

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

CYNTELLEX LLC	§	
Plaintiff Below,	§	
	§	
	§	
VS	§	C.A. No. JP13-18-012511
	§	
	§	
DIANE WASHINGTON	§	
Defendant Below,	§	

TRIAL DE NOVO

Submitted: February 12, 2019

Decided: February 12, 2019

APPEARANCES:

Cyntellex LLC, Plaintiff, appeared by and through Form 50 agent, Aakanksha Dhelia
Diane Washington, Defendant appeared pro se

Marie E. Page, Justice of the Peace
Christopher R. Portante, Justice of the Peace
Amanda Moyer, 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: JP13-18-012511

CYNTELLEX LLC VS DIANE WASHINGTON

ORDER ON TRIAL DE NOVO

The Court has entered a judgment or order in the following form:

Procedural Posture

The Plaintiff, landlord Cyntellex, LLC, (Cyntellex), represented by Aakanksha Dhelia (Dhelia), pursuant to Supreme Court Rule 57, filed Civil Action No. JP13-18-012511, on October 24, 2018, in Justice of the Peace Court 13. Cyntellex sought delinquent utility payments and possession from the Defendant, tenant Diane Washington (Washington).

The trial, before a single Justice of the Peace, on December 10, 2018, resulted in a Court order in favor of Cyntellex and against Washington in the amount of \$383.03, and possession was awarded to Cyntellex. Washington filed an appeal for a trial de novo (TDN) and filed an *in forma pauperis* on January 7, 2019. The appeal was approved on January 7th, with an order for Washington to pay a bond of \$400.00 to stay the writ of possession, but the *in forma pauperis* application was denied and Washington paid the \$50.00 required to file the appeal. Bond was not paid to the Court. Cyntellex requested a writ of possession on February 1, 2019 and the eviction was completed by a Justice of the Peace Court Constable on February 8th.

A TDN was scheduled for February 12, 2019, before a three-judge panel, consisting of Justice of the Peace Amanda Moyer, Justice of the Peace Marie E. Page, and Justice of the Peace Christopher Portante. Cyntellex appeared, represented by Aakanksha Dhelia, pursuant to Supreme Court Rule 57. Washington appeared, self-represented.

Facts

Both parties agree that possession is no longer an issue. Washington does not wish to regain possession of the rental unit. The only issue before the Court is Cyntellex's demand for \$1059.13 of delinquent utility payments. Washington denied that she owes any utility payments, as the Delmarva Power account (Delmarva) is in the landlord's name and not in her name. In addition, Washington requested that the Court find that her status for subsidized housing should be reinstated.

Cyntellex submitted utility bills with proofs of mailing for August, 2018, through the present. Cyntellex testified that in 2015, Washington could not pay her utility bills and Delmarva was to shut off services, which would have removed Washington from subsidized housing and result in the loss of her voucher. Cyntellex agreed to put the account in the landlord's name so Washington would not lose her voucher, but Washington was to pay Cyntellex for the utilities upon receipt of a copy of the bill.

Washington's position was that since Cyntellex put the utility account in their name to provide assistance to her in order to keep her housing voucher, then they should not have filed for possession of the rental unit due to unpaid utility bills, since that action resulted in an eviction and the loss of her housing voucher.

Discussion

Landlord-Tenant relationships are governed by Delaware's Landlord-Tenant Code, found in Title 25, Chapters 51 through 70. A landlord seeking possession of the rental unit may file under §5702. If the reason is for failure to pay rent, a landlord may file under 25 Del.C. §5702(2): *The tenant has wrongfully failed to pay the agreed rent.*

Therefore, the landlord may proceed under 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.

Rent is not specifically defined in the definition section of the Code at 25 Del.C. § 5141. However, throughout the Code, there are references to what may be considered rent. Utility services may be considered as rent, pursuant to 25 Del.C. §5312 (e):

Charges for utility services made by a landlord to a tenant shall be considered rent for all purposes under this Code.

Payment of utilities is a material term of the contract between Cyntellex and Washington. The contract states that Washington is responsible for utility payments. The contract does not provide for exceptions based upon in whose name the utility account is registered. Therefore, Washington is responsible for utility bills whether the Delmarva account is in her name or Cyntellex's name.

Cyntellex submitted to the Court copies of the Delmarva bills and the Certificates of Mailing, as evidence that they presented Washington with a copy of the utility bill each month, via the United States Postal Service. Washington testified that she did not receive the mailings.

The Court finds that Cyntellex has satisfied their burden of proof by a preponderance of the evidence that Washington owes \$1059.13 in delinquent utility bills.

As to Washington's request for the Court to find that her status for subsidized housing should be reinstated, the Court determined that it does not have the legal authority to grant Washington's request for relief.

Conclusion

For the foregoing reasons, the Court finds for Cyntellex and against Washington, awarding a money judgment in the amount of \$1059.13, plus court costs. Possession is no longer an issue as the writ of possession was completed on February 8, 2019, and is not contested by Washington.

Washington informed the Court that she has no forwarding address for the Court to provide her with a copy of this order or for Cytellex to provide her with their letter as to the disposition of her security deposit.

IT IS SO ORDERED 12th day of February, 2019

/s/ Marie E. Page (SEAL)
Justice of the Peace,
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).