

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

APPLECAP I, LLC	§	
Plaintiff Below,	§	
Appellee	§	
	§	
	§	C.A. No. JP13-19-011058
VS	§	
	§	
	§	
JEAN - GRIM TIGNOKPA	§	
DHRUV SANGHAVI		
Defendant Below,		
Appellant		

TRIAL DE NOVO

Submitted: November 22, 2019

Decided: December 9, 2019

**APPEARANCES:**

Plaintiff/Appellee, represented by *Form 50* Agent Alicia Spencer

Defendant/Appellant, Jean-Grim Tignokpa represented by John D. Stant, Esq.

Defendant, Dhruv Sanghavi failed to appear

Peter Burcat, Justice of the Peace

Thomas Brown, 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: JP13-19-011058**

**APPLECAP I, LLC VS JEAN-GRIM TIGNOKPA ET AL**

**ORDER ON TRIAL DE NOVO**

The Court has entered an Order in the following form:

Procedural Background

On September 5, 2019 Plaintiff, Landlord APPLECAP, I LLC, represented at the *Trial de Novo* by *Form 50* agent Alicia Spencer, filed Civil Action No. JP13-19-011058 in Justice of the Peace Court 13. Plaintiff sought a monetary recovery for non-payment of rent and possession of a rental property occupied by Defendants JEAN-GRIM TIGNOKPA and DHARUV SANGHAVI.

A trial, before a single Judge, was conducted below on October 14, 2019. Plaintiff appeared by and through Ms. Spencer. Co-Defendant TIGNOKPA appeared *Pro Se*. Co-Defendant SANGHAVI failed to appear. A Default Judgment was entered against Co-Defendant SANGHAVI. On October 17, 2019, an Order was signed finding in favor of Plaintiff against Co-Defendant TIGNOKPA, ordering a monetary recovery and possession to Plaintiff. On October 23, 2019, John D. Stant, Esq. entered his appearance on behalf of Co-Defendant TIGNOKPA. On October 23, 2019, Mr. Stant filed an appeal for a *Trial de Novo* (“TDN”) on behalf of Co-Defendant TIGNOKPA only. On October 28, 2019, the request for a TDN was granted. Defendants were ordered to post a bond of \$ 4,500.00 to stay the eviction. A bond was not posted, and on November 5, 2019, the eviction was completed.

On November 8, 2019, the Court scheduled a TDN for November 22, 2019, before a three-judge panel consisting of Justice of the Peace Peter Burcat, Justice of the Peace Thomas Brown, and Justice of the Peace Gerald Ross. On November 22, 2019, Plaintiff/Appellee APPLECAP, I LLC appeared, represented by *Form 50* agent Alicia Spencer. Mr. Stant, counsel for Co-Defendant TIGNOKPA appeared. Co-Defendant TIGNOKPA failed to appear. Mr. Stant advised the Panel that he had advised Mr. Tignokpa of the hearing date, but Mr. Stant did not know why Mr. Tignokpa did not appear. Mr. Stant stated he would proceed with the Hearing, but would not be calling any witnesses. Prior to the commencement of the *de novo* Hearing, Mr. Stant made an oral Motion requesting a dismissal of the underlying action. Mr. Stant’s basis for the dismissal was Plaintiff’s failure to comply with 25 Del. C. § 5707. Mr. Stant argued the Complaint filed by Plaintiff in this matter failed to state the interest of the Plaintiff, failed to state the interest of the Defendant, and failed to state the relief being sought. In addition, Mr. Stant argued Plaintiff’s alleged Five (5) Day Notice did not list Plaintiff by name, but rather was captioned “ASPEN RUN.” Plaintiff/Appellee opposed the Motion and argued that the Complaint, when read in conjunction with the Five (5) Day Notice, met the requirements of 25 Del. C. § 5707.

25 Del. C. § 5707 “Contents of complaint generally” states: The complaint shall:

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- (1) *State the interest of the plaintiff in the rental unit from which removal is sought;*
- (2) *State the defendant's interest in the rental unit and defendant's relationship to the petitioner with regard thereto;*
- (3) *Describe the rental unit from which removal is sought;*
- (4) *State the facts upon which the proceeding is based and attach a copy of any written notice of the basis of the claim as an exhibit to the complaint; and*
- (5) *State the relief sought which may include a judgment for rent due if the notice of complaint contains a conspicuous notice that such demand has been made.*

Furthermore, *Bomba's Rest. & Cocktail Lounge, Inc. v. Lord De La Warr Hotel, Inc.*, 389 A.2d 766 (Del. 1978) specifies that the Justice of the Peace Court is a Court of statutory jurisdiction. As such, this Court would lack jurisdiction if the requirements of the statute are not met. In the instant matter, the Court finds that the Five (5) Day Notice attached to the Complaint is incorporated into the Complaint. The Court further finds that the Five (5) Day Notice attached to the Complaint is "signed" by "Aspen Run Management Applecap I LLC & Applecap II LLC." In addition, the notice is addressed to "Dear (Tenant(s))." The notice is addressed to "Tignokpa, Jean Grimm" and "Sanghavi, Dhruv," at the address for the rental property in Newark, Delaware. The Five (5) Day Notice specifically mentions an outstanding rental obligation. Additionally, the relief sought is listed on the face of the Complaint. As such, the Court found that the Complaint was substantially compliant with the statute and denied Defendant TIGNOKPA's Motion to Dismiss.

Mr. Stant made a further motion requesting the Panel to limit Plaintiff/Appellee's recovery, if any, to the amount of \$ 2,409.50 as listed on Plaintiff's Complaint. The Panel reviewed the Complaint and confirmed Plaintiff listed \$2,409.50 as the relief sought. However, Plaintiff specifically requested "a judgment for delinquent rent due, possession, rent up to possession, post judgment interest, court cost, and per diem of \$37.10." Mr. Stant's Motion was denied. The Complaint placed Defendant/Tenants on notice that Plaintiff was seeking more than just \$2,409.50.

Prior to commencing the *de novo* Hearing, the Court provided the Parties instructions on the trial process, including but not limited to, marking evidence, how to identify documents, laying a foundation for the introduction of evidence, and requesting the Court to have evidence introduced to the Court for the Court's consideration. The Court specifically demonstrated to the Parties that the only documents that would be considered by the Court were documents that were introduced into evidence and placed on the bar in front of the Judges' bench. By example, the Parties were shown the placement of documents in plain view on the bar. The Parties were told that if at the conclusion of the case there were no documents left on the bar, there were no documents introduced into evidence for consideration by the Court. The Court further advised the Parties that any documents filed with a Complaint are not evidence merely because those documents were previously filed with the Court. The only evidence/documents that would be considered by the Court would be evidence/documents properly introduced at trial. Neither Ms. Spencer nor Mr. Stant had any questions. Thereafter, the *de novo* Hearing commenced with testimony from Plaintiff/Appellee.

#### Facts

Plaintiff/Appellee called Ms. Spencer as their first witness. Ms. Spencer testified Defendants formerly resided at 811 Thorn Hill Drive. Ms. Spencer further stated rent was being sought for July, August, September, and through October 14, 2019, in the amount of \$4,244.44. Ms. Spencer concluded her testimony by testifying there was a late fee for October, and \$45.00 in Court costs. Mr. Stant had no cross-examination questions for Ms. Spencer. Plaintiff/Appellee was asked to call their next witness. Ms. Spencer stated there were no further witnesses and Plaintiff/Appellee rested.

Mr. Stant made a motion for dismissal based upon *Civil Rule 41(b)*.

### Findings

Supr. Ct. Civ. R. 41(b) *Involuntary dismissal* states in pertinent part:

*After the plaintiff in an action tried by the Court without a jury, has completed the presentation of plaintiff's evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The Court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. Unless the Court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this Rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.*

J.P. Ct. Civ. R. 41(b) *Dismissal upon motion of defendant* states in pertinent part:

*For failure of the plaintiff to prosecute or to comply with these Rules or any order of Court, a defendant may move for dismissal of an action or of any claim against the defendant. After the plaintiff has completed a presentation of plaintiff's evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for dismissal on the ground that upon the facts and the law, the plaintiff has shown no right to relief. Upon such motion the Court may render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. Unless the Court in its order for dismissal otherwise specifies, a dismissal under this paragraph and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to prosecute, operates as an adjudication upon the merits.*

The *Landlord-Tenant Code* regulates and sets forth the legal rights, remedies and obligations of all of the parties to a residential rental agreement within the State of Delaware. See *25 Del.C. §5101, et seq.* A Landlord's remedies for a Tenant's failure to pay rent are set forth in *25 Del.C. §5502(a)*, which states in pertinent part:

*A landlord or the landlord's agent may, any time after rent is due, including the time period between the date the rent is due and the date under this Code when late fees may be imposed, demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in such notice, to be not less than 5 days after the date notice was given or sent, the rental agreement shall be terminated. If the tenant remains in default, the landlord may thereafter bring an action for summary possession of the dwelling unit or any other proper proceeding, action or suit for possession.*

A plaintiff has the burden of proving their case by a preponderance of the evidence. "Preponderance of the Evidence is a standard of proof that is met when a party's evidence indicates that the fact 'is more likely than not' what the party alleges it to be. Evidence which, as a whole, shows the fact to be proved is more probable than not. *9 Del. Admin. Code 303-5.0.*

In the present case, there was testimony from Plaintiff/Appellee's witness, Ms. Spencer, that Defendants resided at an address in Newark, Delaware. In addition, Ms. Spencer testified monies were due and owing. Plaintiff/Appellee did not introduce into evidence any documents in support of

