

IN THE JUSTICE OF THE PEACE COURT NO. 16
OF THE STATE OF DELAWARE IN AND
FOR KENT COUNTY

GM, CEDAR CHASE, LLC,

Plaintiff Below,
Appellant,

v.

MISAEEL LASSALLE,

Defendant/Below Counterclaimant,
Appellee.

C.A. No. JP16-18-008105

TRIAL DE NOVO

Submitted: March 22, 2019

Decided: March 29, 2019

GM, Cedar Chase, LLC, Plaintiff/Appellant, appeared represented by current Form 50 agent Marisa Moore.

Misael Lassalle, Defendant/Counterclaimant/Appellee, appeared *pro se*.

ORDER

Hutchison, DCM
Murray, J
Edmanson II, J

On March 22, 2019 this Court, consisting of the Honorable Cathleen M. Hutchison, the Honorable James A. Murray and the Honorable Wallace G. Edmanson II, acting as a special court pursuant to 25 *Del. C.* § 5717(a)¹ held a trial *de novo*² in reference to a Landlord/Tenant Summary Possession petition filed by GM, Cedar Chase, LLC, (hereinafter referred to as Plaintiff), against Misael Lassalle (hereinafter referred to as Defendant or Counterclaimant). For the following reasons the Court enters judgment in favor of the **Plaintiff and Defendant/Counterclaimant *in-part***.

FACTUAL and PROCEDURAL BACKGROUND

Plaintiff filed a Landlord/Tenant Summary Possession petition with Justice of the Peace Court No. 16 seeking possession, court costs, accrued rent, late fees, utility fees and post-judgment interest. This action is based on the Defendant's alleged failure to pay rent. Trial was held on March 6, 2019 and judgment was entered in favor of the Defendant.³ Plaintiff filed a timely appeal of the Court's Order pursuant to 25 *Del. C.* § 5717(a). Consequently,

¹ 25 *Del. C.* § 5717(a). *Nonjury trials*. With regard to nonjury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing, within 5 days after judgment, a trial *de novo* before a special court comprised of 3 justices of the peace other than the justice of the peace who presided at the trial, as appointed by the chief magistrate or a designee, which shall render final judgment, by majority vote....

² *De novo* trial. Trying a matter anew; the same as if it had not been heard before and as if no decision had been previously rendered. Black's Law Dictionary 435 (6th ed. 1990).

³ *GM, Cedar Chase, LLC., v. Lassalle*, Del. J.P., C.A. No. JP16-18-008105, Dillard, J. (March 6, 2019).

trial *de novo* was scheduled. Thereafter, Defendant filed a counterclaim seeking \$7,363.30 to be heard at the *de novo* trial.

FACTS and DISCUSSION

It is undisputed that Parties entered into a landlord/tenant relationship.⁴ Defendant's monthly rent is \$1,099.00 due on or before the fifth with a \$54.95 late fee for rent not paid timely.⁵ Defendant acknowledged receipt (via the lease agreement) of the Residential Summary Landlord/Tenant Code.⁶ Defendant has not paid any rent whatsoever since December 5, 2018. Defendant was sent a demand letter for unpaid rent.⁷ Defendant asserted a claim that he has not received the full benefit of his bargain as well as essential services during his tenancy and therefore, has withheld rent.

Uncontested testimony showed the Defendant was without heat for three weeks in October and Plaintiff was notified of said heat issue at that time. Plaintiff did not show the impossibility of performance for restoration

⁴ Plaintiff's Exhibit #5. Landlord/Tenant Rental Agreement.

⁵ A 5% late fee is permitted by Code.

⁶ Plaintiff's Exhibit #5. Landlord/Tenant Rental Agreement.

⁷ Plaintiff's Exhibit #1. Demand Notice & Proof of Mailing.

of heat. Based on 25 *Del. C.* § 5308(a)(2) Defendant is entitled to two-thirds per diem rent abatement for the time he was without heat.⁸

Defendant asserted many other claims which he believes deprived him of the full benefit of the bargain for this unit. Testimony revealed Plaintiff attempted to remedy each one of Defendant's claims in a timely matter with the exception of one. The windows in this unit are out dated and in need of replacement. The windows are not weather efficient and therefore, the Defendant suffers heat and air loss on a daily basis due to the windows age and inefficiency. Plaintiff acknowledged the window issues and advised the windows are scheduled for replacement. Due to the above referenced issues Defendant has withheld his rent in its entirety since December 5, 2018.⁹

Plaintiff was noticed of the window issues and has not taken any corrective action thus far. This condition has existed since the inception of the lease. Plaintiff's lack of corrective action over a period of nine months may be perceived as willful disregard; however, at the very least, this Court finds it is negligence. Plaintiff's negligence has prevented Defendant from receiving the full benefit of the bargain for this unit. Whereas Defendant did

⁸ 25 *Del. C.* § 5308(a)(2). **Essential services; landlord obligations and tenant remedies.** Upon written notice to the landlord, keep 2/3 per diem rent accruing during any period when hot water, heat, water, electricity or equivalent substitute housing is not supplied. The landlord may avoid this liability by a showing of impossibility of performance.

⁹ Defendant made a payment of \$400.00 on the 5th of December which was applied to his past due rent balance of \$1,068.95.

not receive the full benefit of his bargain pursuant to 25 Del. C. § 5306(c)(2) the Court finds that Defendant is entitled to a damage award of “an amount equal to 1 month’s rent and the security deposit.”

CONCLUSION

As to Plaintiff’s petition, based on the Court’s fact finding inquiry, the Court’s above-referenced conclusions of law and by a preponderance of evidence, the Court by unanimous verdict enters *JUDGMENT for the PLAINTIFF.*

The Court hereby enters *JUDGMENT* as follows:

Judgment amount: **\$2,521.12.** (*balance due \$5,308.02¹⁰, less offset of \$2,786.90¹¹ based on finding for Counterclaimant.*)

Possession of rental unit @ **Apartment B203, 1700 North DuPont Highway, Dover, Delaware 19901.**

Per diem rent @ **\$36.63** until possession is relinquished.

Post-Judgment Interest @ **8%**.

Each Party *shall* bear their own court costs.

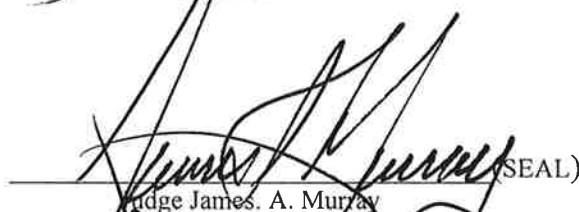
The Court announced its decision and rationale in open court and reduced it to writing this date.

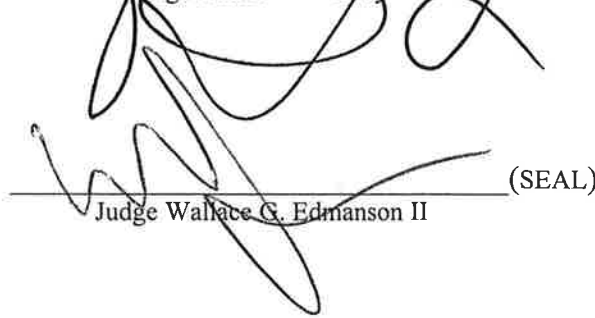
¹⁰ \$668.95 (past due for Nov.) + \$3,297.00 (monthly rent of \$1,099.00 for Dec., Jan., Feb.) + \$1,062.27 (per diem \$36.63 rent for March thru the 29th) + \$219.80 (late fees for Dec., Jan., Feb., March @ \$54.95) + \$60.00 (trash fees for Dec., Jan., Feb., March) = \$5,308.02.

¹¹ \$2,198.00 (1 month’s rent of \$1,099.00 + security deposit of \$1,099.00) + \$512.82 (2/3rds per diem rent for 21 days October rent) + \$76.08 (Lowe’s costs of supplies and rental to clean mold) = \$2,786.90.

IT IS SO ORDERED, this 29th day of March, 2019.¹²

 (SEAL)
Judge Cathleen M. Hutchison

 (SEAL)
Judge James A. Murray

 (SEAL)
Judge Wallace G. Edmanson II

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¹² This amount of judgment will increase by \$36.63 per diem for everyday that Defendant remains in possession of the rental unit after March 29, 2019.