

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

ROS RENTALS LLC	§	
Plaintiff Below,	§	
Appellee	§	
	§	
VS	§	C.A. No. JP13-19-012715
	§	
JESUS GUTIERREZ, MARIA GONZALEZ,	§	
YOMAIRACELYS GARCIA-GONZALEZ, and	§	
JOSE GARCIA	§	
Defendants Below,	§	
Appellants	§	

**TRIAL DE NOVO**

Submitted: February 26, 2020

Decided: February 27, 2020

**APPEARANCES:**

Plaintiff/Appellant ROS Rentals LLC, represented by Form 50 Agent John Ormsby  
Brian L. Kasprzak, Esquire, Attorney for Defendants  
Laurie Lane, Certified Court Interpreter (Spanish)

**THE PANEL:**

Christopher R. Portante, Justice of the Peace  
Susan E. Ufberg, Justice of the Peace  
Thomas P. Brown, 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: JP13-19-012715**

**ROS RENTALS LLC**

**VS**

**JESUS GUTIERREZ ET AL**

**ORDER ON TRIAL DE NOVO**

PROCEDURAL HISTORY

On October 25, 2019, ROS Rentals, LLC brought the above-captioned summary possession action against Defendants Jesus Gutierrez, Maria Gonzalez, Yomairacelys Garcia-Gonzalez, and Jose Garcia based on a claim of Defendants' failure to pay rent, pursuant to 25 *Del. C.* § 5502. The court below heard testimony on November 11, 2019 and found in favor of Plaintiff for possession, as well as rent due and owing. Judgment was formally issued on November 15, 2019. Subsequently, on November 21, 2019, Defendants appealed the decision to a three-judge panel.

On February 26, 2020, a three-judge panel consisting of Judges Christopher Portante, Thomas Brown, and Susan Ufberg ("the Panel") was convened to hear the trial de novo. Plaintiff was represented by Form 50 Agent John Ormsby. Defendants were represented by Brian L. Kasprzak, Esquire. Defendants, themselves, failed to appear.

MISJOINDER OF PARTY

Pursuant to Justice of the Peace Court Civil Rule 21, Jesus Gutierrez was dropped as a defendant by the Panel, as he had been at the court below, due to the fact that he was not a party to the lease at issue. Plaintiff acknowledged that there had been an agreement between Plaintiff and Defendants to have Mr. Gutierrez removed by executing a new lease so that the other tenants could obtain utility services in their names.

DEFENDANTS' MOTION TO DISMISS

Defendants' counsel raised a pre-trial motion ("Motion") for dismissal based on deficiencies in the five-day notice and service of said notice. Namely, Mr. Kasprzak identified two issues: (1) that the five-day notice sent to Defendants on September 23, 2019 ("Notice") contained illegal language; and (2) that Plaintiff failed to serve all tenants separately with the Notice.

*Illegal Language in Five-Day Notice*

The Notice Plaintiff sent Defendants is headed with the phrase "Delaware 5 Day Notice to Pay Rent or Quit". A five-day letter cannot require the tenant to quit the premises, move out, or deliver up possession to the landlord except under color of a valid court order. This Court has consistently held

that such language is illegal in that it can give the impression that if the amount demanded is not paid within the cure period, then the tenants must vacate. This is contrary to a tenant's rights to a hearing on the matter under Delaware Landlord-Tenant Code ("the Code").

### *Improper Service of Notice*

Where there are multiple tenants on a rental agreement, the landlord may compose one demand notice which includes the name of every tenant on the lease, however the notice itself must be mailed or served to each tenant individually. *See 25 Del. C. §5113, Eanes v. Custer*, Del.Super., C.A. No. 94C-05-019, Terry, J. (Aug. 31, 1994).

In *Eanes*, the Court found that when a summons was sent in one envelope to three separate individuals, such practice did not afford proper "actual notice" of the proceeding to each of the individual defendants involved. The Court provided the following reasoning for its decision:

If a summons is mailed to an individual at his address and someone residing there accepts it, one can fairly presume that the individual to whom it is addressed will receive it. Similarly if three summonses are mailed in three separate envelopes to three individuals residing in the same house and one person receives all three, it can still be fairly presumed that they will be delivered by that individual to the persons to whom they are addressed. However, if one summons is mailed in only one envelope addressed to three people and is received by one person, the chances that the one summons will be passed around to all three addressees is considerably more remote. *Eanes* at \*2.

The Delaware Justice of the Peace Courts regularly extend the *Eanes* standard to also apply to notices sent by landlords to tenants regarding termination of a lease agreement. This Court has previously held, however, that the presence of certain specific circumstances may indicate actual notice of all tenants even when separate notices are not sent. In the case at bar, however, the Court finds no indication of the presence of any such circumstances. For instance, Defendants were not present in court at this trial de novo to acknowledge that they were aware of the existence of the Notice; their ability to avoid court action by curing the amount demanded in the Notice; or the implications of non-compliance with the Notice.

### OTHER NOTICE ISSUES

#### *Overstated Five-Day Notice*

Additionally, the Notice states the total amount sought is for "rent, late charges[,] non-sufficient funds charges and utilities." Based on the attached ledger, the non-sufficient funds (NSF) fees are not immediately evident, but may be contained in the \$515.93 balance for May rent. Regardless of whether they are actually contained in the total or not, Plaintiff gives the distinct impression through the language in the Notice that NSF fees factor in to Defendants' rental deficiency.

While "rent" is not specifically defined in the Code, there are references to what may be considered rent throughout the Code. The dictionary definition of rent is a common sense one: "payment received periodically for the use of property". *Black's Law Dictionary*. Late fees are also considered rent, pursuant to 25 Del. C. § 5501(d). In addition, "[c]harges for utility services made by a landlord to a tenant shall be considered rent for all purposes under this Code". 25 Del. C. § 5312(e).


Other fees are permitted under the Code, however none of the language permitting them states that such fees are considered *rent* under the Code. Consequently, if a tenant fails to pay them, the landlord cannot use that failure to pay as a premise for seeking possession based on 25 Del. C. § 5702(2). This does not necessarily mean the fees cannot be sought as part of a judgment, however. NSF fees are not considered rent and may not be included in a five-day notice. Consequently, the Notice is overstated.


CONCLUSION

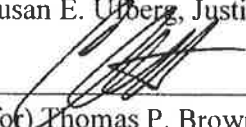
The Notice contained improper language and was overstated. In addition, proper notice was not given to Defendants. For these reasons, Defendants' Motion to Dismiss is hereby **GRANTED**.

As a result, the above-captioned matter is hereby **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED this 27th day of February, 2020.

  
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Christopher R. Portante, Justice of the Peace

  
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Susan E. Ufferg, Justice of the Peace

  
\_\_\_\_\_  
(for) Thomas P. Brown, Justice of the Peace

