

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

**FRANCIS OSEI-AFRIYIE,**

Plaintiff Below,  
Appellant,

v.

**AYANI SHROUDER,  
TENNILLE SHROUDER,**

Defendants Below,  
Appellees.

**C.A. No. JP16-19-002562**

***TRIAL DE NOVO***

Submitted: May 9, 2019

Decided: May 9, 2019

Francis Osei-Afriyie, Plaintiff/Appellant, *pro se*.  
Ayani Shrouder and Tennille Shrouder, Defendants/Appellees, appeared  
represent by Tara Blakely, Esquire.

***ORDER***

Murray, J  
Tracy, J  
Wilson, J

On May 9, 2019, this Court, consisting of the Honorable James A. Murray, the Honorable Dana M. Tracy and the Honorable Kevin Wilson, acting as a special court pursuant to 25 *Del. C.* § 5717(a)<sup>1</sup> held a trial *de novo*<sup>2</sup> in reference to a Landlord/Tenant Summary Possession petition filed by Francis Osei-Afriyie (hereinafter referred to as Plaintiff), against Ayani Shrouder and Tennille Shrouder (hereinafter referred to as Defendant or Defendants). For the following reasons the Court enters judgment in favor of the **DEFENDANTS**.

### **FACTUAL and PROCEDURAL BACKGROUND**

Plaintiff filed a Landlord/Tenant Summary Possession petition with Justice of the Peace Court No. 16 seeking possession only. This action is based on the Defendants alleged failure to relinquish possession of the rental unit after notice to do so. Trial was held on April 22, 2019 and judgment was entered in favor of the Defendants.<sup>3</sup> Plaintiff filed a timely appeal of the Court's Order pursuant to 25 *Del. C.* § 5717(a). Consequently, trial *de novo* was scheduled and held.

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<sup>1</sup> 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....

<sup>2</sup> *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 (6<sup>th</sup> ed. 1990).

<sup>3</sup> *Afriyie v. Shrouder et al.*, Del. J.P., C.A. No. JP16-19-002562, Dillard, J. (April 22, 2019).

## TESTIMONY and EVIDENCE

Based on the testimony and evidence presented at trial, the Court found the following *salient facts*: There is a landlord/tenant relationship between the Parties. Defendants rent a property known as 354 Alder Road, Dover, Delaware 19904. Defendants have been and remain current with rent payments. On January 2, 2019 Plaintiff mailed<sup>4</sup> a 60-day termination demand notice to each Defendant.(notice was dated February 1, 2019)<sup>5</sup> Defendants acknowledged receipt of same.

Parties have not vacated the unit as of the date of this trial. Whereas Defendants did not vacate the rental unit on or before April 1, 2019 Plaintiff filed the above referenced summary possession petition on April 4, 2019.

Defendants presented a second 60-day termination demand notice sent to them by Plaintiff.<sup>6</sup> Said notice was dated April 22, 2019 and mailed the same date.

## DISCUSSION

At issue is which one of Plaintiff's 60-day demand notices control this manner. Plaintiff asserts through his first 60-day demand notice that he

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<sup>4</sup> Plaintiff's exhibit #2. Proofs of mailing.

<sup>5</sup> Plaintiff's exhibit #1. 60-day termination demand notice.

<sup>6</sup> Defendants' exhibit #1. 60-day termination demand notice.

complied with the requirements of the Delaware Landlord/Tenant Code and therefore, he should receive judgment in his favor. Defendants assert the last demand notice provides for them to remain in possession of the rental unit until June 30, 2019.

This Court agrees with the Defendants. Once Plaintiff sent Defendants a new demand notice he *reset the clock*. By sending Defendants a second demand notice on April 22, 2019 Plaintiff's notice of February 1, 2019 became moot. Plaintiff's second notice of April 22<sup>nd</sup> provided Defendants with a new date of termination.

Whereas Plaintiff's first demand notice is moot there is no reason for this Court to determine if said demand notice of complied fully with the Delaware Landlord/Tenant Code.

Whereas Defendants time to comply with the 60-day demand notice dated April 22, 2019 has not elapsed, Plaintiff's petition for summary possession is premature.

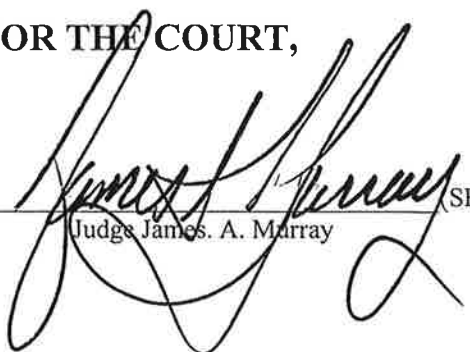
### CONCLUSION

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 DEFENDANTS*.

The Court announced its decision and rationale in open court.

**IT IS SO ORDERED**, this 9<sup>th</sup> day of May, 2019.

**FOR THE COURT,**

  
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Judge James A. Murray (SEAL)

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