

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

BIG T PROPERTIES, LLC
Plaintiff Below,

VS

DIANNE COLLINS
Defendant Below,

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C.A. No. JP13-18-011819

TRIAL DE NOVO

Submitted: February 12, 2019

Decided: February 15, 2019

APPEARANCES:

Big T Properties LLC, Plaintiff, appeared by and through Donald L. Gouge, Jr., Esq.
Dianne Collins, Defendant, appeared pro se

Marie E. Page, Justice of the Peace
Christopher R. Portante, Justice of the Peace
Nina M. Bawa, Justice of the Peace

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
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CIVIL ACTION NO: JP13-18-011819

BIG T PROPERTIES LLC VS DIANNE COLLINS

ORDER ON TRIAL DE NOVO

This case is a summary possession action brought by Plaintiff Big T Properties LLC against Defendant Dianne Collins on October 11, 2018. The case was originally heard before a single judge on December 6, 2018. After trial, a judgment was entered in favor of the Plaintiff against Defendant. Defendant Dianne Collins filed a timely appeal pursuant to 25 Del. C. § 5717. Upon appeal, the Court required a bond to be posted to stay the eviction pending appeal. Defendant failed to post the bond and the eviction occurred on January 17, 2019. Trial de Novo was held on February 12, 2019.

At the *de novo* hearing, Plaintiff Big T Properties, LLC was represented by Donald Gouge, Esq. Defendant Dianne Collins was self-represented. The three-judge panel consisted of Judge Page, Judge Bawa and Judge Portante.

Plaintiff Big T Properties LLC seeks back rent from March 1, 2018 through January 17, 2019 totaling \$8453.39 from Defendant Dianne Collins. Plaintiff mailed a 5-day notice to Defendant on October 1, 2018 via certificate of mailing demanding \$5600.00. Plaintiff argues that the prior owner of the property fell behind on the loan payments and the property went into foreclosure. Plaintiff asserts that the bank hired Plaintiff to manage the property in February 2018. Plaintiff asserts that they acted as property manager of the property from February 2018 until October 2018, when Plaintiff became the owner of the property. Plaintiff submits into evidence the 5-day notice, property management agreement between Vestinus II LLC (the prior owner) and Big T Properties LLC, New Castle County property records showing Plaintiff Big T Properties LLC purchased the property from Vestinus II LLC effective October 10, 2018, and various correspondence with Defendant and Defendant's prior counsel. Plaintiff testifies that they attempted to make repairs but were refused access to the unit.

Defendant does not seek possession of the rental unit but disputes the amount owed. Defendant asserts that the entire process was confusing and she does not believe Plaintiff Big T Properties LLC is the proper landlord. Defendant asserts that she has lived in the unit since 2015 and during that time has had four different property managers. Defendant asserts that in February 2018 she received a letter from Plaintiff that they were the new property manager but since it was not on letterhead and it requested confidential information from Defendant, she believed it to be a scam. Defendant asserts that she requested verification from Plaintiff to show proof that they were an authorized property manager and she found the documents eventually produced by Plaintiff to be suspicious due to inconsistencies with dates, letterhead and signatures. Defendant asserts that Plaintiff told her they purchased the property effective October 30, 2018 but the New Castle County property records show the effective date as

October 10, 2018. Defendant asserts that her letter from Plaintiff is dated February 7, 2018 but the property management agreement between Vestinus II LLC and Big T Properties is not dated until February 28, 2018. Defendant admits that she has not paid rent from March 2018 forward and further admits that her rent is \$800.00 per month. Defendant admits that she owes rent from October 2018 through December 2018 to Plaintiff Big T Properties LLC but disputes owing rent from March 2018 until October 2018 to Plaintiff Big T Properties LLC as Plaintiff is not the proper landlord.

The parties agree that possession of the rental unit is no longer an issue as possession was returned to Plaintiff on January 17, 2019. Therefore, the only issue before the Court is if Defendant owes rent to the Plaintiff, and if so, how much. The Court understands Defendant's confusion regarding the change in property management. This was a confusing situation and this Court acknowledges Defendant's concern about whether Plaintiff is the proper party to whom to pay the rent. However, it is clear that Defendant does owe rent to someone from March 2018 forward. Defendant even admitted during her testimony that she knows she cannot live somewhere for free.

Landlord-Tenant relationships are governed by Delaware's Landlord Tenant Code, found in Title 25, Chapters 51-70. 25 Del. C. § 5703 states:

"Who may maintain proceeding" The proceeding may be initiated by:

- (1) The landlord;
- (2) The owner;
- (3) The tenant who has been wrongfully put out or kept out;
- (4) The next tenant of the premises, whose term has begun; or
- (5) The tenant.

Furthermore, 25 Del. C. §5141 (15) defines the term landlord as:

- a. The owner, lessor or sublessor of the rental unit or the property of which it is a part and, in addition, shall mean any person authorized to exercise any aspect of the management of the premises, including any person who, directly or indirectly, receives rents or any part thereof other than as a bona fide purchaser and who has no obligation to deliver the whole of such receipts to another person; or
- b. Any person held out by any landlord as the appropriate party to accept performance, whether such person is a landlord or not; or
- c. Any person with whom the tenant normally deals as a landlord; or
- d. Any person to whom the person specified in paragraphs (15)b. and c. of this section is directly or ultimately responsible.

After a careful review of the evidence and testimony presented, the Court finds that the Plaintiff's notice in February 2018 to Defendant informing her of the change in property management is sufficient. While the communication from Plaintiff to Defendant was not perfect, the Court finds that it is legally sufficient and meets the preponderance of the evidence standard. The Court finds that Plaintiff has given enough testimony and evidence to meet the burden of proof to show that Plaintiff Big T Properties LLC was the property manager from February 2018 until October 2018 when they purchased the property and became the owner. There is a signed property management agreement between the prior owner Vestinus II LLC and Big T Properties LLC from February 2018, which shows that Plaintiff qualifies as a landlord

