

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

LIMESTONE TERRACE HOLDINGS LLC	§	
Plaintiff Below,	§	
Appellant	§	
	§	
	§	C.A. No. JP13-19-008626
VS	§	
	§	
	§	
PAMELA JACKSON	§	
Defendant Below,		
Appellee		

**TRIAL DE NOVO**

Submitted: October 30, 2019  
Decided: December 9, 2019

**APPEARANCES:**

Plaintiff, Represented by David C. Zerbato, Esq.  
Defendant, Pro se

Sean P. McCormick, Deputy Chief Magistrate  
Thomas P. Brown, Justice of the Peace  
Marie E. Page, 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: JP13-19-008626**

**LIMESTONE TERRACE HOLDINGS LLC VS PAMELA JACKSON**

**ORDER ON TRIAL DE NOVO**

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

Procedural Posture

The Plaintiff, landlord Limestone Terrace Holdings, LLC (Limestone,) represented by Nicole Taylor, pursuant to Supreme Court Rule 57, filed Civil Action No. JP13-19-008626, on July 17, 2019, in Justice of the Peace Court 13. Limestone sought delinquent rent payments and possession from the Defendant, tenant Pamela Jackson (Jackson.) Rent was \$1004.00 per month. At the time of trial, Jackson presented an oral counterclaim regarding conditions of the rental unit.

The trial held on August 27, 2019, before a single Justice of the Peace, resulted in a Court order stating “(I)n Plaintiff’s initial claim, the Court finds for the Defendant. In Defendant’s counterclaim, the court finds for Plaintiff. No monetary award or court costs will be granted to either party.”

David C. Zerbato, Esq. filed an entry of appearance for Limestone on September 27<sup>th</sup>, and filed an appeal for a trial de novo (TDN) on October 2<sup>nd</sup>. Jackson filed a counterclaim for \$5,000.00 on October 3<sup>rd</sup>. Jackson stated that she was discriminated against under the Fair Housing Act. She signed a lease for a newly renovated apartment, yet was placed in a unit requiring several repairs, which were either never or belatedly resolved. The request for a TDN was approved on October 4<sup>th</sup>, with no bond required to stay the writ of possession.

A TDN was scheduled for October 30, 2019, before a three-judge panel, consisting of Justice of the Peace Sean McCormick, Justice of the Peace Thomas P. Brown, and Justice of the Peace Marie E. Page. Limestone appeared, represented by Mr. Zerbato. Jackson appeared pro se. At the time of the TDN, Limestone claimed that Jackson owed \$5270.00 in delinquent rent and late fees. Jackson did not deny owing the amount claimed by Limestone; however, she stated that she stopped paying rent because Limestone failed to correct conditions in the unit.

Facts

*As to the case-in-chief:*

There was no dispute between the parties that Jackson owed rent and late fees for the months of June through October 2019, for a total of \$5270.00.

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As to the counterclaim:

As the basis for her claim that Limestone was acting in a discriminatory manner against her, thus violating the Fair Housing Act, Jackson testified that Limestone had fixed other tenants' apartments, but continued to ignore, avoid, or procrastinate on addressing her requests.

Jackson testified that there were always different maintenance people and that most did not speak English, making communication about the problems difficult. She testified that the apartment is not worth the money Limestone is charging her because of the following conditions:

- 1) There was a leak in her closet and Limestone made a temporary fix with cardboard and duct tape. It took 3 (three) months for Limestone to finish the repairs, during which time she could hear animals (presumably mice, rats, or squirrels) running across the cardboard;
- 2) There was no electricity in her kitchen, so she had to utilize extension cords. Maintenance could not initially fix the problem. Jackson's husband, an electrician by trade, tried to fix the problem, but could not. Maintenance claimed that they fixed the problem, but the circuit breaker kept overloading;
- 3) There was a leak in her kitchen ceiling. She had to use buckets for the water;
- 4) There was mold in her bathroom. Maintenance came to look, but did not return;
- 5) There was a leak in the ceilings of both her living room and dining room.

Upon cross-examination, Jackson admitted that she had never put her repair requests in writing. She admitted that at the time of the TDN, Limestone had completed most of the repairs, although most of the repairs had been done after the original trial date.

Limestone admitted that their protocol for tenants to file repair requests or to file complaints is:

- 1) The tenant needs to call a designated phone number and leave a message;
- 2) Limestone will produce a work order;
- 3) Limestone will send a maintenance worker to look at the problem.

## Discussion and Findings

### As to the case-in-chief:

Limestone submitted copies of the lease, a ledger, the 5-day letter, and the proof of mailing to the Court. The Court finds that 1) Jackson does not dispute that she owes rent and late fee for the months of June through October of 2019; and 2) Limestone satisfied their burden of proof beyond a preponderance of the evidence that Jackson owes rent for \$5270.00.

### As to the counterclaim:

Limestone's defense against Jackson's claim for \$5,000.00 due to conditions of the rental unit and treating her in a discriminatory manner, is not based upon the merits of her listed repair complaints, but upon the lack of written notice. Limestone claims that they were not aware of the conditions that needed repair until the first trial date. Limestone testified that Jackson had a copy of the Landlord/Tenant Code, yet did not put any requests for repairs in writing. In addition, Limestone testified that Jackson had never provided written notice as to why she had ceased to pay rent. They rely on 25 Del. C. § 5306(a), stating that they never received written notice of requested repairs and that Jackson's final remedy, if the conditions were egregious, was to terminate the rental agreement and find a new place to live, not to cease making rental payments.

"If there exists any condition which deprives the tenant of a substantial part of the benefit or enjoyment of the tenant's bargain, the tenant may notify the landlord in writing of the condition and, if the landlord does not remedy the condition within 15 days following receipt of notice, the tenant may terminate the rental agreement. If such condition renders the premises uninhabitable or poses an imminent threat to the health, safety or welfare of the tenant or any member of the family, then tenant may, after giving notice to the landlord, immediately terminate the rental agreement without proceeding in a Justice of the Peace Court."

The Court finds that, although the Landlord/Tenant Code mandates written notice from a tenant for requests for repairs, Jackson followed Limestone's protocol: call a designated phone number and leave a message. Limestone cannot now claim that they should not be held responsible for any lack of repairs because Jackson did not provide them with written notice. The Court finds Jackson's testimony credible that Limestone had actual notice prior to the first court date, as evidenced by their partial repairs and attempts at repairs, even though Jackson had not provided written notice.

The Court finds that Limestone did not promptly or properly address Jackson's requests for repairs to maintain the rental unit. However, the Court finds that Limestone's failure to perform was not based upon discrimination and was not a violation of the Fair Housing Act. Nevertheless, the Court finds

that Jackson has satisfied her burden of proof beyond a preponderance of the evidence that rent abatement of one month's rent with late fees, based upon conditions of the rental unit, is equitable.

Conclusion

As to the case-in-chief:

The Court finds for the Plaintiff Limestone and against the Defendant Jackson for delinquent rent for \$5270.00. Possession is awarded to Limestone.

As to the counterclaim:

The Court finds for the Defendant Jackson and against the Plaintiff Limestone in the amount of \$1054.00.

Net Judgment:

The Court finds for the Plaintiff Limestone for a net judgment of \$4,216.00, plus possession, \$48.75 Court costs, per diem of \$33.47, and 7.25% post-judgment interest per annum.

IT IS SO ORDERED 09th day of December, 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).