

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

STEPHANIE TARKENTON  
Plaintiff Below,

VS

DARLENE THOMPSON  
Defendant Below,

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C.A. No. JP13-18-011849

TRIAL DE NOVO

Submitted: February 20, 2019

Decided: February 26, 2019

**APPEARANCES:**

Plaintiff represented by James H. Edwards, Esq.

Defendant represented by Jillian M. Pratt, Esq.

Sean McCormick, Deputy Chief Magistrate

Gerald Ross, Justice of the Peace

James Hanby, 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: JP13-18-011849**

**STEPHANIE TARKENTON VS DARLENE THOMPSON**

**ORDER ON TRIAL DE NOVO**

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

**Procedural Posture**

This action was filed by Plaintiff/Landlord against Defendant/Tenant on October 15, 2018, seeking past due rent and possession. Defendant raised a counterclaim for conditions of the rental unit. The trial before a single Justice of the Peace took place on November 26, 2018, with a finding in favor of Plaintiff on its case in chief, as well as a judgment for Plaintiff on Defendant's counterclaim. Plaintiff appealed timely and, after a day-of-trial continuance granted to Defendant, a three-judge panel consisting of Deputy Chief Magistrate McCormick, Judge G. Ross, and Judge Hanby heard the trial de novo on February 20, 2019. This is the Court's decision after trial. For the reasons stated below the Court finds for Plaintiff on its case in chief, and also for Plaintiff on Defendant's counterclaim.

**Facts**

Plaintiff seeks past due rent and late fees from October 2018 thru January 2019 plus court costs. Possession of the unit is not an issue. Defendant filed a counterclaim seeking rent abatement due to no heat, holes in the wall, and a rodent infestation.

Stephanie Tarkenton, Plaintiff's lead witness in its case-in-chief, testified that she owns a house located at 933 N. Pine St., Wilmington, DE; she rented it to Defendant on a six-month lease starting May 1, 2018; she charged a rent of \$950 per month plus a \$950 security deposit; Defendant paid a partial rent of \$200 in October 2018; a five-day letter was sent to Defendant via certified mail on October 2, 2018, followed by a reservation of rights letter on October 13, 2018; no additional rent was received thereafter; and the key to the rental property was returned on February 1, 2019. Plaintiff moved into evidence the signed lease agreement, five-day letter with proof of mailing, and reservation of rights letter.

Darlene Thompson, Defendant's lead witness in the counterclaim, testified that she moved into the rental property on May 5, 2018; the rent was \$950 per month plus a \$950 security deposit; there were no issues until September 2018; there was indicia of rodents in the kitchen and dining room starting in September; the heat upstairs was felt only in the bathroom when the cooler temperature arrived in October 2018; she sent Plaintiff a Request for Repairs dated October 24, 2018; and she contacted the Department of Licenses and Inspections ("L&I"), inspections were done in October and December 2018, and violations were found both times.

During cross-examination, Ms. Thompson stated that she sent a text message to Plaintiff on September 12, 2018 about a rat problem; she did not send the Request for Repairs to Plaintiff until November 14,

2018, because L&I was involved now; and two repair people came to the property to look at the heat but the issue was never resolved. Defendant moved into evidence the Request for Repairs, a printout of text messages exchanged with Plaintiff, and receipts for peppermint oil purchased. Plaintiff moved into evidence an envelope postmarked November 14, 2018, identified as the Request for Repairs letter sent to Plaintiff.

Dajour Thompson, Defendant's second witness, corroborated Ms. Thompson's testimony about the mice and rat infestation and no heat upstairs except in the bathroom. He testified that he saw mouse droppings on clothes inside the drawers and closets; he saw a dead rat in the kitchen and another one in the basement in October and November 2018; and the rat issue was resolved but the mice issue was never corrected. Defendant moved into evidence photos of two dead rats.

Inspector Natal, Defendant's third witness, testified that L&I received a complaint about rodents from Defendant on October 15, 2018; he inspected the property on October 17, 2018, and discovered 12 violations including a dead rat under the basement staircase; and he re-inspected the property (exterior only) near the end of October and all the violations were corrected. On cross-examination, Inspector Natal stated that L&I received another complaint from Defendant on November 13, 2018, that there were unfilled holes in the walls and closet floor, mice running about, and no heat upstairs. Defendant moved into evidence Inspector Natal's notice of violations.

Inspector Hamilton, Defendant's fourth witness, testified that L&I received a complaint from Defendant about the same issues on December 6, 2018; he inspected the property on December 7, 2018, and discovered three violations; he observed that the force of air was not as strong in the two bedrooms; he conferred with Inspector Natal about the issues; and he received an invoice from Plaintiff showing that the vent registers were checked and the holes filled. Defendant moved into evidence Inspector Hamilton's notice of violations.

Terry Curtis Smallwood, Plaintiff's first rebuttal witness, testified that he provided pest extermination services at the property on October 23, 2018; he searched all over the house for rodent entry points; he laid bait and tracking dust behind the kitchen stove, basement, upstairs behind the bathtub; and he saw no evidence of rats. Plaintiff moved into evidence an invoice from Will's Affordable Pest Control, LLC.

Ms. Tarkenton, Plaintiff's second rebuttal witness, testified that she received a text message and phone call from Ms. Thompson on September 12, 2018, alerting her to a rat problem next door; she ordered rat poison and bait stations; a handyman put down the rat traps in the closets and patched holes in a hallway and closet on September 25, 2018; Ms. Thompson first advised her of a dead rat inside the property on October 12, 2018; Ms. Thompson first complained about no heat on October 17, 2018; Ms. Tarkenton responded to the rental property with the handyman and an HVAC technician on November 19, 2018; the handyman patched more holes in the bedroom and hallway closets; the HVAC technician adjusted the dampers to direct more heat upstairs and switched the thermostat from fan to auto mode; and a mechanical contractor responded to the property on December 14, 2018, checked the heater, and measured the first floor temperature at 80 degrees and the second floor bedroom at 72 degrees. Plaintiff moved into evidence a printout of the text messages exchanged with Defendant, two invoices from Nothing Too Big or Too Small Handyman Service, an invoice from the HVAC technician, and an invoice from the mechanical contractor.

## Discussion

There is no dispute that Defendant owes the past due rent as claimed. Therefore, the Court finds in favor of Plaintiff Stephanie Tarkenton against Defendant Darlene Thompson on Plaintiff's case in chief. With regard to Defendant's counterclaim, this matter hinged largely on notice and Plaintiff's response. From the testimony and evidence presented, Plaintiff acted promptly and responsibly when notified of the two primary issues with the rental property. She brought the appropriate resources to bear on the rodent problem and inadequate second floor heat. Defendant failed to meet her burden to show that Plaintiff acted otherwise.

#### Conclusion

For the foregoing reasons, the Court awards a judgment of \$3,600 to Plaintiff for the unpaid rent plus \$45 court costs. Late fees were not charged and, therefore, are disallowed. No rent abatement is awarded to Defendant.

IT IS SO ORDERED 26th day of February, 2019

/s/ Gerald Ross (SEAL)

GERALD ROSS

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).