

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

RACHAEL OETTEL,

Defendant Below,
Appellant,

v.

ELYSE LYNNE DYER,

Plaintiff Below,
Appellee.

C.A. No. JP16-18-006417

TRIAL DE NOVO

Submitted: December 7, 2018

Decided: December 7, 2018

Written Order issued: January 7, 2019

Elyse Lynne Dyer, Plaintiff/Appellee appeared represented by Ronald G. Poliquin, Esquire.

Rachael Oettel, Defendant/Appellant, appeared *pro se*.

ORDER

Murray, J
Tracy, J
Edmanson, J

A Three Judge Panel convened on December 7, 2018, acting as a special court pursuant to 25 *Del. C.* §5717(a).¹ This panel was comprised of the Honorable James A. Murray, the Honorable Dana M. Tracy and the Honorable Wallace G. Edmanson. The Court held a trial *De Novo*² in reference to a Landlord Tenant Summary Possession petition filed by Elyse Lynne Dyer (“Plaintiff”) against Rachael Oettel (“Defendant”). For the following reasons the Court enters judgment in favor of the **Plaintiff**.

FACTUAL AND PROCEDURAL BACKGROUND

The Court has before it a Landlord Tenant Summary Possession petition filed by the Plaintiff seeking rent, pre and post judgment interest, court costs, attorney’s fees and possession. This action is based on Defendant’s failure to pay rent. Trial was held on November 5, 2018 and judgment was entered in favor of Plaintiff.³ Defendant filed a timely appeal and a trial *de novo* was scheduled.

¹ 25 *Del. C.* § 5717(a). *Nonjury trials*. With Regard to nonjury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing, within 5 days after judgement, a trial, 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 judgement, 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 435 (6th ed. 1990).

³ *Dyer v. Oettel*, Del. J.P., C.A. No. JP16-18-006417, Montano, J. (Nov. 9, 2018).

FACTS

Testimony revealed the following facts:

- Parties entered into a Landlord/Tenant relationship effective February 2, 2018.⁴
- Monthly rent is \$650.00 for property known as 417 Fieldbrook Drive, Magnolia, DE.⁵
- Defendant was not provided a copy of the Landlord/Tenant Summary upon executing the lease agreement.
- Defendant withheld part of the rent for August, 2018, paying only \$300.00.
- Defendant withheld said rent due to water damage in her unit which she felt prevented her from receiving the full benefit of her bargain for rent.
- Plaintiff mailed Defendant a demand notice demanding August's unpaid rent be brought current within five days.⁶
- Defendant admitted she had not paid any rent for the month of December.

⁴ Plaintiff's exhibit #1. Residential Lease Agreement.

⁵ *Id.*

⁶ Plaintiff's exhibit #2. Demand Notice.

DISCUSSION

As a trier of fact, it is the Court's responsibility to weigh the testimony and evidence presented as well as the creditability of each witness. In this instance, the Court did not find either Plaintiff or Defendant any more or less creditable than the other.

It is clear to the Court that a Landlord/Tenant relationship exists between the Parties. However, that relationship eroded over the tenancy of the Defendant. The root cause of this is due to Plaintiff's failure to provide the Defendant a copy of the Landlord/Tenant Summary upon execution of the lease agreement. Defendant withheld rent because she was not receiving the full use of her unit due to water damage. While withholding full rent is not permissible under the Landlord/Tenant Code (Code), Defendant is not held to that standard as Plaintiff failed to provide her with a copy of the Code. Defendant was acting in good faith (by withholding rent) in an attempt to gain Plaintiff's attention and have Plaintiff remedy the water damage issues within the unit. Defendant's course of action frustrated Plaintiff as Plaintiff expected full rent paid on-time. Those actions that lead to the breakdown of the Landlord/Tenant relationship between the parties.

Whereas Defendant did not receive full benefit of the bargain and was not provided a copy of the Code, the Court shall not award Plaintiff any monies for rent which were not paid during this period. During testimony Defendant admitted to not

paying December's rent. Based on Defendant's admission, the Court finds Plaintiff has prevailed in this matter and will enter judgement in her favor.

The above is a condensed review of this hearing as the Court announced its full findings and rationale in open court at the conclusion of trial and reduced it to writing as dated below.

CONCLUSION

After careful consideration of the testimony and evidence presented, the Court finds in favor of the Plaintiff in-part unanimously by preponderance of the evidence.

Judgment is hereby entered as follows:

Judgment amount: **\$801.69** (\$650.00 for December's rent + 151.69 (7 days rent Jan. @ \$21.67) = \$801.69).

Possession of unit at **417 Fieldbrook Drive, Magnolia, DE.**

Post-Judgment interest at **7.75%**.

Per-diem rent at **\$21.67** until possession is relinquished.

IT IS SO ORDERED this **7th** day of **January, 2019.**

For The Court:



Judge Dana M. Tracy (SEAL)

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