

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

HELEN CHARLTON  
Plaintiff Below,  
Appellee

VS

DAWN U. MOORE  
Defendant Below,  
Appellant

§  
§  
§  
§  
§ C.A. No. JP13-19-008974  
§  
§  
§  
§

TRIAL DE NOVO

Submitted: October 30, 2019  
Decided: November 5, 2019

**APPEARANCES:**

Plaintiff, Represented by George E. Evans, Esq.  
Defendant, Represented by John D. Stant, Esq.

Thomas P. Brown, Justice of the Peace  
Marie E. Page, Justice of the Peace  
Gerald Ross, 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: JP13-19-008974**

**HELEN CHARLTON VS DAWN U MOORE**

**ORDER ON TRIAL DE NOVO**

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

Procedural Posture

The Plaintiff, landlord Helen Charlton (Charlton,) represented by George E. Evans, Esq., filed Civil Action No. JP13-19-008974, on July 18, 2019, in Justice of the Peace Court 13. Charlton sought delinquent rent payments and possession from the Defendant, tenant Dawn U. Moore (Moore.)

The trial, before a single Justice of the Peace, on September 16, 2019, resulted in a Court order in favor of Charlton and against Moore for \$3889.06, and possession was awarded to Charlton. Moore filed an appeal for a trial de novo (TDN) on September 24, 2019, accompanied with an "Application and Affidavit to Proceed *in Forma Pauperis*." The request for a TDN was approved on the same day, with an order for Moore to pay a bond of \$3,900.00 to stay the writ of possession. John D. Stant, Esq. entered his appearance for Moore on the same day. Bond was not received by the Court. Charlton requested the writ of possession on October 6, 2019, but the service was "returned not served."

A TDN was scheduled for October 30, 2019, before a three-judge panel, consisting of Justice of the Peace Thomas P Brown, Justice of the Peace Marie E. Page, and Justice of the Peace Gerald Ross. Charlton appeared, represented by Mr. Evans. Moore appeared, represented by Mr. Stant. At the time of the hearing, possession was no longer an issue and Moore stated that she did not want to petition the Court to repossess the unit. Therefore, the only remaining issue before the Court was a claim for delinquent monthly rent of \$650.00, from April through September 2019, and water bills, for a total of \$10,079.61.

Pretrial Motion

Moore presented an oral motion to dismiss the case, arguing that the 5-day letter was insufficient. The 5-day letter included a notice that the rent was delinquent, itemizing the months, the amount of rent, and late fees. It also included notice that a water bill, considered rent pursuant to 25 *Del. C.* § 5312(e), was due for \$5510.44, but did not itemize this part of the claim.

Charlton argued that: 1) the motion should have been filed in writing prior to the TDN date; 2) she has had frequent and ongoing conversations with Moore about the water bills; 3) she gave Moore

VIEW YOUR CASE ONLINE: <https://courtconnect.courts.delaware.gov>

copies of the bills; 4) Moore has promised she would make payments; and 5) Moore had sufficient notice pursuant to 25 Del. C. § 5114, as she had actual knowledge of the water bills.

25 Del. C. § 5114 reads as follows:

“A person has notice of a fact if: (1) The person has actual knowledge of it; (2) The person has received a notice pursuant to the provisions of the Code; or (3) From all the facts and circumstances known at the time in question, such person has reason to know that it exists.”

The Court found that even if Moore had actual knowledge that water bills were due, no extrapolation exists to indicate that Moore knew the exact amount due or knew what timeframes were included in the billings. Therefore, the Court agreed with Moore that the water bill needed to be itemized in the 5-day letter, *but* for purposes of determining the issue of possession. Since Moore did not dispute the issue of possession, and Charlton has possession, the Court denied the motion and ruled to move forward to hear and decide the case on the merits of the claim.

### Facts

#### As to the issue of delinquent rent:

Both parties testified in accord that Moore owed rent for the months of July through September 2019, and 10 days of October 2019. Charlton stated that Moore also owed rent for April, May, and June for a total of \$4441.60. Moore testified that she was unsure if rents for May and June were paid as her aunt handled payments. In addition, Moore stated that her mother paid \$2500 in April with a certified check that her aunt delivered to Charlton. Under cross-examination, Moore admitted that she did not have any proof of payments. Charlton testified that she received no payment in April, May or June from Moore or from anyone acting on Moore’s behalf.

#### As to the issue of the water bill:

Statute generally refers to utilities in 25 Del. C. § 5312 and in direct reference to the issue at bar in § 5312 (e), which reads as follows:

“Charges for utility services made by a landlord to a tenant shall be considered rent for all purpose under this Code.”

The parties did not dispute that the lease stipulated that Moore was responsible to pay the water bills. The parties also did not dispute that in the beginning of the tenancy in 2015, Charlton physically handed the water bills to Moore and Moore paid them. The dispute at bar was on the exact amount of water bills Moore currently owed, as Moore’s position was that she owed less than the amount Charlton claimed.

Charlton presented a \$5510.44 water bill from the City of Wilmington (City), which included \$2128.89 in interest, and copies of texts from her phone of communications to Moore about water bills, including copies of a few of the bills. Charlton testified that Moore owed the total amount because

when Moore took possession of the rental unit, Charlton had a payment plan with the City for a prior resident's delinquent water bills.

Moore presented a document, purportedly created by the City, detailing an historical record of water bills for the rental unit.

### Motion for Directed Verdict

After both parties presented their cases, Moore presented an oral motion for a directed verdict. Moore argued that: 1) Charlton did not meet her burden of proof beyond a preponderance of the evidence; 2) Charlton did not produce a ledger to substantiate her testimony; and 3) Charlton's claim may not move forward due to the 3-year Statute of Limitations articulated in 10 *Del. C.* § 8106; and 4) the Doctrine of Laches excludes Charlton from relief.

Charlton's argued that: 1) Moore admitted she owed rent; 2) Moore has no records of payments made; 3) Moore admitted to paying some water bills; 4) she (Charlton) testified as to what a ledger would show; and 5) 10 *Del. C.* § 8106 and the Doctrine of Laches do not apply as the debt continued to accrue until Moore relinquished possession in October 2019.

After reviewing testimony and evidence from both parties, the Court found that: 1) Charlton had satisfied her burden of proof that Moore owed Charlton for delinquent rent even though the Court had not yet determined the amount owed; 2) Although it is helpful to all parties, including the Court, for a landlord to provide a ledger to the Court, it is not necessary. Testimony on the facts of the claim is legally sufficient; 3) The Statute of Limitations does not apply, as the claim was ongoing, not a set claim with stopped action. Charlton could not legally turn off the water; and 4) the Doctrine of Laches does not apply.

Black's Law Dictionary provides case law to define the Doctrine of Laches:

- 1) "neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity;"<sup>1</sup>
- 2) "Knowledge, unreasonable delay, and change of position are essential elements;"<sup>2</sup> and
- 3) "Laches requires an element of estoppel or neglect which has operated to prejudice of defendant."<sup>3</sup>

The Court finds that Charlton has not changed her position on the issue of delinquent water bills and the delay in bringing the case forward to the Court has not prejudiced Moore. Moreover, Moore presented the Motion for Directed Verdict after the defense concluded its case. In order for the Court to rule in favor of Moore on the motion, the Court would be required to find that Charlton failed to present a prima facie case. Even if Moore had not testified that she owed rent, the Court would make a finding that Charlton presented a prima facie case. Charlton presented enough testimony and evidence necessary

---

<sup>1</sup> *Wooded Shores Property Owners Ass'n, Inc. v. Mathews*, 37 Ill.App.3d 334, 345 N.E.2d 186,189.

<sup>2</sup> *Shanik v. White Sewing Mach. Corporation*, 25 Del.Ch. 371, 19 A.2d 831, 837.

<sup>3</sup> *Scarborough v. Pickens*, 26 Tenn.App. 213, 170 S.W.2d 585, 588.

to require Moore to proceed with a defense. Therefore, the Court denied Moore's motion for Directed Verdict.

### Discussion and Findings

#### As to the issue of rent:

The Court finds Charlton's testimony credible, as she also presented a lease and a legally sufficient 5-day letter, with proof of mailing. Moore could not state if she knew rent had been paid for May and June, could not provide supporting documents, and did not present witnesses on her behalf that rent for April, May or June was paid. In addition, Moore testified that the certified check her mother provided for her aunt to deliver to Charlton was for \$2500.00, and that none of that amount was to go to the water bills. This would indicate that Moore was behind in her rent or wanted to pay rent in advance; however, there was no testimony from either party to that effect. Therefore, the Court finds that Charlton satisfied her burden of proof beyond a preponderance of the evidence that Moore owes rent for \$4441.60.

#### As to the issue of the water bills:

Moore's dispute was on the amount of water bills that Charlton claimed, not that she owed nothing. Therefore, the Court was required to make a determination of the exact amount Moore owed. Moore submitted evidence purporting to be a document from the City presenting an historical review of water usage, billing, and payments for the property. The Court could not decipher the document and Moore did not present any witness from the City to provide a foundation for and explain the document.

Charlton testified and presented evidence from the City, of a final total billing for water of \$5510.44. She also testified that she had a payment plan with the City for a prior tenant's water bill. The evidence she submitted in the form of copies of her text messages to Moore concerning the water bills, including pictures of bills, were blurry, difficult to read, and often addressed to Moore's aunt, not to Moore. Moreover, Charlton did not present a single original water bill for the Court to consider. She did not present a coherent or documented history of the increasing demand from the City. In addition, she did not provide copies of any demand notices she sent to Moore, as the total demand from the City continued to increase.

The total amount due included \$2128.89 of interest. Charlton clearly understood the ramifications of unpaid water bills, as she had the prior payment plan mentioned above. The City sent the bills to Charlton, as she was the owner of the property. Charlton's responsibility was to send them to Moore with a demand for payment. At any time, Charlton could have mitigated the damages and avoided interest by making prompt payments to the City and by moving forward with an action in Justice of the Peace Court for possession.

The one bill presented by Charlton was simply the final amount owed for water use from the property. The Court believes that Moore owes for water bills, but finds that Charlton did not satisfy her burden of proof beyond a preponderance of the evidence of the exact amount due by Moore. The Court

attempted to decipher the evidence submitted by both parties to determine a sum certain, but could not. There was no supporting documentation submitted to clarify the amounts due since Moore took possession of the rental unit. The Court knows through testimony that there was a delinquency due to a prior tenant. The Court knows through testimony and evidence the current balance due. However, the Court does not have a complete history of the water bills from the beginning of Moore's tenancy. This undermines the Court's confidence that Moore owes the amount claimed on the final billing presented by Charlton. Therefore, the Court finds that Charlton did not satisfy her burden of proof by a preponderance of the evidence that Moore owed the claim presented for water bills.

#### Conclusion

The Court finds for the Plaintiff Charlton and against the Defendant Moore for delinquent rent for \$4441.60. Possession is no longer an issue.

The Court finds for the Defendant Moore and against the Plaintiff Charlton for the claim for water bills.

The Court finds for the Plaintiff Charlton for a net judgment of \$4441.60.

IT IS SO ORDERED 05th day of November, 2019

/s/ Marie E. Page (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).