

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

FAB LLC	§	
Plaintiff Below,	§	
Appellant	§	
	§	
	§	C.A. No. JP13-19-001788
VS	§	
	§	
	§	
A.K.P. HOLDINGS, LLC	§	
Defendant Below,		
Appellee		

TRIAL DE NOVO

Submitted: June 10, 2019

Decided: July 5, 2019

**APPEARANCES:**

FAB LLC, Plaintiff appeared by and through Jeffrey M. Weiner, Esq.

A.K.P. Holdings, LLC, Defendant appeared by and through R. Karl Hill, Esq.

Sean P. McCormick, Deputy Chief Magistrate

Thomas P. Brown, Justice of the Peace

Kerry Taylor, Justice of the Peace

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**CIVIL ACTION NO: JP13-19-001788**

**FAB LLC VS A.K.P. HOLDINGS, LLC**

**ORDER ON TRIAL DE NOVO**

**History of the Case at Bar.**

This matter was originally filed on February 1, 2019 seeking possession of the unit based upon an allegation of non-payment of rent. Given that the amount of rent claimed exceeded the jurisdictional limit of the Court, the matter was bifurcated in that the rental portion of the claim was filed in the Superior Court while the possession aspect was sought through the Justice of the Peace Court. A hearing before a single Judge took place on April 16. Thereafter, a judgment favoring the Defendant was issued on April 25. From that order the Plaintiff sought relief on appeal. On June 10, 2019 a three-judge panel consisting of Deputy Chief Magistrate Sean McCormick and Judges Thomas Brown and Kerry Taylor convened to consider the matter. This is their decision after trial.

**The Motion to Dismiss.**

The Panel's consideration of the matter turned largely upon a Defense motion seeking to dismiss the possession action. It was argued that the notice of demand of rent payment upon which this filing is based was defective in that it cited an incorrect period of time (five days, versus the ten-day time frame counsel argued was specified in Article 16.01(b) of the lease) to cure the default. In-point-of-fact, counsel argued that he felt that the language contained within Article 16.01(c) (which cited a 30-day time-period after notice is given) was controlling. Regardless, whether 10 days or 30, the Defense held that the action was filed prior to either of those time-periods having tolled. Accordingly, the action should be dismissed without prejudice.

In opposition to the motion Plaintiff's counsel argued that, since commercial leases are excluded from the provisions of the landlord-tenant code (with the exception of Chapter 57 of Title 25 of the Delaware Code) pursuant to 25 Del. Code § 5501, there is no requirement that notice be given pursuant to the Code as with residential tenancies. Rather, the tenets of contract law govern the relationship; in this matter, pursuant to the language and terms offered and accepted within the lease as is found within Article 16.01(b). Article 16.01(b) of the lease does not specify the need for any notice – rather, it allows Plaintiff to take action after the tenant is in default for ten days. It was the Plaintiff's position that any notice sent was not required but rather simply sent as a courtesy.

The pertinent part of Article 16.01 of the lease states:

Article 16 DEFAULT; REMEDIES

16.01 In the event that during the Term (regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, at law, in equity, or before any administrative tribunal, which has prevented or might prevent compliance by Tenant with the terms of this lease): (a) Tenant shall abandon the Premises or suffer the Premises to become vacant or deserted; (b) Tenant shall be in default for ten (10) days in the payment of any installment of Base Rent, Additional Rent or any other sum herein specified to be paid by Tenant, (c) Tenant shall be in default in the observance or performance of any of Tenant's other covenants, agreements, or obligations hereunder, and such default shall not be cured within thirty (30) days after Landlord shall have given to Tenant written notice specifying such default or

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defaults . . . then in such event Landlord shall have the right (each of the foregoing being at times herein referred to as an “event of default” or “default”) in addition to any other rights or remedies Landlord may have under this Lease and at law and in equity, at its election (aa) to immediately declare due and payable, as if by the terms of this Lease the same were payable in advance, all Base Rent for the balance of the Term, and/or (bb) to recover all Base Rent and Additional Rent that is due and payable and other damages, and/or (cc) to distrain for Rent and/or (dd) to terminate this Lease and/or (ee) to reenter the Premises and remove all persons and all or any property therefrom, either by summary dispossession proceedings or by any suitable action.

After reading the language in question and considering the argument before it, the Panel advised the parties that its reading of the Article aligned with the Plaintiff’s; accordingly, the Defense motion to dismiss was denied.

Thereafter, the outcome of the case was fated, for it was not contested that rent had gone unpaid and remained so. Payment of rent is a material term of a contract. When that term was breached, Plaintiff was well within their right to seek possession by way of this proceeding.

**Conclusion.**

Accordingly, Possession of the unit is hereby awarded to the Plaintiff.

IT IS SO ORDERED 05th day of July, 2019

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/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).