

On September 28, 2018 this Court, consisting of the Honorable James A. Murray, the Honorable D. Ken Cox, and the Honorable Alexander J. Montano acting as a special court pursuant to 25 Del C. § 5717 (a)¹ convened a trial *de novo*² in reference to a Landlord/Tenant Summary Possession petition filed by Colonial Investment & Management Company (“Plaintiff”), against Stacy Edwards (“Defendant”). At the conclusion of trial, the Court announced its decision entering judgment for the Plaintiff. This is the Court’s oral decision reduced to writing.

BACKGROUND

Plaintiff filed a Landlord/Tenant Summary Possession petition on July 24, 2018 seeking unpaid rent, court costs, post judgment interest, and possession of the rental unit located at 32 West Loockerman Street, Apartment M-10, Dover, Delaware. Trial was held on September 11, 2018 and a judgment was entered in favor of the Plaintiff.³ The Defendant filed a timely appeal on September 19, 2018 and a trial *de novo* was held.

TESTIMONY OF PARTIES & WITNESSES

The Plaintiff’s testimony included that of witness, Judith L. Ballis, the Plaintiff’s bookkeeper. The Plaintiff testified that this is a summary possession action against the Defendant who has leased the aforementioned property since March 2016 at a rate of \$850.00 per month. That on January 23, 2018, the Defendant was notified that starting April 2018 the monthly rent would increase \$35.00 per month, totaling \$885.00 per month. On May 2018, the Defendant made a late rent payment and accrued a late fee of \$44.25 (5% of the \$885.00 per month), which remains unpaid. That the Defendant has failed to make the monthly rent payments for the months of June, July, August and September.

¹ 25 Del C. § 5717 (a). *Nonjury trials*. With regards to nonjury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing, within 5 days after judgment, a trial *de novo* before a special court comprised of 3 justices of the peace other than the justice of the peace who presided at the trial, as appointed by the chief magistrate or a designee, which shall render final judgment, by majority vote.

² *De Novo* trial. Trying a matter anew; the same as if it had not been heard before and as if no decision had been previously rendered. *Black’s Law Dictionary* 300 (6th ed. 1991).

³ *Colonial Investment & Mgt. Co. v. Edwards*, Del. J.P., C.A. No. JP16-18-004839, Wilson, J. (Sep. 12, 2018).

On July 11 2018, the Plaintiff provided the Defendant a 5-day demand notice⁴ stating that the Defendant was arrears a total of \$1,902.75 for unpaid rent and late fees along with a breakdown of the debt owed, along with the consequent legal action if the debt is not satisfied within the 5 days. The Plaintiff submitted the following plaintiff exhibits (Pl. E.) into evidence without legal objection from the Defendant:

Pl. E. #1: Lease Agreement, signed and dated March 4, 2016 which includes:

- (1) Addendum, Safe Communities
- (2) Pet Policy, "No Pet" Acknowledgement

Pl. E. #2: Computer Generated Ledger, current as of September 10, 2018 (includes a hand-written ledger to explain the computer-generated ledger).

Pl. E. #3: 5-Day Demand Notice, dated July 11, 2018 which includes:

- (1) Statement as of July 6, 2018
- (2) Proof of Mailing, dated July 12, 2018
- (3) Notice of "Rent Increase" Effective April 2018, dated January 23, 2018

The Plaintiff called the Defendant to testify as a witness, during which the Defendant admitted to owing \$885.00 per month rent and late fees for the months of June, July, August and September 2018 and that she was in default of her lease agreement as per paragraph #3 *Default in Payment*.⁵ Upon Plaintiff resting their case, Plaintiff motioned for a "directed verdict".

The Court declined to grant the directed verdict and thereafter allowed the Defendant an opportunity to provide her defense.

The Defendant testified that the reason for the delay in rent payments has been due to a job loss as well as due to difficulties starting her business. That due to the limited

⁴ 25 Del C. § 5502 (a). A landlord or the landlord's agent may, any time after rent is due, including the time period between the date the rent is due and the date under this Code when late fees may be imposed, demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in such notice, to be not less than 5 days after the date notice was given or sent, the rental agreement shall be terminated. If the tenant remains in default, the landlord may thereafter bring an action for summary possession of the dwelling unit or any other proper proceeding, action or suit for possession.

⁵ Pl. E. #1: Lease Agreement, signed and dated March 4, 2016.

income, the Defendant has relied on different charities to help her gather the money which she is now able to pay. However, that on September 11, 2018 the Defendant attempted to pay off the amount due but the Plaintiff informed her that they would still be seeking legal action against her. As a result, the Defendant opted to hold on to the money instead.

The Defendant stated that she is now able to pay the rent in October and that she is confident that she will be able to pay her rent on time, going forward. That the Defendant is now able to prove that she has a steady source of income.

DISCUSSION

Through the testimony of both parties, it is undisputed that a landlord/tenant relationship exists between the parties. It is also undisputed, through the Defendant's own admission, that the Defendant has not made her rent payments on time (late fee \$44.25) from May 2018 through the present time and that the Defendant has failed to pay her rent (\$885.00 per month) from June 2018 through the present time. Furthermore, the Plaintiff has provided evidence of a satisfactory timeline for the Defendant to cure in within the requirements of the 5-day demand notice.⁶

CONCLUSION

After considering the evidence and testimony presented, the Court finds Plaintiff has proven their case by a preponderance of the evidence and issues a unanimous decision in favor of the Plaintiff and against the Defendant as follows:

Judgment in the Amount of \$3,908.75.

Court Costs of \$40.00.

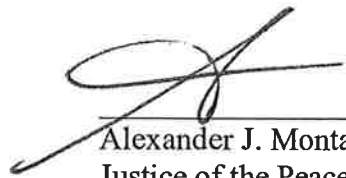
Post Judgment Interest @ 7.75%.

Possession to Plaintiff.

⁶ Pl. E. #3: 5-Day Demand Notice, dated July 11, 2018.

The Court announced its decision on September 28, 2018 in open court and reduced it to writing on this date.

IT IS SO ORDERED this 5th day of October, 2018.



(SEAL)
Alexander J. Montano
Justice of the Peace
FOR THE COURT