

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

102 EAST AYRE STREET LLC
Plaintiff Below,

VS

BARBARA MCNALLY
Defendant Below,

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C.A. No. JP13-18-012186

TRIAL DE NOVO

Submitted: March 13, 2019

Decided: March 15, 2019

APPEARANCES:

102 East Ayre Street LLC, Plaintiff represented by Roger L. Truemper, Esq.
Barbara McNally, Defendant appeared pro se.

Sean P. McCormick, Deputy Chief Magistrate
Thomas P. Brown, Justice of the Peace
Christopher R. Portante, Justice of the Peace

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
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COURT NO. 13**

CIVIL ACTION NO: JP13-18-012186

102 EAST AYRE STREET LLC VS BARBARA MCNALLY

ORDER ON TRIAL DE NOVO

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

A de novo panel consisting of Deputy Chief Magistrate Sean McCormick and Judges Thomas Brown and Christopher Portante went forward in the above-reverenced matters, which consisted of a landlord-tenant filing brought by 102 East Ayre Street Realty, LLC against Barbara McNally and a contemporaneously filed debt action, JP13-18-013339, in which McNally alleged that damages of \$10,000 were incurred during the course of the tenancy to her personal property (namely, mold growth on personal property destroyed the same). The Court below merged the matters, taking the second as an offset; it should be noted that at no time was the second filing articulated as a counter-claim or setoff pursuant to any section of the landlord-tenant code. A pre-trial motion to dismiss the debt filing (claiming the appellate venue incorrect) was denied; the panel held that by merging it as a potential offset to Plaintiff/landlord's claims, consideration in this venue of appeal was appropriate. Pre-trial, Ms. McNally conceded the rental amount sought was due and owing and that she was not contesting possession. Accordingly, Plaintiff/landlord evidence their 5-day letter offered pursuant to 25 Del. C. §5502 and rested their case.

Ms. McNally then asserted her belief that an improperly vented dryer vent caused moisture issues such that mold grew on her personal property. Although she was able to evidence that the Town of Newport cited the landlord for the improperly vented dryer, she was unable to demonstrate that the improper venting was the cause of the mold (or for that matter that the substance was in fact mold at all.) Ms. McNally also in no way demonstrated the means of valuation of her claim, despite numerous opportunities to do so. At the conclusion of her claim, a motion seeking a directed verdict dismissing her claim was granted.

Judgment was then entered in favor of Plaintiff 102 East Ayre Street LLC and against Barbara McNally in the amount of \$5,419.25 plus the \$45.00 cost of filing, per diem rent in the amount of \$32.26, Post-Judgment Interest at the legal rate as well as possession of the unit.

IT IS SO ORDERED 15th day of March, 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).