

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

FISHER DEVELOPMENT CO.
Plaintiff Below,

VS

CHRISTOPHER TIGANI
Defendant Below,

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C.A. No. JP13-19-003870

TRIAL DE NOVO

Submitted: June 13, 2019

Decided: July 19, 2019

APPEARANCES:

Fisher Development Co., Plaintiff/Appellee, represented by Bayard J. Snyder, Esq.
Christopher Tigani, Defendant/Appellant, appeared Pro Se.

Sean P. McCormick, Deputy Chief Magistrate
Peter Burcat, Justice of the Peace
Amanda Moyer, 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: JP13-19-003870

FISHER DEVELOPMENT CO. V CHRISTOPHER TIGANI

ORDER ON TRIAL DE NOVO

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

Procedural Background

On March 20, 2019, Plaintiff, Landlord FISHER DEVELOPMENT COMPANY (“Fisher”), represented by Bayard Snyder, Esq., filed Civil Action No. JP13-19-003870 in Justice of the Peace Court 13. Fisher sought possession of a rental property occupied by Defendant CHRISTOPHER TIGANI (“Mr. Tigani”), based upon non-payment of rent for the said rental property.

A trial, before a single Judge, was conducted below on April 29, 2019. On May 13, 2019, an Order was signed finding in favor of Plaintiff Fisher, and Ordering possession to be returned to Plaintiff. On May 17, 2019, Mr. Tigani filed an appeal for a *Trial de Novo* (“TDN”). On May 20, 2019, the request for a TDN was granted.

On May 29, 2019, the Court scheduled a TDN for June 13, 2019, before a three-judge panel consisting of Deputy Chief Magistrate Sean McCormick, Justice of the Peace Peter Burcat, and Justice of the Peace Amanda Moyer. On June 13, 2019, Plaintiff/Appellee Fisher appeared, represented by Bayard Snyder, Esq., and Defendant/Appellant Mr. Tigani appeared *Pro Se*.

Facts

Plaintiff/Appellee is the owner of a single-family home located at 2831 Grubb Road, Wilmington, Delaware 19810. Plaintiff had offered to rent the said home to Defendant/Appellant. The Parties entered into a Lease Agreement, dated December 30, 2018, for the rental property. The term of the Lease was December 30, 2018 through June 30, 2020. The Lease Agreement was signed on behalf of Plaintiff/Appellee Fisher by Nina Fisher, and signed by Defendant/Appellant Tigani. As per the terms and conditions of the Lease, the Tenant, Mr. Tigani, was to pay the Landlord, Plaintiff Fisher, a total sum of Thirty-Six Thousand Dollars (\$36,000.00) as rent for the term of the lease. Payment of the rental obligation was set forth in the Lease Agreement as an initial payment of Twenty-Four Thousand Dollars (\$24,000.00), due and payable at the time the lease was signed, followed by a balance payment of Twelve Thousand Dollars (\$12,000.00), due and payable on or before January 1, 2020. In addition, a Two Thousand Dollar (\$2,000.00) security deposit was to be paid by Defendant/Appellant Tigani.

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Plaintiff/Appellee Fisher has alleged that Defendant/Appellant Tigani failed to pay in full the initial rental payment as per the terms and conditions of the Lease Agreement, and Tigani has refused to vacate the rental property due to non-payment of rent. Based upon the contentions of the landlord (Fisher) of a breach of tenant's Rental Agreement, and the *Delaware Landlord Tenant Code*, on March 11, 2019, Fisher sent Mr. Tigani a Five (5) Day Notice. Mr. Tigani did not pay the amount past due as per the Lease Agreement, did not vacate the rental property, nor return possession of the rental property to Fisher. As such, Plaintiff/Appellant filed their Action for Possession. Defendant/Appellant Tigani has responded by stating he had paid rent through April 30, 2019, and further attempts to pay rent that is due and owing for the rental property have been rejected by Plaintiff/Appellee Fisher. Defendant/Appellant Tigani has further alleged the Complaint filed by Plaintiff in March 2019 was pre-maturely filed as he had paid rent through April 2019.

At the TDN on June 13, 2019, both Parties made opening statements. Thereafter, Plaintiff/Appellee called Nina Fisher as their first witness. Ms. Fisher testified she was the owner of the single-family home located at 2831 Grubb Road, Wilmington, Delaware. Ms. Fisher further testified she rents the property to third parties. Ms. Fisher testified she was familiar with Defendant/Appellant Mr. Tigani. Plaintiff/Appellee Fisher had a document marked as Plaintiff/Appellee's "Exhibit P-1," identified as the Lease Agreement signed by the witness and Mr. Tigani. P-1 was introduced into evidence without objection. Ms. Fisher testified she and Mr. Tigani signed the lease on December 30, 2018, for a lease term through June 30, 2020. Ms. Fisher further testified that the lease was to be pre-paid for the first year. Ms. Fisher stated Mr. Tigani gave her \$10,000.00, of which \$2,000.00 was to be applied to the security deposit. Ms. Fisher testified she was handed a second check in the amount of \$16,000.00, but Mr. Tigani requested she hold the check until January 2019, at which time she could deposit the second check. Plaintiff/Appellee Fisher had a document marked as Plaintiff/Appellee's "Exhibit P-2," identified as a copy of the second check, dated January 16, 2018 (sic) in the amount of \$16,000.00. P-2 was introduced into evidence without objection. Ms. Fisher testified she deposited the second check, but it was returned due to insufficient funds. Plaintiff/Appellee Fisher had a document marked as Plaintiff/Appellee's "Exhibit P-3," identified as the Five (5) Day Notice with Proof of Mailing, dated March 11, 2019. P-3 was introduced into evidence without objection. Plaintiff/Appellee Fisher had a document marked as Plaintiff/Appellee's "Exhibit P-4," identified as a bill from *Delmarva Power* for utility service for the rental property. P-4 was introduced into evidence without objection. Ms. Fisher testified that as per the terms and conditions of the Lease, the Tenant (Mr. Tigani) was to pay for the utilities for the rental property during the term of the lease. Ms. Fisher stated Mr. Tigani neither transferred the utilities into his name nor paid for the utilities as per the Lease Agreement.

Prior to commencing the cross-examination of Ms. Fisher, Mr. Tigani had a document marked as Defendant/Appellant's "Exhibit D-1," identified as copies of text messages. D-1 was introduced into evidence without objection. On cross-examination, Ms. Fisher testified she did not run a credit report on Mr. Tigani as she did not believe a credit report would be necessary since Mr. Tigani agreed to pay the rent in advance. Ms. Fisher agreed she and Mr. Tigani engaged in conversations regarding the lease, but ultimately, the only reason she agreed to rent the house to Mr. Tigani was because he was willing to pay the full rent in advance. Ms. Fisher stated she and Mr. Tigani met on the afternoon of December 30, 2018 to sign the lease, and Mr. Tigani gave her two (2) checks. The second check was post-dated. Upon inquiry regarding the utilities, Ms. Fisher testified the oil bill for the rental property was paid by Mr.

Tigani, but he did not pay any other utility bills. Mr. Tigani had a document marked as Defendant/Appellant's "Exhibit D-2," identified as a copy of text messages. Mr. Snyder objected to D-2 as being hearsay. The objection was over-ruled, and D-2 was introduced into evidence. Mr. Tigani sought to confirm a \$726.00 payment he made to a Michael Phouts was for an oil bill payment. Mr. Tigani had a document marked as Defendant/Appellant's "Exhibit D-3," identified as a copy of text messages. D-3 was introduced into evidence without objection. Mr. Tigani showed the witness D-3, and Ms. Fisher agreed she did not respond to Mr. Tigani's request for the amount of the outstanding utility bills. Mr. Tigani had no further questions for Ms. Fisher.

Plaintiff had no re-direct questions for Ms. Fisher. Plaintiff rested.

Defendant/Appellant called himself as his first witness. Mr. Tigani testified he never agreed to pay Twenty-Four Thousand Dollars (\$24,000.00) to Plaintiff/Landlord at the commencement of the lease term. To the contrary, Mr. Tigani stated he agreed to pay only for the first four (4) months of the rental period, together with the Two Thousand Dollar (\$2,000.00) security deposit. This total was Ten Thousand Dollars (\$10,000), which he stated he paid to Ms. Fisher. Mr. Tigani testified that he did provide a second check to Ms. Fisher in the amount of Sixteen Thousand Dollars (\$16,000.00), but Ms. Fisher stated she would not deposit the second check. Mr. Tigani stated he advised Ms. Fisher he would "make good" on the second check when he could. As for the utilities, Mr. Tigani testified he attempted to move the utilities into his name, and he paid all utility bills that he was presented. Mr. Tigani argued Plaintiff, in her court filing, did not seek any monetary recovery from Defendant/Tenant as the rent was paid in full through, and beyond, the date of the initial filing of Plaintiff/Landlord's Complaint. Mr. Tigani was reminded that he was presenting his defense through testimony and evidence, and any arguments he sought to make to the Panel should be reserved for closing arguments. Mr. Tigani testified it was not his idea to bring a post-dated check to the lease signing, but rather it was something Ms. Fisher had requested. Mr. Tigani stated he never thought Ms. Fisher would actually try to deposit the Sixteen Thousand Dollar (\$16,000.00) check, especially since he had informed Ms. Fisher the check would not clear the bank. Mr. Tigani concluded his testimony by stating the agreement he had with Ms. Fisher was not the same agreement that was set forth in the Lease Agreement.

On cross-examination, Mr. Tigani was asked about text messages he exchanged on January 16, 2019 regarding the Sixteen Thousand Dollar (\$16,000.00) check. Mr. Tigani agreed the text messages indicated Mr. Tigani was requesting additional time to have the funds available for the check, as he stated he was sick at that time.

There were no further questions from Mr. Snyder for Mr. Tigani. Mr. Tigani did not present any re-direct testimony.

Defendant/Appellant called Michael Phouts as his next witness. Mr. Phouts testified he knew Mr. Tigani, but did not recall when or how they had first met. Mr. Phouts stated he knew Ms. Fisher as she was his employer, *Rentals on Demand*. Mr. Phouts testified he showed Mr. Tigani the rental property at 2831 Grubb Road, and had sent Mr. Tigani a rental application. However, he did not discuss the terms and conditions of the rental agreement with Mr. Tigani. Mr. Phouts stated he was aware the Lease Agreement was signed on December 30, 2018, and it was signed on site at the rental property. Mr.

Phouts further testified he was aware Ms. Fisher accepted Eight Thousand Dollars (\$8,000.00) from Mr. Tigani as pre-payment for rent. Mr. Phouts stated Ms. Fisher continued to receive electric bills for the rental property after Mr. Tigani had moved into the rental property, but Mr. Tigani had stated he would “go on line and put the electricity into his name.” Upon inquiry, Mr. Phouts agreed he went to the rental property to pick up a payment from Mr. Tigani, but Mr. Phouts did not know what the intended purpose was for the payment, and he agreed he had sent a text message to Mr. Tigani confirming receipt of the payment. Mr. Tigani had no further questions for Mr. Phouts. Mr. Snyder had no cross-examination questions for Mr. Phouts. Mr. Tigani had a document marked as Defendant/Appellant’s “Exhibit D-4,” identified as a copy of an email. Mr. Snyder objected to D-4. A discussion took place and Mr. Snyder withdrew his objection. D-4 was introduced into evidence without objection. Mr. Tigani argued D-4 was an email he had sent to Mr. Snyder on May 19, 2019 regarding the case, and an offer to pay rent and utilities. However, Mr. Tigani argued Mr. Snyder did not open the email until June 13, 2019.

Defendant rested. Plaintiff did not present any rebuttal testimony or evidence.

Mr. Snyder made a closing statement. Mr. Snyder argued there was a signed lease that set forth the terms and conditions regarding the rental agreement for the rental property. Mr. Snyder further argued Mr. Tigani gave his client a post-dated check since he did not have the full amount of the funds agreed to be paid at the time the Lease Agreement was signed. Mr. Snyder stated the text messages received from Mr. Tigani confirmed Mr. Tigani’s knowledge and intention for Plaintiff/Landlord to cash the post-dated check. Mr. Snyder concluded his comments by stating there was no evidence presented to support Mr. Tigani’s contention the Lease Agreement had been modified to a month-to-month lease.

Mr. Tigani made a closing statement. Mr. Tigani argued he did not have an opportunity to review the lease before it was signed on December 30, 2018. He further argued he had agreed to pay only Eight Thousand Dollars (\$8,000.00) on December 30, 2018, and the only reason he gave Ms. Fisher a check for Sixteen Thousand Dollars (\$16,000.00) was because Ms. Fisher asked for the check, but assured him she would not actually cash the check. Mr. Tigani strongly stated he never agreed to pay Ms. Fisher Twenty-Four Thousand Dollars (\$24,000.00) on December 30, 2018. Mr. Tigani reminded the Panel that Plaintiff/Appellant was not seeking any monetary recovery in the present matter, which he argued would only serve to confirm the Lease Agreement had been modified to a month-to-month lease, and he had paid the rent through the date the Complaint had been filed. Mr. Tigani argued it was the Plaintiff/Appellant who did not want to adhere to the agreed upon modification of the Lease Agreement. In conclusion, Mr. Tigani requested the Panel to “reverse the trial court’s decision.”

Findings

A plaintiff has the burden of proving their case by a preponderance of the evidence. “Preponderance of the Evidence is a standard of proof that is met when a party's evidence indicates that the fact ‘is more likely than not’ what the party alleges it to be. Evidence which, as a whole, shows the fact to be proved is more probable than not. 9 Del. Admin. Code 303-5.0.

Plaintiff/Appellee Fisher introduced into evidence, without objection, as P-1, a Lease Agreement signed on behalf of Plaintiff/Appellee and signed by Defendant/Appellant. Therefore, there is no dispute

that the Parties agreed to, and entered into, the said Lease Agreement commencing December 30, 2018 and continuing through June 30, 2020. The *Landlord-Tenant Code* regulates and sets forth the legal rights, remedies and obligations of all of the parties to a residential rental agreement within the State of Delaware. See *25 Del.C. §5101, et seq.* The case at bar is a residential Landlord-Tenant action. As per the Lease Agreement, Section 2, with a heading of “RENT” states in pertinent part that “Tenant shall pay to the Landlord the sum of Thirty Six Thousand Dollars (\$36,000.00) representing the duration of the lease which is payable in one (1) payment of Twenty Four Thousand Dollars payable at the signing of lease, followed by one payment of Twelve Thousand Dollars (\$12,000.00) on or before January 1, 2020 . . .” In addition, there was to be a single payment of Two Thousand Dollars (\$2,000.00) to be applied as a security deposit. On the date of the signing of the Lease Agreement, Mr. Tigani gave Plaintiff Ten Thousand Dollars (\$10,000.00), of which Two Thousand Dollars (\$2,000.00) was to be applied to the security deposit. As stated above, the agreement between the Parties was for an initial payment of Twenty-Four Thousand Dollars (\$24,000.00). Ms. Fisher testified that on December 30, 2018, she was handed by Mr. Tigani a balance due check in the amount of Sixteen Thousand Dollars (\$16,000.00). Ms. Fisher stated Mr. Tigani requested she hold the check until January 2019, at which time she could deposit the second check. Ms. Fisher testified she waited, as requested by Mr. Tigani, until January 2019 to deposit the second check. However, Ms. Fisher was notified the check was being returned due to insufficient funds.

During the cross-examination of Mr. Tigani by Mr. Snyder, Mr. Tigani testified he had sent text messages that he did not dispute he owed the additional Sixteen Thousand Dollars (\$16,000.00). Mr. Tigani argued at the TDN that the Lease Agreement had been orally modified and therefore, at the time of the filing of Plaintiff’s Complaint, he was not obligated to pay the Sixteen Thousand Dollars (\$16,000.00) as a lump sum payment. Mr. Tigani insisted his rental obligations were on a month-to-month basis. Mr. Tigani argued he had pre-paid his rent through the date of the filing of the Complaint in March 2019. The Court rejects this argument. *25 Del.C. §5109(a)* states in pertinent part: “Material promises, agreements, covenants or undertakings of any kind to be performed by either party to a rental agreement shall be interpreted as mutual and dependent conditions to the performance of material promises, agreements, covenants and undertakings by the other party.” In plain language, this section of the *Landlord-Tenant Code* states the written, and signed, Lease Agreement controls. As stated herein, Mr. Tigani was obligated to pay Plaintiff/Appellee at the time the Lease Agreement was signed, a lump sum payment of Twenty-Four Thousand Dollars (\$24,000.00). On December 30, 2018, Mr. Tigani paid a net total of Eight Thousand Dollars (\$8,000.00) to Plaintiff/Appellee towards his rental obligation. The balance amount of Sixteen Thousand Dollars (\$16,000.00) was paid on that same day with a post-dated check, that subsequently did not clear the bank. Therefore, Mr. Tigani is found to have breached the terms and conditions of the Lease Agreement. Mr. Tigani’s argument that the Lease Agreement was orally modified is rejected. Again, referring back to the controlling document, the Lease Agreement, Section 19, with a heading of “ENTIRE AGREEMENT” states in pertinent part that the Parties signing the Lease Agreement agree that: “I understand that this is the full Agreement, and that this Agreement cannot be orally modified. The terms and conditions of this Agreement are the entire agreement and understanding of the parties.” While Plaintiff/Appellee would be entitled to pursue a claim for the sums agreed to in the Lease Agreement, Plaintiff/Appellee has sought no monetary recovery, but only possession of the rental property.

25 Del.C. §5502(a) Landlord remedies for failure to pay rent states:

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.

Plaintiff/Appellee introduced into evidence, without objection, the requisite Five Day Notice. The Court finds Mr. Tigani violated the terms and conditions of the Lease Agreement by failing to pay the agreed upon rent as per the payment conditions. If a tenant wrongfully fails to pay the agreed rent, an action for summary possession may be maintained. 25 Del.C. §5702(2).

Defendant/Appellant has asked the TDN panel to reverse the trial court's decision. Defendant/Appellant is reminded that the TDN is a de novo hearing, and not a review of the trial court's decision.

Conclusion

For the foregoing reasons, the Court finds in favor of Plaintiff/Appellee and against Defendant/Appellant, and possession of the rental property is granted to Plaintiff/Appellee.

Court Costs in the amount of \$ 47.50 are awarded to Plaintiff/Appellee.

IT IS SO ORDERED 19th day of July, 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).