

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

GEORGINA LORCA	§	
Plaintiff Below,	§	
	§	
	§	
VS	§	C.A. No. JP13-19-003185
	§	
	§	
NICHOLE ROBB	§	
Defendant Below,	§	

TRIAL DE NOVO

Submitted: May 10, 2019

Decided: May 31, 2019

**APPEARANCES:**

Plaintiff, represented by Richard T. Wilson, Esq.

Defendant self-represented

**DE NOVO PANEL:**

Marie E. Page, Justice of the Peace

Gerald Ross, Justice of the Peace

Peter Burcat, Justice of the Peace

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

**CIVIL ACTION NO: JP13-19-003185**

**GEORGINA LORCA  
vs.  
NICHOLE ROBB**

**ORDER ON TRIAL DE NOVO**

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

Procedural History

On March 6, 2019, Plaintiff/Tenant GEORGINA LORCA, hereinafter “Lorca,” represented by Richard T. Wilson, Esq., filed Civil Action No. JP13-19-003185 in Justice of the Peace Court 13. Lorca filed her matter as a Forthwith Complaint seeking access and possession of a rental unit Plaintiff rented from Defendant/Landlord NICHOLE ROBB, hereinafter “Robb.” In addition, Plaintiff sought treble damages for an alleged unlawful ouster by Defendant/Landlord.

On March 11, 2019, an expedited hearing was held on the unlawful ouster claim under 25 Del. C. §5313. Plaintiff was represented by Richard Wilson, Esq. Defendant Nichole Robb appeared pro se. Plaintiff/Tenant LORCA asserted Defendant/Landlord ROBB changed the locks to the rental unit on March 4, 2019 without a valid court order, and Plaintiff/Tenant sought possession of the rental unit. Defendant/Landlord ROBB asserted she did change the locks on March 4, 2019 after giving Plaintiff/Tenant LORCA a 60-day notice, a 15-day notice, police responding to the rental unit, and the City of Wilmington Licensing and Inspections issuing a citation regarding the rental unit not being habitable. Defendant/Landlord ROBB stated the lease with Plaintiff/Tenant LORCA had expired in August 2018. Defendant/Landlord asserts that upon her demand, Plaintiff/Tenant handed her the keys to the rental unit so she had returned possession of the unit.

Subsequent to considering the testimony of the Parties, on March 11, 2019 the Court issued an Order directing Defendant/Landlord ROBB to restore full possession of the rental unit to Plaintiff/Tenant Lorca by no later than 4:00 p.m. on Wednesday, March 13, 2019. Defendant had mentioned she may file a Counterclaim in this matter. As part of the Court’s March 11, 2019 Order, the Court ordered that if Defendant sought a Counterclaim, any such Counterclaim would need to be in writing and must be filed with the Court, and served on Plaintiff, by no later than **March 25, 2019**. The Court’s Order further stated that if Defendant did not so file and serve by March 25, 2019, Defendant would be prevented from going forward with a Counterclaim, if any.

On April 12, 2019, a trial before a single Justice of the Peace resulted in a Court order dated April 15, 2019, in favor of Plaintiff LORCA and against Defendant ROBB. On April 16, 2019,

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prevailing party, Plaintiff LORCA, filed an appeal and requested a *trial de novo*. On April 16, 2019 Plaintiff's *trial de novo* request was approved. On April 18, 2019, the Court sent the Parties Notice of the *trial de novo* hearing date of May 10, 2019. On April 29, 2019, Defendant filed a Counterclaim in this matter seeking a financial recovery from Plaintiff. Defendant did not include a Bill of Particulars with her filing.

On May 10, 2019, the *trial de novo* was heard before a three-judge panel consisting of Justice of the Peace Marie E. Page, Justice of the Peace Gerald Ross, and Justice of the Peace Peter Burcat.

### Facts

At the *trial de novo*, Mr. Wilson called Plaintiff LORCA as Plaintiff's first witness. Ms. Lorca testified on February 3, 2018, she entered into a lease agreement with Defendant ROBB for a rental unit located at 1013 East 27<sup>th</sup> Street, Wilmington, Delaware. Ms. Lorca stated the agreed upon monthly rental obligation was \$475.00, plus an additional \$25.00 each month for use of a washer and dryer. Ms. Lorca testified she was excluded from the rental unit on March 4, 2019 due to the City of Wilmington deeming the rental unit was not habitable. Ms. Lorca stated on March 4, 2019, Defendant, along with three (3) police officers told Plaintiff the rental unit was condemned and Plaintiff would have to vacate the unit that day. Ms. Lorca further stated the weather was rainy that day so she was unable to vacate until approximately 9:30 p.m. Ms. Lorca testified she went to a hotel, but her daughter paid for the hotel as Ms. Lorca did not have the money for a hotel. Ms. Lorca stated she was forced to stay in a hotel through March 12, 2019, at which time she was allowed to re-occupy the rental unit. Ms. Lorca further stated she was not sure of the name of the first hotel/motel, but she knew the motel she stayed at from March 9 through March 12, 2019 was a *Super Lodge*. Mr. Wilson had two (2) receipts from *Super Lodge* marked as Plaintiff's "Exhibit P-1 and P-2" respectively. P-1 was a receipt totaling \$110.00, and P-2 was a receipt totaling \$55.00. Defendant did not object to P-1 or P-2, and both receipts were introduced into evidence. The Court took Judicial Notice that the room number on P-1 did not match the room number on P-2. While P-1 and P-2 had Plaintiff's name listed, the credit card receipts attached to the exhibits did not have the credit card holder's name printed on the credit card receipt. Ms. Lorca repeated her statement that she did not pay for the motel, but rather her daughter paid for the motel. Ms. Lorca concluded her testimony by stating she did not have receipts for the hotel stay from March 4, 2019 through March 9, 2019.

On cross-examination, Ms. Lorca testified her daughter had paid \$209.00 for a stay at a *Red Roof Inn*, but Ms. Lorca did not have a copy of a receipt from the *Red Roof Inn*. Plaintiff rested.

Defendant called Eric Croxton as her first witness. Mr. Croxton testified he lived in an apartment in the same building as Plaintiff. Mr. Croxton stated Plaintiff did not vacate her rental unit until March 5, 2019, which he recalled was the day after the police arrived at Plaintiff's rental unit. Mr. Wilson did not have any cross-examination questions for Mr. Croxton. Defendant called herself as her next witness. Ms. Robb testified Plaintiff did not present any proof to the court as to who actually stayed at the *Super Lodge* from March 9 through March 12, 2019. Ms. Robb stated it could have been Plaintiff's daughter. Ms. Robb concluded her testimony by stating Plaintiff vacated the rental unit on March 5, 2019 and not

March 4, 2019. Mr. Wilson did not have any cross-examination questions for Ms. Robb. Defendant rested.

In closing, Mr. Wilson argued Plaintiff was excluded from her rental unit from March 4 through March 12, 2019. He stated Plaintiff had presented receipts totaling \$165.00 and therefore, Plaintiff was entitled to treble that amount as damages. In the alternative, Mr. Wilson argued Plaintiff was entitled to treble damages of her *per diem* rental rate of \$16.67 for the period of time she was excluded from her rental unit.

In closing, Ms. Robb argued the receipts did not prove Plaintiff had paid for any hotel stay(s).

#### Discussion

Landlord-Tenant relationships are governed by Delaware's *Landlord-Tenant Code*, found in *Title 25, Chapters 51 through 70*. The first issue considered by the *de novo* Panel was the issue regarding Defendant's Counterclaim filed on April 29, 2019. Mr. Wilson argued the Panel should not consider the Counterclaim as it was not timely filed. The Panel took Judicial Notice that the Court had filed an Interim Order on March 11, 2019, directing Defendant to file her Counterclaim, if any, by no later than March 25, 2019, or the Counterclaim would not be considered by the Court. As stated herein, the Counterclaim was not filed until over one (1) month past March 25, 2019. *25 Del. C. §5717(b)* states in pertinent part: "An appeal taken pursuant to subsection (a) of this section may also include claims and counter-claims not raised in the initial proceeding; provided, that **within 5 days of the filing of the appeal, the claimant also files a bill of particulars identifying any new issues which claimant intends to raise at the hearing which were not raised in the initial proceeding.**" (emphasis added). The appeal herein was filed on April 16, 2019. The Counterclaim was not filed until April 29, 2019, and Defendant did not include a Bill of Particulars with the filing of her Counterclaim. As the Counterclaim was not filed before March 25, 2019, and as the Counterclaim was not filed within five (5) days of the filing of the appeal, and as Defendant failed to include a Bill of Particulars with her Counterclaim, Defendant's Counterclaim was not considered by the Panel.

Pursuant to *25 Del. C. §5313*:

*If removed from the premises or excluded therefrom by the landlord or the landlord's agent, except under color of a valid court order authorizing such removal or exclusion, the tenant may recover possession or terminate the rental agreement. The tenant may also recover treble the damages sustained or an amount equal to 3 times the per diem rent for the period of time the tenant was excluded from the unit, whichever is greater, and the costs of the suit excluding attorneys' fees.*

The Court has considered the testimony of the Parties and Defendant's witness, Mr. Croxton. Plaintiff testified she was excluded from the rental property on March 4, 2019. Mr. Croxton believed it was actually March 5, 2019. Ms. Lorca was re-possessed on March 12, 2019. Accordingly, the Court finds Plaintiff was excluded from the rental property for a total of eight (8) days. Plaintiff has argued she

is entitled to receive treble the damages sustained, and those damages would be the documented costs for the hotel stay incurred by Plaintiff. The only receipts Plaintiff was able to produce at the hearing were two (2) receipts totaling \$165.00. As the two (2) receipts were for two (2) different rooms and did not confirm Plaintiff actually occupied either of the rooms, the receipts were not considered by the panel. In addition, Plaintiff herself testified she did not pay for her hotel stays. Mr. Wilson argued in the alternative, Plaintiff is entitled to three (3) times the *per diem* rent for the period of time she was excluded from the rental property. There was no dispute that the total rent was \$500.00 per month. Mr. Wilson argued the *per diem* would be \$16.67. To arrive at that *per diem*, the month would have to have only thirty (30) days. March has 31 days, so if the *per diem* were to be based on the actual number of days in the month of exclusion, the *per diem* would be \$16.13. In determining the *per diem* for this case, the Court has used a calculation that takes into consideration a total of 365 days per year. As such, the *per diem* would be \$16.44, and Plaintiff is entitled to three (3) times the *per diem*, for a total of eight (8) days.

Order

Based upon the foregoing, JUDGMENT for Plaintiff as follows:

Judgment Total:       \$ 394.56

Post-Judgment Interest: 8.0%

IT IS SO ORDERED 31st day of May, 2019

/s/ Peter Burcat \_\_\_\_\_ (SEAL)  
Justice of the Peace,  
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).