

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

IRON HILL APARTMENTS
Plaintiff Below,

VS

SEAN SHANNON
REGINALD LYONS
Defendant Below,

§
§
§
§
§
§
§
§

C.A. No. JP13-18-011305

TRIAL DE NOVO

Submitted: January 11, 2019
Decided: January 11, 2019

APPEARANCES:

Iron Hill Apartments, Plaintiff appeared by and through David Zerbato, Esq.
Sean Shannon, Defendant appeared by and through Jillian Pratt, Esq.
Reginald Lyons, Defendant failed to appear

Sean P. McCormick, Deputy Chief Magistrate
Thomas P. Brown, Justice of the Peace
Gerald Ross, 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: JP13-18-011305

IRON HILL APARTMENTS VS SEAN SHANNON ET AL

ORDER ON TRIAL DE NOVO

A de novo panel consisting of Deputy Chief Magistrate Sean McCormick and Judges Thomas Brown and Gerald Ross went forward in the above referenced matter on Friday, January 11, 2019. Pre-trial, the Defense Counsel sought to dismiss from the panel's consideration the issue of possession in this instant matter. Ms. Pratt noted that the five-day letter of demand upon which this matter is based sought a late fee for July of 2018 in addition to other rental claims. The parties had been involved in previous litigation in which the landlord had sought possession based on the issue of unpaid rent; that filing, which was based upon a five-day letter issued in June, was adjudicated as a non-suit on July 18, 2018 (both parties having failed to appear.) Essentially Ms. Pratt argued that the July late fee should have been sought at that juncture; accordingly, the doctrine of res judicata should bar collection of that particular fee. And, if barred, the mention of it inflates the amount sought in the five-day notice associated with this instant matter such that possession cannot be considered. In support of her argument, Ms. Pratt offered a copy of the landlord's ledger showing that the late fee was entered as due and owing on July 6, 2018 – and as such, should be considered to have fallen under the Court's July 18th holding. In response, Mr. Zerbato reminded the panel that the code does not mandate when late fees are to be sought; indeed, since his client was not present on July 18, one could argue that it was not sought at that juncture and therefore could be claimed in this instant matter.

After some consideration, the panel unanimously agreed with Ms. Pratt. By both doctrine and custom, any claims that were ripe for litigation would have been brought at the date of the previous filing – including the late fee associated with July. In point of fact, given that the five-day letter associated with this instant matter sought twelve days' rent for July, 2018 (the twelve days remaining after July 18th) it seemed as if the landlord acquiesced to that very fact.

Upon advising the parties of the ruling on the issue of possession, the Defendant withdrew their counter-claim and advised that there was no defense to the rental claim. Judgment was therefore entered in favor of the Plaintiff Iron Hill Apartments and against Defendant Sean Shannon in the amount of \$4,523.84 plus \$50.00 Court costs and interest on the debt at 8.0% post judgment interest per annum. Possession remains with the tenant.

IT IS SO ORDERED 11th day of January, 2019

/s/ Sean P. McCormick (SEAL)
Deputy Chief Magistrate,
On behalf of the 3-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).

VIEW YOUR CASE ONLINE: <https://courtconnect.courts.delaware.gov>