through photographs plus her testimony and that of her witness, has established that there was mold in the unit and that it is yet to be totally removed. She also established that since the leak was first reported in March 2018, her children have been unable to live there without getting sick.

It is not clear whether or not the defendant ever received a copy of the landlord code which would relieve her of the responsibility to notify the landlord in writing that she was withholding her rent until the problem was fixed and until there were no more mold spores in the unit. The landlord did receive actual notice that there was a problem in March 2018 and at that time the landlord only provided a cosmetic fix until the ceiling fell down in June 2018.

Under 25 Del. C. §5308(a) the landlord has a duty to "remedy any condition which materially deprives a tenant of a substantial part of the benefit of the tenant's bargain in violation of the rental agreement." Although no copy of the rental agreement was entered into evidence, the plaintiff would have these same obligations under the landlord tenant code as outlined above.

DECISION

25 Del. C. §5308(d) states "Where a landlord files an action for summary possession, claiming that a tenant wrongfully withheld rent or deducted money from rent under this section and the court so

finds, the landlord shall be entitled to receive from the tenant either possession of the premises or an amount of money equal to the amount wrongfully withheld....”

In the present case the Court finds that the landlord is entitled to possession of the unit but they are not entitled to any back rent. The Court will allow the plaintiff to take possession of the premises on October 1, 2018 in order to give the tenant time to remove her possessions if she so chooses to do so. No back rent is awarded as the landlord failed to properly correct the problem back in March 2018 and it is not clear whether or not the unit is currently safe for occupancy.

The Court will also note that although possession is being awarded to the plaintiff, this eviction should not be held against the tenant if she should apply for public or subsidized housing in the future.

IT IS SO ORDERED 21st day of September, 2018

/s/ Sheila G Blakely (SEAL)
Hon. Sheila G Blakely
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).

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

COURT ADDRESS:
23730 SHORTLY ROAD
GEORGETOWN DE 19947

CIVIL ACTION NO:
JP17-18-004976

**HOLLYBROOK FARMS, PLAINTIFF
VS
CHANDELL HAYES, DEFENDANT**

Plaintiff Parties:
PLAINTIFF
SYSTEM ID: @856122
HOLLYBROOK FARMS
1111 GRAZING COURT
RENTAL OFFICE
LAUREL, DE 19956

Defendant Parties:
DEFENDANT
SYSTEM ID: @3127691
CHANDELL HAYES
200 PASTURE LANE
UNIT 207
LAUREL, DE 19956

Other Case Parties:
AGENT
SYSTEM ID: FA11073
SAMMANTHA QUEBRAL
HOLLYBROOK FARMS
1111 GRAZING COURT
LAUREL, DE 19956

**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.**