

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

A.I. ENTERPRISE	§	
Plaintiff Below,	§	
	§	
	§	
VS	§	C.A. No. JP13-18-014404
	§	
	§	
RAVEN COOKE	§	
Defendant Below,	§	

TRIAL DE NOVO

Submitted: June 26, 2019

Decided: July 1, 2019

APPEARANCES:

Plaintiff represented by Lidia Ini, Form 50 Agent

Defendant represented by Richard Wilson, Esq.

Sean McCormick, Deputy Chief Magistrate

Marie E. Page, Justice of the Peace

Nina Bawa, Justice of the Peace

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

CIVIL ACTION NO: JP13-18-014404

A I ENTERPRISE VS RAVEN COOKE

ORDER ON TRIAL DE NOVO

Plaintiff filed this summary possession action seeking past due rent and possession on December 17, 2018. The trial before a single Justice of the Peace was held on May 13, 2019. A judgment was awarded to Plaintiff on May 16, 2019. Defendant appealed the decision to a three-judge panel on May 21, 2019. A panel consisting of Deputy Chief Magistrate McCormick, Judge Page and Judge Bawa heard the trial de novo on June 26, 2019. At the time of the trial de novo appeal hearing, possession is no longer an issue as possession was surrendered by Defendant to Plaintiff. For the reasons stated below, the Court dismisses the case-in-chief without prejudice, and the counterclaim is held in abeyance.

Pre-Trial Motions

1) Plaintiff's pre-trial motion to dismiss the counterclaim.

Plaintiff makes a pre-trial motion to dismiss the counterclaim. Plaintiff argues that the Court's order dated March 19, 2019 gave Defendant 10 days to file a written counterclaim, and Defendant failed to file the written counterclaim until May 22, 2019. Plaintiff argues that the counterclaim should be dismissed based on Defendant's failure to comply with the Court's order.

Defendant argues this is a brand new trial and the parties may raise new issues.

25 Del. C. § 5717 Stay of proceedings on appeal

(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, on the original complaint within 15 days after such request for a trial de novo. No such request shall stay proceedings on such judgment unless the aggrieved party, at the time of making such request, shall execute and file with the Court an undertaking to the successful party, with such bond or other assurances as may be required by the Court, to the effect that the aggrieved party will pay all costs of such proceedings which may be awarded against that party and abide the order of the Court therein and pay all damages, including rent, justly accruing during the pendency of such proceedings. All further proceedings in execution of the judgment shall thereupon be stayed.

(b) An appeal taken pursuant to subsection (a) of this section may also include claims and counterclaims 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.

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25 Del. C. § 5717 (a) specifies that the appeal from a nonjury trial is a trial de novo and 25 Del. C. § 5717 (b) specifically allows the appeal to include claims and counter-claims not raised in the initial proceeding. The decision from the trial below has no bearing on the trial de novo panel's appeal trial. As such, Plaintiff's motion to dismiss the counterclaim is **DENIED**.

2) Defendant makes a pre-trial motion to dismiss the case-in-chief.

Defendant makes a pre-trial motion to dismiss the case-in-chief due to failure to comply with the notice requirements of 25 Del. C. § 5502. Defendant argues that two notices were attached to the complaint which initiated this action, and these two notices are the basis for the instant action. Defendant asserts that the two letters are contradictory and thus cause confusion as to how the tenant can cure the situation. Both of Plaintiff's notices are dated December 7, 2018. Defendant argues the two letters are ambiguous because: (1) one notice demands \$778.87 to cure and the other demands \$219.41 and (2) the notice which demands \$219.41 provides a time to cure of both five business days and a deadline of December 17, 2018. Defendant argues the two notices are confusing as to the time period to cure and the amount to cure.

Plaintiff argues that there are two notices because one contains the amount of rent due and owing, and the other contains the new utility bill. Plaintiff asserts that the notices are adequate and are not ambiguous.

Plaintiff brought 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:

§ 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.

In this instance, the Court finds that Plaintiff's notices are faulty because they provide Defendant with two different amounts and two different timeframes to cure. The purpose of the 5-day letter is to put the Defendant on notice as to how to cure the problem. The contradictions contained within Plaintiff's notices make Defendant's requirements to cure ambiguous. As such, the Court finds that Plaintiff's notices do not comply with 25 Del. C. § 5502.

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. Since the five-day letter did not comport with the requirements of the Landlord-Tenant Code, the complaint was not properly before the Court. Even though possession is no longer an issue, Plaintiff filed this as a summary possession action because possession was an issue at time of filing. As such, the requirements of 25 Del. C. § 5502 must be met. Therefore, Defendant's motion to dismiss the case-in-chief is **GRANTED**. The Court dismisses the case-in-chief without prejudice.

As such, the counterclaim seeking rent abatement is held in abeyance.

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This order neither precludes Plaintiff from the ability to seek a future debt action nor precludes Defendant from raising the counterclaim for rent abatement on a future action.

IT IS SO ORDERED 01st day of July, 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).