

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

TATNALL STREET, LLC
Plaintiff Below,
Appellee

VS

ROBAN HATLEY
Defendant Below,
Appellant

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C.A. No. JP13-18-011480

TRIAL DE NOVO

Submitted: February 8, 2019

Decided: April 2, 2019

APPEARANCES:

Tatnall Street, LLC, Plaintiff appeared by and through Michael P. Morton, Esq.
Roban Hatley, Defendant appeared by and through Jillian Pratt, Esq.

Sean P. McCormick, Deputy Chief Magistrate
Peter Burcat, 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: JP13-18-011480

TATNALL STREET LLC V ROBAN HATLEY

ORDER ON TRIAL DE NOVO

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

History of the case at bar.

This instant matter was originally filed on or about October 1, 2018. A trial before a single Justice of the Peace occurred on November 19, 2018, the decision to which was reserved. Judgment was rendered in the form of a written opinion on December 18 awarding the Plaintiff a rental debt as well as possession of the unit. Further, a counter-claim lodged by the Defendant was decided in the Plaintiff's favor. From that proceeding the Defendant appealed. As a condition relating to the appeal, a bond was required to stay eviction but was never posted by the Defendant. Consequently, eviction took place on January 15, 2019. A three-judge panel consisting of Deputy Chief Magistrate Sean P. McCormick and Judges Peter Burcat and Gerald Ross convened to consider the matter on February 8, 2018. This is their decision after trial. For the reasons stated below, judgment was entered in favor of the Plaintiff for both a monetary judgement as well as regarding possession.

Facts and Argument.

The facts germane to the Panel's decision are as follows: The Plaintiff sought possession of the rental unit known as 835 N. Tatnall Street Unit as well as holdover rent for the period of time between September 1, 2018 and January 15, 2019 (the rent being \$1025 per month.) In support of this assertion the Plaintiff relied upon a 60-day notice sent pursuant to the requirements set forth within 25 Del. Code § 5106. The notice, dated June 29, 2018, was suitable for its purpose; the validity of it was not contested by the Defense. The Defendant sought to be relieved of the onus of holdover (or double) rent, arguing that since the 60-day notice made no mention of the possibility of double rent as a penalty for not complying with the notice, such damages should be disallowed. The Defendant voiced a desire to be re-possessed of the unit until such time as alternative housing became available. Lastly, the Defendant sought a 2/3 rent abatement against any rental debt that may be due from August 15, 2018 onwards¹.

In support of the claim for abatement, the Defendant relied upon a notice entitled "Request for Repairs."² This document, dated June 1, 2018 and which listed a litany of things in need of attention, was hand-delivered to

¹ The parties had engaged in previous litigation in which a similar counter-claim was raised which was terminated on August 14, 2018 – hence the date of August 15, 2018 being the first date in which abatement could be raised. See JP13-18-006819 for further.

² The notice in question is a document provided by Legal Services Corporation of Delaware, Inc. to their clients with pre-printed text followed by a blank area where tenants can list defects within rental units that need attention. It is presumably

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Mr. Timothy Crawl-Bey (managing partner of Tatnall Street, LLC) on or about June 4, 2018. The document was addressed to the Plaintiff and listed the address of the rental unit. In its text, the document stated “I am writing pursuant to 25 Del. Code § 5306 to notify you of conditions that have deprived me of the benefit and enjoyment of the bargain and that are in need of repair. Pursuant to that code section, you have 15 days to make the necessary repairs.” Thereafter, the repairs sought were listed. At the document’s conclusion, the text stated further “Under 25 Del. Code § 5305 of the Delaware Landlord-Tenant Code, all landlords are required to keep their rental properties in good repair.”

At the conclusion of the Defense presentation, the Plaintiff sought to have the counter-claim dismissed or in the alternative limited to the time-period between August 15, 2018 and September 1, 2019 – the day after the time period expressed within the 60-day notice tolled. In support of the motion, Plaintiff argued that the document held out as notice for the purpose of rent abatement cited referred to 25 Del. Code §§ 5305 and 5306, but not § 5308 – and it is only within § 5308 that one may find any allowance for two-thirds rent abatement. Further, the damages allowed for pursuant to § 5306 (granting the tenant the ability to terminate the rental agreement and seek expenses related to seeking substitute housing) are the exact opposite of what the Defendant has sought (to remain in the unit and pay substantially less rent while repairs are made.) Further, Plaintiff argued that since the 60-day notice had tolled at the end of August, 2018 no further duty to make repairs existed. 25 Del. Code § 5515(a) holds that “whenever either party to a rental agreement rightfully elects to terminate, the duties of each party under the rental agreement shall cease.” Even if the Panel felt that the document entitled “Request for Repairs” was sufficient for the purpose of notice pursuant to the requirements set forth within 25 Del. Code § 5308 and that the Defendant had adequately evidenced the existence of the conditions upon which abatement is claimed, abatement could only be considered for the 15-day period between the end of previous litigation and the tolling of the 60-day letter. After due consideration, the Panel concluded that the notice proffered did not meet the requirements as set forth within 25 Del. Code § 5308 and granted the motion to dismiss the counter-claim.

The final point of contention between the parties hinged on the Defense assertion that holdover (or double) rent should be disallowed. Although clearly there was no mention of the possibility of double damages in the body of the 60-day notice, the Plaintiff relied on statutory language to support their claim. 25 Del. Code § 5515(b) states:

(b) Whenever the term of the rental agreement expires, as provided herein or by the exercise by the landlord of a right to terminate given the landlord under any section of this Code, if the tenant continues in possession of the premises after the date of termination without the landlord’s consent, such tenant *shall* pay to the landlord a sum not to exceed double the monthly rental under the previous agreement, computed and pro-rated on a daily basis, for each day the tenant remains in possession for any period. [emphasis added.]

Clearly the section in question makes no mention of a requirement of notice prior to claiming double damages. Further, by using the word “shall” it indicates legislative intent that double damages, once sought, are not subjective to the Court’s determination but rather are mandatory in nature, assuming the landlord has properly

intended to assist pro-se litigants to meet generally notice provisions regarding the need for repair – or potential for rent withholding or other perspective damages if such repairs are not engaged.

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exercised a right to terminate – which the landlord did in this instant matter. As such, double damages are awarded to Plaintiff.

One further wrinkle effected the overall outcome of this matter – On August 29, 2018 Plaintiff issued a 5-day letter of demand seeking payment of rent for the months of July and August, 2018 at the contracted rate of \$1,025/month. This rent was at some point paid by the tenant to the landlord; appropriate reservations of rights were engaged. August 29, 2018 was a Tuesday; the following Monday was the Labor Day Holliday. Given that the matter in which time computation for the purpose of determining when the 5 days tolled³ excludes weekends and holidays, the 5 day period effectively stretched through September 6, 2018. Given that the 5 days allowed by the notice ran into a period of time in which double damages could be sought, the Panel held that the 5-day letter had a staying effect on when double damages could be first sought – that is, not until September 7, 2018 at earliest.

Conclusion.

Judgement was therefore entered against Roban Hatley and in favor of Tatnall Street, LLC in the amount of \$9020.00 (This amount being calculated at the contractual per diem amount of \$34.16 for the first 6 days of September, 2018 and at double that amount thereafter from September 7, 2018 through January 15, 2019.) plus the costs of filing; Possession, which previously was adjudicated in Plaintiff's favor, remains with Plaintiff by virtue of this Judgement.

IT IS SO ORDERED 02nd day of April, 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).

³ See 25 Del. Code § 5112 for further.