

JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY
COURT NO. 17

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|-----------------------|---|-------------------------|
| MAURICE DONOWAY | § | |
| Plaintiff Below, | § | |
| Appellee | § | |
| | § | |
| VS | § | C.A. No. JP17-19-001963 |
| | § | |
| | § | |
| MELISSA KARYL DIPALMA | § | |
| Defendant Below, | § | |
| Appellant | § | |

TRIAL DE NOVO

Submitted: April 29, 2019

Decided: May 3, 2019

APPEARANCES:

Peter K. Schaffer, Esquire, Avenue Law, Dover, for Maurice Donoway
Melissa Karyl Di Palma was self-represented

Richard Comly, Justice of the Peace
Jennifer Sammons, Justice of the Peace
John Martin, Senior Justice of the Peace

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY
COURT NO. 17**

CIVIL ACTION NO: JP17-19-001963

MAURICE DONOWAY VS MELISSA KARYL DIPALMA

ORDER ON TRIAL DE NOVO

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

HISTORY

On March 26, 2019 Maurice Donoway, the landlord, filed this action seeking to recover \$13,500.00 in unpaid rent and possession of the rental property known as 609 East Grove Street, Delmar, Delaware. Trial was held on April 11, 2019 and judgment on behalf of the landlord was entered that same day. On April 16, 2019, Melissa Karyl Di Palma, the tenant, filed a timely appeal pursuant to 25 *Del. C.* § 5717. This is the decision of the Three Judge Panel hearing the appeal as a trial de novo.

FACTS

The landlord testified that he was the owner of the property in question. The landlord had been in a long term relationship with the tenant's mother. The parties entered into a verbal lease on Mother's Day 2016. The landlord testified that the rent was \$750.00 per month plus utilities. During the first year the rent was almost always paid on time. In January 2017 the tenant's mother passed away. The tenant got behind in the rent and utility payments. In April 2017 the tenant paid up all the rent and utility payments she owed and also paid off a separate loan she had received from the landlord. The total of this payment was \$5,266.34 and the landlord wrote a receipt to her for that amount. The tenant stopped paying all rent in August 2017 but made sporadic utility payments since then.

On February 21, 2019, the landlord's attorney sent a letter to the tenant at the landlord's request. That letter was a demand to pay all the rent due at that time, \$13,500.00, within five days or the rental agreement would be terminated. When the rent was not paid, this action was filed. The monthly rent has continued to accrue and is now in excess of the jurisdictional limit of this Court so the landlord has limited his claim to \$15,000.00.

The landlord called the tenant's uncle, her mother's brother, as a witness. This witness testified that he was aware of the rental agreement and that he had asked the tenant's mother if the tenant could afford to pay the \$750.00 per month rent.

The tenant testified that under the verbal agreement she did not have to pay rent but only had to pay for the utilities. She admitted that she has not made all the utility payments when they were due.

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DISCUSSION

25 *Del. C.* § 5141(24) provides that a “rental agreement” shall include all agreements, written or oral, which establish or modify the terms...or any other provisions concerning the use and occupancy of a rental unit. 25 *Del. C.* § 5502(a) provides that any time after rent is due, the landlord may demand payment of the amount due to be paid in not less than five days from the date the notice was given or sent. Unless payments are made within that time period, the rental agreement may be terminated.

In this case, the landlord testified that the monthly rent was \$750.00. He also provided a copy of a receipt for \$5,266.34 that he prepared for the tenant when that payment was made. Written in the FOR area was “Elec. Water Rent”. The tenant testified that payment of rent was never part of any agreement.

While the testimony in this case is obviously contradictory, the Court finds that the receipt prepared by the landlord in March 2017 along with the tenant’s acknowledgement that she paid that amount to the landlord is proof of an agreement for the payment of rent in this case.

ORDER

Therefore, after considering all the evidence presented, the Court finds that the landlord met his burden of proof by a preponderance of the evidence and enters a judgment on his behalf and against the tenant in the amount of \$15,000.00 and court costs of \$48.75. Post judgment interest to accrue at the current legal rate of 8% per year. Possession of the rental unit is also awarded to the landlord pursuant to 25 *Del. C.* § 5702(2)

IT IS SO ORDERED 03rd day of May, 2019

/s/Richard Comly
Justice of the Peace
For the Three 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).

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