

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

KGL HOLDINGS RIVERFRONT LLC  
Plaintiff Below,  
Appellee

VS

FRANCESCA BOULDIN  
Defendant Below,  
Appellant

§  
§  
§  
§  
§ C.A. No. JP13-19-010166  
§  
§  
§  
§

TRIAL DE NOVO

Submitted: October 30, 2019  
Decided: December 2, 2019

**APPEARANCES:**

Plaintiff/Appellee KGL Holdings Riverfront, LLC, represented by Lauren Wolfgang, Esq.  
Defendant/Appellant Francesca Bouldin, represented by Richard Wilson, Esq.

**THE PANEL:**

Sean P. McCormick, Deputy Chief Magistrate.  
Marie E. Page, Justice of the Peace.  
Christopher R. Portante, 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: JP13-19-010166**

**KGL HLDG RIVERFRONT VS FRANCESCA BOULDIN**

**ORDER ON TRIAL DE NOVO**

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

Procedural Posture

On August 19, 2019, Plaintiff KGL Riverfront Holdings, LLC brought the above-captioned summary possession action against Defendant Francesca Bouldin for failure to pay rent, pursuant to 25 *Del. C.* § 5502. Trial in the matter was held on October 3, 2019 before a single Justice of the Peace who found in favor of Plaintiff, awarding possession and a monetary judgment. Defendant appealed the judgment on October 9, 2019.

On October 30, 2019, a three-judge panel consisting of Deputy Chief Magistrate Sean McCormick, Judge Marie Page, and Judge Christopher Portante was convened to hear the trial de novo. Plaintiff was represented by Lauren Wolfgang, Esq., and Defendant was represented by Richard Wilson, Esq.

Facts and Discussion

On August 6, 2019, Plaintiff sent Defendant a five-day notice (“Notice”), pursuant to 25 *Del. C.* § 5502(a), stating that Defendant owed past-due rent of \$966.00. Defendant did not pay the demanded amount within the statutory five-day cure period.

Defendant/Appellant Francesca Bouldin believes that there is a good faith dispute here based on her claim that critical information contained in the September 20 warning letter (“Warning Letter”) posted on her door did not make clear the date by which she would have to pay in order for the filed court action to be withdrawn. The Warning Letter stated, in part, as follows: “You must have a **Zero Balance** on your rental account the day of court in order for us to dismiss your court hearing” (emphasis in original). In the next paragraph, Defendant is advised that her outstanding balance at the time was \$270.75 and that, if the full payment were made by September 30, Plaintiff would “dismiss the court case”.

The initial trial date was October 3, not September 30—the deadline given in the Warning Letter. Defendant paid \$270.00 on October 1 and, when she realized she owed an additional 75 cents, she paid the remainder on October 2. Therefore, Defendant satisfied the requirement to have a zero balance on the day of trial, albeit not taking into account that October rent had accrued by then. Defendant did not comply with the demand in the subsequent statement requiring payment by September 30.

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

On September 30, Plaintiff sent Defendant a notice that Plaintiff would be rescinding its prior offer to withdraw the case upon timely payment (“Rescission”) and would, instead, move ahead with court action. Defendant claims not to have received this until after she had already made her payments in good faith. Plaintiff responded that the Rescission was also sent by email to Defendant and, therefore, should have been received well in advance of the dates of payment.

Any claim of a good faith dispute in a landlord-tenant action is governed by 25 *Del. C.* § 5716 which states, in pertinent part, that:

When a final judgment is rendered in favor of the plaintiff in a proceeding brought against a tenant for failure to pay rent and the default arose out of a good faith dispute, the tenant may stay all proceedings on such judgment by paying all rent due at the date of the judgment and the costs of the proceeding...within 10 days of the final judgment being rendered for the plaintiff.

#### Findings

The Court found that Plaintiff proved by a preponderance of the evidence that Defendant’s overdue rent was not paid within the five-day cure period after Notice was sent. At the same time, the Court also found that, while not explicitly contradictory, the language in the Warning Letter was certainly confusing. Furthermore, the Rescission truly may not have been received by Defendant until after she made the payments that she believed would lead to Plaintiff withdrawing the action against her.

Finally, the Court found that Defendant had proven the existence of a good faith defense, pursuant to 25 *Del. C.* § 5716, and should be given an opportunity to avoid eviction for non-payment of rent through the demonstration of continued good faith. To that end, the Court gave Defendant ten (10) days from the date of trial in which to pay her October and November rent in full, as well as a late fee for October (and November, if applicable) and court costs. If Defendant failed to do so, the Plaintiff could file as early as the eleventh day, i.e. November 10, 2019. Based on the finding of a good faith dispute, and having received no notice of breach of conditions from Plaintiff, the Court rules as follows:

**DISMISSED WITH PREJUDICE.**

IT IS SO ORDERED 02nd day of December, 2019

/s/ Christopher R. Portante (SEAL)  
Justice of the Peace,  
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).