

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

FAIRVILLE MANAGEMENT COMPANY LLC
Plaintiff Below,

VS

SHANAYE BROWN
NI'JEA COLEMAN
Defendant Below,

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C.A. No. JP13-18-008090

TRIAL DE NOVO

Submitted: January 25, 2019

Decided: March 20, 2019

APPEARANCES:

Plaintiff, represented by and through David Zerbatto, Esq.

Defendants, represented by and through Dmitry Pilipis, Esq.

Sean P. McCormick, Deputy Chief Magistrate

Marie E. Page, Justice of the Peace

Gerald Ross, Justice of the Peace

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
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CIVIL ACTION NO: JP13-18-008090

WCV LLP VS SHANAYE BROWN ET AL

ORDER ON TRIAL DE NOVO

Procedural History of the Case at Bar.

This instant matter was originally filed July 16, 2018 seeking to terminate the tenancy based upon the allegation that the Defendants had not complied despite being served with a notice of breach sent to them pursuant to 25 Del. C. § 5513. It was determined on June 21, 2018 that the Defendants had allowed their electric service to lapse due to non-payment. Since no service rendered smoke detectors inoperable, the lack of electrical service created a heightened risk to adjoining units. Accordingly, a 7-day letter was sent. The matter was filed thereafter claiming that the Defendants had not complied within the time given by the letter. The matter was continued several times and finally heard on October 22, 2018. The Court below reserved judgment, issuing their findings on December 6, 2018 in favor of the Plaintiff. The matter was appealed. A trial de novo panel consisting of Deputy Chief Magistrate Sean McCormick and Judges Robert Lopez and Gerald Ross convened on January 25, 2019 to consider the matter anew. This is their decision after trial. For the reasons articulated below, the panel found in favor of the Defendants.

Facts.

This matter turned exclusively on a Defense pre-trial motion to dismiss, arguing that the 7-day notice failed to comply with the requirements of 25 Del. C. § 5513 in that the language within it was ambiguous to the point that understanding when the demand had to be complied with was impossible. In the first paragraph of the notice, the letter advised that the Defendants “have seven (7) days to restore [the utility] or immediate termination will be filed in court.” However, further on in the notice, it was stated “Therefore, as stated in the Delaware Landlord-Tenant Code, Paragraph 5513, you will be allowed seven (7) days from the date of this letter to correct the violation.” In the very next paragraph, the notice concludes by advising that compliance must be achieved “within seven (7) days you are receipt of this letter.” [sic.] Lastly, the notice of mailing showed that the letter wasn’t mailed until June 27, 6 days (out of 7) into the second time frame expressed. Which time frame was to be followed? It was that ambiguity that caused the Defense to argue that the notice itself was insufficient for its purpose and as such the matter should be dismissed.

In response, the Plaintiff noted that it was uncontested that the power was off between the dates of June 18 and July 11. As such, compliance was not achieved within any of the time frames

given. Accordingly, by whatever metric the 7 days tolled, it simply didn't matter – because compliance was not achieved.

The Panel held otherwise. Simply put, it advised that the Plaintiff's argument essentially amounted to the ends justifying the means. The court is a court of statutory jurisdiction, and thus for jurisdiction to be had the acting party must first comply with the language set forth within statute. In this instant matter, the Plaintiff's notice is by virtue of the ambiguity within it and compounded by when it was mailed rendered it insufficient for its purpose and thus, deprived the panel of jurisdiction to consider the matter. Accordingly, the matter was dismissed with prejudice.

IT IS SO ORDERED 20th 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).