

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY
COURT NO. 17**

JOSEPH COLBURN
Plaintiff Below,
Appellee

VS

KENNETH NITKOWSKI
Defendant Below,
Appellant

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C.A. No. JP17-19-002804

TRIAL DE NOVO

Submitted: July 15, 2019

Decided: July 31, 2019

APPEARANCES:

Plaintiff represented by Michael McGroerty, Esq
Defendant self-represented

Sheila Blakely, Deputy Chief Magistrate
Richard Comly, Justice of the Peace
Alan Davis, Chief Magistrate

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6CF14A3J (3/1/19)

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
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COURT NO. 17**

CIVIL ACTION NO: JP17-19-002804

JOSEPH COLBURN VS KENNETH NITKOWSKI

ORDER ON TRIAL DE NOVO

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

Procedural Posture

Plaintiff, Joseph Colburn, brought this action in his capacity as owner of a home on East State Street in Delmar, Delaware. He initiated the action May 7, 2019, seeking possession of the property based on a failure to pay rent. The Court scheduled the initial trial on May 23, 2019. Defendant, Kenneth Nitkowski, failed to appear at that hearing and subsequently filed a motion to vacate the default judgment. That motion was granted and a single judge heard the trial on June 17, 2019. The single Justice of the Peace ruled in favor of the Plaintiff. Defendant brought a timely appeal but failed to post the required bond to stay eviction.

The Court scheduled this case for a three judge panel on July 15, 2019. Chief Magistrate Davis, Deputy Chief Magistrate Blakely and Judge Comly heard the appeal on that date. Meanwhile, the Plaintiff filed for a writ of possession since the bond had not been posted; eviction was to take place on July 16, 2019. After trial, the Court indicated that it would not stay the eviction. For the reasons stated below the Court finds in favor of the Plaintiff.

Facts

The Court finds the following facts applicable to this action:

Defendant rented a room in a home with several other tenants in Delmar, Delaware. The classified ad that he responded to indicated that the room – with common area privileges – was available at \$425 per month. Once he went to the property, he became aware that the owner claimed the ad was improperly placed and the room was actually \$500 per month. Defendant began paying \$500 per month for the room with common area privileges. During the course of his tenancy, Mr. Nitkowski encountered a number of vexing situations. The other tenants did not seem to abide by what were the house rules about use of the common areas and the house also became infested with bedbugs. The person who haphazardly “oversaw” the property for the owner was not particularly friendly or helpful to him. There were ongoing construction projects in the house that limited his use of the common areas for periods of time. He went to the town office to complain of the conditions on at least one occasion and learned that the property was not licensed as a rental.

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At the same time, Mr. Nitkowski was not the most amenable tenant. When pest control was called about the bedbug problem, he would not leave his room for the necessary time. And, most importantly, he quit paying rent in November of 2018. While he claims that he paid the erstwhile “manager” of the property cash for his rent, Mr. Nitkowski could show no proof of such transactions.

Discussion

The Court is satisfied by a preponderance of the evidence that Mr. Nitkowski has not paid rent since before November 2018. His assertion that the person overseeing the property pocketed cash that he gave the man doesn’t have any credibility. In fact, the most credible witness the Court had before it was Mr. Sean Taylor, who served the notice upon Mr. Nitkowski on behalf of the owner’s counsel. Mr. Taylor testified in detail how he handed the defendant the delinquency notice. Mr. Nitkowski’s recollection of that interaction was that some man who would not identify himself stopped by and asked to talk to him and gave him no paper. This testimony further discredited Mr. Nitkowski’s credibility with the Court.

Judgment

The Court finds in favor of the Plaintiff and enters judgment in the amount of \$4261.28, which accounts for rent for the months of November through June, plus per diem rent of \$16.33 per day until he was evicted on July 16th.

IT IS SO ORDERED 31st day of July, 2019

/s/ Alan G. Davis (SEAL)

Chief Magistrate
For the three 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).