

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

MOHAMED AWADALLAH
Plaintiff Below,
Appellant

VS

WALID BAILOUMY
Defendant Below,
Appellee

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§ C.A. No. JP13-18-014618
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TRIAL DE NOVO

Submitted: April 1, 2019
Decided: April 9, 2019

APPEARANCES:

Mohamed Awadallah, Plaintiff represented by and through Basil Kollias, Esq.
Walid Baioumy, Defendant represented by and through Brian Jordan, Esq.

Sean McCormick, Deputy Chief Magistrate
Nina Bawa, Justice of the Peace
Cheryl McCabe-Stroman, Justice of the Peace

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

CIVIL ACTION NO: JP13-18-014618

MOHAMED AWADALLAH VS WALID BAILOUMY

ORDER ON TRIAL DE NOVO

Plaintiff filed this civil action seeking past due rent and possession on December 26, 2018. The trial before a single Justice of the Peace was held on February 25, 2019. A judgment was awarded to Defendant on March 11, 2019. Plaintiff appealed the decision to a three-judge panel on March 14, 2019. A panel consisting of Deputy Chief Magistrate McCormick, Judge Bawa and Judge McCabe-Stroman heard the trial de novo on April 1, 2019. This is the Court's decision after trial. For the reasons stated below, the Court awards a judgment for rent to Plaintiff but Defendant retains possession of the unit.

Plaintiff seeks past due rent and possession. Plaintiff testifies that Plaintiff and Defendant entered into a verbal rental agreement in which Defendant would pay \$300.00 per month to live in a room above Plaintiff's store. Plaintiff testifies that a 5-day notice pursuant to 25 Del. C. § 5502 was sent to Defendant on December 13, 2018 demanding rent and/or a receipt for a missing money order. Plaintiff testifies that the initial rent payments in April and May were paid via cash, but in June 2018 Defendant began to pay via money order. Plaintiff argues that Defendant delivered a money order for September 2018's rent to an individual who then gave the money order to Plaintiff's teenage son and then the money order was lost. Plaintiff asserts that Defendant refused to provide the money order receipt so the funds could be transferred. Plaintiff testifies that no rent has been paid since the September 2018 lost money order. Plaintiff argues that he did not know how to fill out the complaint form because he did not have an Arabic translator or attorney to help him so he had his teenage daughter assist him in filing the court action. Plaintiff argues he did check off that the type of action was summary possession and the notice attached to the complaint does indicate that if the rent was not cured a summary possession action would be filed. Plaintiff testifies that Defendant failed to retrieve his mail from Plaintiff. Plaintiff asserts that criminal charges were filed and there was a no contact order in place between the parties. Plaintiff submits into evidence the ledger, 5-day notice, and copies of money orders from Defendant's payments in June, July and August 2018. Plaintiff seeks \$2100.00 rent and possession.

Defendant asserts that he initially paid cash for the rent but Plaintiff refused to give receipts for the cash payments so Defendant switched to using money orders. Defendant argues that Plaintiff lost the money order and Defendant offered to let Plaintiff look at all of his money order receipts. Defendant asserts he could not provide the missing money order receipt because it had been through the laundry and was ruined. Defendant argues that he has paid rent every month in cash since September 2018. Defendant asserts that he switched back to cash payments after the missing money order because the Plaintiff preferred cash. Defendant argues that Plaintiff failed to indicate on the complaint that possession of the rental unit was part of the relief he was seeking, and thus possession cannot be awarded. Defendant further argues that Plaintiff was receiving Defendant's mail and therefore Defendant never received the 5-day notice to cure. Defendant argues that Plaintiff has failed to meet the burden of proof.

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:

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§ 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's 5-day notice demands not only payment of rent but also performance. Plaintiff's notice requires Defendant to produce the receipt for the missing money order. Additionally, the Court finds that Defendant delivered the money order to Plaintiff. Plaintiff's loss of the money order is not Defendant's responsibility. Defendant submitted payment to Plaintiff for the September 2018 rent, and therefore the Court finds that the amount demanded on the 5-day notice is inflated.

Furthermore, 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.

In this instance, Plaintiff's complaint both fails to describe the rental unit from which removal is sought and fails to state the relief sought. Plaintiff's complaint lists Defendant's address as "201 Concord Ave, Wilmington DE 19802" but the attached 5-day notice is addressed to "201 Concord Avenue, Apartment 2, Wilmington, DE 19802". Also, Plaintiff's complaint does not indicate that possession of the rental unit is sought through this court action in the concise statement of facts or on the "relief sought" section of the complaint. *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. The purpose of the complaint is to put the Defendant on notice as to what Plaintiff is seeking. Plaintiff's failure to properly indicate that possession was being sought prevents the Court from awarding possession as the Court cannot award something not included in Plaintiff's action, as this would deprive Defendant of proper due process. Finally, the testimony that Plaintiff was receiving Defendant's mail indicates that Defendant was not provided the proper opportunity to cure the non-payment of rent. Since the complaint and five-day letter did not comport with the requirements of the Landlord-Tenant Code, the Complaint for Possession was not properly before the Court. Therefore, the Court cannot award Possession of the rental unit to Plaintiff. Possession of the unit remains with Defendant.

On the issue of the rent, the Court finds that Plaintiff met the burden of proof to show by a preponderance of the evidence that rent of \$300.00 per month is due and owing from October 2018 through March 2019. Defendant asserted that he paid cash every month, but Plaintiff testified that no rent had been paid since September 2018. The Court finds the Plaintiff's testimony that rent has not been paid since October 2018 credible for several reasons. The parties agreed there was an active no contact order between the parties during this time. Defendant offered no testimony or evidence to specify as to how and when the cash was delivered to Plaintiff every month. In addition, it is unclear to the Court why

Defendant would switch back to cash payments from money order due to the problem with not getting receipts.

The Court finds, by a preponderance of the evidence, in favor of Plaintiff Mohamed Awadallah against Defendant Walid Baioumy for \$1800.00 plus \$45.00 court costs plus 8.0% post-judgment interest per annum. This action represents a final adjudication of rent through March 31, 2019. Possession of the rental unit remains with Defendant.

IT IS SO ORDERED 09th 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).