

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

WILLIAM PENN VILLAGE APARTMENTS  
Plaintiff Below,  
Appellant

VS

JOHN DAYE  
Defendant Below,  
Appellee

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C.A. No. JP13-19-007819

TRIAL DE NOVO

Submitted: October 16, 2019

Decided: October 17, 2019

**APPEARANCES:**

William Penn Village Apartments, Plaintiff appeared by and through David Zerbato, Esq.  
John Daye, Defendant appeared by and through Elizabeth Rowe, Esq.

Sean P. McCormick, Deputy Chief Magistrate

Marie E. Page, Justice of the Peace

Thomas P. Brown, 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: JP13-19-007819**

**WILLIAM PENN VLG APTS VS JOHN DAYE**

**ORDER ON TRIAL DE NOVO**

A three-judge panel consisting of Deputy Chief Sean McCormick and Judges Thomas Brown and Marie Page went forth in the above-referenced matter. Plaintiff was represented by David Zerbato, Esq.; the Defendant was represented by Elizabeth C. Rowe, Esq. Two pre-trial motions to dismiss were offered by the Defense – the first seeking dismissal based upon an improper five-day notice as is required pursuant to 25 Del. C. §5502; the second seeking dismissal for non-compliance with 25 Del. C. §5707.

It was argued that language in the boilerplate within the notice regarding the possibility or application of holdover penalties was both intimidating and misleading to the extent that it created a due process issue. Although there was mention elsewhere in the letter that a court process would be employed to seek both a monetary judgment and potentially an order of eviction, the language in the complained of section (“In the event you fail to pay all rent due within the five day period, and the rental agreement is therefore terminated you will then have no legal right to remain in the rental property.”) inferred otherwise. Although the panel agreed with the movant that the language could be substantially improved, it was not seen as fatal for the purpose of the motion. Accordingly, the first motion was denied.

As for the second motion, it was argued that \$400 sought in the complaint as additional rent was not listed or mentioned within the five-day notice upon which the filing is based. Therefore, the complaint itself was defective in that it failed to comply with 25 Del. C. §5707(4) in that no notice making such a claim was attached and incorporated to the complaint. The panel agreed with the movant; the panel also noted that in its review of the complaint, the various figures claimed within it when totaled together equaled a sum lesser than the one sought (or more simply put, the claim was inflated.) For these reasons, the second motion was granted. The matter is hereby dismissed without prejudice.

IT IS SO ORDERED 17th day of October, 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).

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