

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

REYBOLD VENTURE GROUP VIII-TH3
Plaintiff Below,
Appellee

VS

MR.DEWAYNE YOUNG JR.
Defendant Below,
Appellant

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C.A. No. JP13-19-011147

TRIAL DE NOVO

Submitted: December 12, 2019
Decided: January 2, 2020

APPEARANCES:

Reybold Venture Group VIII-SF, Plaintiff, appeared by and through Form 50 agent, Valerie Sharp
Dewayne Young, Defendant, appeared pro se

Sean P. McCormick, Deputy Chief Magistrate
Amanda D. Moyer, Justice of the Peace
Kerry Taylor, Justice of the Peace

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
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CIVIL ACTION NO: JP13-19-011147

REYBOLD VENTURE GROUP VS DEWAYNE YOUNG JR

ORDER ON TRIAL DE NOVO

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

Procedural Posture

The Plaintiff, landlord Reybold Venture Group VIII-SF (Reybold), represented by Valerie Sharp, pursuant to Supreme Court Rule 57, filed Civil Action No. JP13-19-011147, on September 12, 2019, in Justice of the Peace Court 13. Reybold sought delinquent rent payments and possession from the Defendant; tenant Dewayne Young (Young).

The trial, before a single Justice of the Peace, on October 21, 2019, resulted in a Court order in favor of Reybold and against Young for \$1497.98, possession plus \$61.32 per diem until the unit is vacated. Young filed an appeal for a trial de novo (TDN) on October 30, 2019. The appeal was approved on October 31.

A TDN was scheduled for November 22, 2019, before a three-judge panel, consisting of Justice of the Peace Peter Burcat, Justice of the Peace Thomas P. Brown, and Justice of the Peace Gerald Ross. Reybold appeared, represented by Valerie Sharp (Sharp), pursuant to Supreme Court Rule 57. Young failed to appear. As such, the appeal was dismissed.

Young made a motion November 26, 2019 seeking to reconsider the appeal as he was hospitalized unexpectedly at the time of the original TDN. The motion hearing was scheduled for December 12, 2019, before a three-judge panel, consisting of Deputy Chief Magistrate Sean P. McCormick, Justice of the Peace Amanda D. Moyer, and Justice of the Peace Kerry Taylor. TDN was to follow if the motion was granted.

Facts

Young makes a motion to reopen the appeal and vacate the dismissal. Young indicates his failure to appear was a result of his hospitalization for a seizure on the date and time of the previous appeal hearing. Young presents documentation to support his claim. Young asserts that he filed his appeal due to a discrepancy in the balance owed. Young acknowledges that while there is a substantial balance owed, the amount Reybold is demanding is inaccurate. Reybold opposes Young's motion, while there was a discrepancy two years ago, when they researched it the money orders in question were made out to other people and not Reybold. Young asserts that he has receipts to support his claims. The Court finds that Young's behavior was that of a reasonably prudent person, the motion was filed timely, and there appears to be the presence of a meritorious defense, as such, the motion is GRANTED and the TDN proceeds.

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Young makes a motion before the Court to have his witness, Connie Johnson, speak on his behalf. The Court notes that Ms. Johnson is neither a Form 50 Agent for Defendant nor a Delaware attorney, as such Young's motion is DENIED.

Reybold is seeking possession of Young's rental unit. Reybold submits the Five (5) Day Notice to cure delinquent rent sent to the Young August 13, 2019, as well as a reservation of rights letter dated October 18, 2019, water bills from October – December, and a ledger to support their claim. Sharp testifies that the Five (5) Day Notice was sent to Young via Certificate of Mailing. Sharp indicates that she was aware of Young's objections to the ledger entries and that she went over the ledger line by line with Young. Additionally, Sharp provides copies of the money orders in question, which were made out to parties other than Reybold. Sharp asserts that there was also a contested \$100 concession from the renewal of the lease in 2017 however; the lease was not renewed timely so the concession was not credited to the ledger. Reybold rests their case.

Young calls Connie Johnson to testify. Johnson indicated that they went to the rental office and went over the rent receipts. No further questions were asked of Johnson. Young presents his own accounting of the balance owed, a handwritten ledger. When questioned by the panel regarding the document, Young advised Johnson put it together on his behalf. Young indicates that he was confused as to why the office was bringing up past due rent from two years ago and questioned why his lease was renewed if he owed past due rent. On cross-examination, James Grygal from Reybold questions two entries on Young's ledger from December 12, 2019, which indicate payments of \$1958.25 and \$3162.34. Young asserts that they have not been turned in to the office yet. It was patently obvious to the panel that Young suffered from physical or medical limitations. Young advised the panel that he suffered from memory lapses and overall seemed to be exhibiting signs of malaise. Noting this, the panel asked Young on multiple occasions if he had any other evidence to present or further arguments to make regarding the evidence he presented. Despite the numerous opportunities afforded him, Young did not take advantage and offered no further testimony in support of his position.

Discussion

Landlord-Tenant relationships are governed by Delaware's Landlord-Tenant Code, found in Title 25, Chapters 51 through 70. A landlord seeking possession of the rental unit may file under §5702. If the reason is for failure to pay rent, a landlord may file under 25 Del.C. §5702(2): *The tenant has wrongfully failed to pay the agreed rent.*

Therefore, the landlord may proceed under 25 Del. C. §5502(a):

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.

Rent is not specifically defined in the definition section of the Code at 25 Del.C. § 5141.

However, throughout the Code, there are references to what may be considered rent. Utility services may be considered as rent, pursuant to 25 Del.C. §5312 (e):

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

Reybold submitted to the Court a Five-Day letter, as evidence that Young was given proper notification of the past due rent. Additionally, proof of the outstanding energy bills and reservation of rights letter was submitted to substantiate Plaintiff's claim that \$3957.78 is outstanding. Young submitted a ledger created by a third party, which, when the two payments not yet submitted are taken into account, actually reflects a higher balance owed than what Reybold is requesting. The amount in

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