

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

PAOLINO PROPERTIES
ALBERTA BOWERS
Plaintiff Below,

VS

PAOLINO PROPERTIES
ALBERTA BOWERS
Defendant Below,

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C.A. No. JP13-18-011313

TRIAL DE NOVO

Submitted: February 8, 2019

Decided: March 7, 2019

APPEARANCES:

Plaintiff represented by Form 50 Agent Rick Paolino

Defendant represented by Jillian Pratt, Esq.

Sean McCormick, Deputy Chief Magistrate

Nina Bawa, Justice of the Peace

Peter Burcat, 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: JP13-18-011313

PAOLINO PROPERTIES VS ALBERTA BOWERS

ORDER ON TRIAL DE NOVO

Plaintiff filed this civil action seeking past due rent and possession on September 25, 2018. Defendant filed a written counterclaim seeking a rent abatement due to conditions of the rental unit on October 18, 2018. The trial before a single Justice of the Peace was held on November 5, 2018. A judgment was awarded to Plaintiff on December 19, 2018, for rent, possession, court costs, and post-judgment interest. Defendant appealed the decision to a three-judge panel on December 20, 2018. A panel consisting of Deputy Chief Magistrate McCormick, Judge Bawa and Judge Burcat heard the trial de novo on February 8, 2019. This is the Court's decision after trial. For the reasons stated below, the Court dismisses Plaintiff's case-in-chief with prejudice and Defendant withdraws the counterclaim.

Defendant makes a pre-trial motion to consolidate this matter with *Bowers v. Paolino*, Del. J.P., C.A. No. JP13-18-013168 as the damages from the lack of heat on the other matter involve the same lease and circumstances as the counterclaim filed by Defendant in the instant matter. Plaintiff does not oppose Defendant's motion to consolidate. As the parties agree and based on Justice of the Peace Civil Rule 13, the Court grants Defendant's motion to consolidate.

Defendant makes a pre-trial motion to dismiss based on Plaintiff's failure to comply with 25 Del. C. § 5707. Defendant argues that the complaint filed by Plaintiff in this matter fails to state the interest of the Plaintiff, fails to state the interest of the Defendant, and fails to state the relief being sought. Plaintiff opposes the motion and argues that the complaint has all the necessary components.

25 Del. C. § 5707 "Contents of complaint generally" states: The complaint shall:

- (1) State the interest of the plaintiff in the rental unit from which removal is sought;
- (2) State the defendant's interest in the rental unit and defendant's relationship to the petitioner with regard thereto;
- (3) Describe the rental unit from which removal is sought;
- (4) State the facts upon which the proceeding is based and attach a copy of any written notice of the basis of the claim as an exhibit to the complaint; and
- (5) State the relief sought which may include a judgment for rent due if the notice of complaint contains a conspicuous notice that such demand has been made.

Furthermore, *Bomba's Rest. & Cocktail Lounge, Inc. v. Lord De La Warr Hotel, Inc.*, 389 A.2d 766 (Del. 1978) specifies that this is a Court of statutory jurisdiction so this Court lacks jurisdiction if the requirements of the statute are not met. In the instant matter, the Court finds that the 5-day notice attached to the complaint is incorporated into the complaint. The Court further finds that the 5-day notice attached to the complaint is signed as "landlord" and addressed to "tenant". Additionally, the relief sought is listed on the face of the complaint. As such, the Court finds that the complaint is substantially compliant with the statute and denies the Defendant's motion to dismiss.

Plaintiff seeks past due rent and possession. Plaintiff's agent testifies that a 5-day notice pursuant to 25 Del. C. § 5502 was sent demanding rent to Defendant on September 13, 2018. Plaintiff asserts that there have been no payments since then, and that Defendant refused to pay due to the conditions of the rental unit. Plaintiff argues that Defendant has refused to allow access to the rental unit so Plaintiff may make the necessary repairs.

Upon the conclusion of Plaintiff's presentation of the case-in-chief, Defendant makes a motion for directed verdict. Defendant argues that Plaintiff has neither submitted the rental agreement into evidence nor testified as to the terms of the rental agreement upon which this action is based. Defendant argues Plaintiff has not met the preponderance of the evidence standard. Plaintiff opposes the motion.

The Court grants the motion for directed verdict. Plaintiff brings this action for possession of a rental unit and monies due pursuant to 25 Del. C. § 5702(2). This, of course, requires filing only after proper notice is sent, pursuant to 25 Del. C. § 5502(a), which states:

§ 5502. Landlord remedies for failure to pay rent.

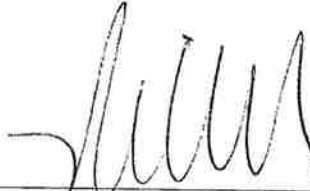
(a) A landlord or the landlord's agent may, any time after rent is due, including the time period between the date the rent is due and the date under this Code when late fees may be imposed, demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in 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.

Here, Plaintiff failed to submit into evidence the 5-day notice during the trial. In addition, Plaintiff failed to submit into evidence any rental agreement or ledger. Plaintiff did not provide the Court with testimony or evidence as to the total amount sought. For all of these reasons, the case fails on its merits. Plaintiff failed to meet the burden of proof to show by a preponderance of the evidence that they are legally entitled to possession or a judgment for rent. **The case-in-chief is dismissed with prejudice.** Defendant withdraws the counterclaim without prejudice.

This action represents a final adjudication of rent through January 31, 2019. Possession of the rental unit remains with Defendant.

At the conclusion of the trial, Defendant makes a motion to disjoin *Bowers v. Paolino*, Del. J.P., C.A. No. JP13-18-013168 for procedural fairness. Plaintiff does not oppose the motion. Therefore, the Court orders that *Bowers v. Paolino*, Del. J.P., C.A. No. JP13-18-013168 shall be disjoined from the instant action at the request of the parties.

IT IS SO ORDERED 07th day of March, 2019


NINA M. BAWA
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).