

GLASGOW COURT ENTERPRISES LLC
Plaintiff Below,

VS

RICK STEVENS
Defendant Below,

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C.A. No. JP13-18-012806

Submitted January 25, 2019.
Published February 27, 2019.

David C. Zerbato, Esq.; Morton, Valihura, & Zerbato, LLC. Counsel for Plaintiff/Appellee.
Richard Wilson, Esq.; Legal Services Corporation of Delaware, Inc. Counsel for Defendant/Appellant.

Sean P. McCormick, Deputy Chief Magistrate.
Gerald Ross, Justice of the Peace.
Robert Lopez, 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: JP13-18-012806

GLASGOW COURT ENTERPRISES VS RICK STEVENS

ORDER ON TRIAL DE NOVO

Procedural History of the Case at Bar.

This instant matter was filed on or about October 31, 2018 seeking both a rental debt and possession for the rental property pursuant to Chapter 70 of Title 25 of the Delaware Code, namely the Manufactured Home Owners and Community Owners Act. A hearing on the matter commenced on December 11, 2019. On December 19, 2019 a judgment in favor of Plaintiff was rendered. From that judgment the Defendant appealed. A trial *de novo* consisting of Deputy Chief Magistrate Sean McCormick, Judge Gerald Ross, and Judge Robert Lopez convened on January 25, 2019 to consider the matter. On that date the Defendant was not present. This is the Court's decision after trial. For the reasons stated below, the Court finds in favor of the Plaintiff both for a rental debt as well as on the issue of possession.

Facts.

This entire matter turned on a pre-trial motion offered by the Defense to dismiss based upon a belief that the amount sought within the 7-day letter of demand issued pursuant to 25 Del. C. § 7010A(b)(3) was inflated, and therefore possession of the unit in question should be disallowed from the panel's consideration.

The rental agreement, entered into March 1, 2016 expressed on its first page that the rental amount was \$650/month. However, by the listed amount was an asterisk. On the very last page of the lease immediately above the signatures of the parties, the asterisk denoted that a \$75 monthly discount was offered "as long as resident Qualifies * -- non-transferrable (*Disability/Senior.)" A clause in that lease allowed for a late fee of 5% "of the monthly rental amount." On or about November 26, 2016 a notice of renewal was sent by the landlord to the tenant. This document advised that the currently monthly rent was \$650 and that effective March 1, 2017 the new monthly rent would be \$654. The notice made no mention of the \$75 rental discount. No new lease was signed at that time and there was no endorsement by the parties on the renewal.

For whatever reason, rent began to go unpaid on or about April 1, 2018. After several months' non-payment, a 7-day letter was sent seeking the amount listed in the renewal notice (\$654) less \$75 for a total of \$579 for each month that remained unpaid. Also sought for each month was a late fee of \$32.50 – which is 5% of \$654. It was with the late fee that the Defense contended the 7-day letter was inflated. The question posed was how much was the monthly rental amount -- \$654 or \$579? If the lesser amount, then the 5% late fee would total \$28.95 -- \$2.55 less than the amount sought. The argument that then ensued was largely about semantics – for purposes of fee calculation, does the term “rent” mean the amount actually paid on a monthly basis, or is it the amount listed in the lease (or renewal letter) before any discount is applied?

After some discussion, the Panel unanimously denied the motion. It was clear by both the lease and the renewal letter how much the rental amount was for the unit in question. The fact that a discount that the defendant qualified for existed and worked to his benefit should not alter or amend the clearly-stated terms or figures listed in the rental contract. In-point-of-fact, the Panel opined that to consider otherwise would both have a chilling effect on the offer of discounts and could cause landlords hardship in having to re-calculate any fees related to the discount offered.

Thereafter the Plaintiff offered through the testimony of Property Manager Heather Taylor sufficient evidence (namely, she supplied the lease, ledger, notice of renewal, 7-day letter of demand, and notice of termination) that collectively warranted a judgment in the Plaintiff's favor.

Conclusion.

Judgment was therefore awarded in favor of Glasgow Court Enterprises, LLC and against Rick Stevens in the amount of \$5368.90 plus \$48.75 Court costs, per diem rent at the rate of \$21.80 from January 26, 2019 onwards, 8.0% Post Judgment Interest per annum on the debt, and possession of the unit.

IT IS SO ORDERED 27th day of February, 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).