

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

EASTCOAST WOODACRES LLC

Plaintiff Below,

Appellee

VS

DONNA MARIENO

SHANELL MARIENO

MARIA SILVA

Defendant Below,

Appellant

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C.A. No. JP13-19-012094

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TRIAL DE NOVO

Submitted: February 21, 2020

Decided: April 6, 2020

APPEARANCES:

Plaintiff/Appellee Eastcoast Woodacres LLC appeared through Form 50 Agent Lori Samuels

Defendant/Appellant Donna Marieno appeared pro se

Defendant/Movant Shanell Marieno appeared pro se

Defendant Maria Silva failed to appear

THE PANEL:

Sean McCormick Deputy Chief Magistrate

Thomas Brown, Justice of the Peace

Susan Ufberg, 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: JP13-19-012094

EASTCOAST WOODACRES LLC VS DONNA MARIENO ET.AL

ORDER ON TRIAL DE NOVO

PROCEDURAL HISTORY

In the above-captioned matter, Plaintiff Eastcoast Woodacres LLC brought a summary possession action against Defendants Donna Marieno, Shanell Marieno and Maria Silva based upon a claim of Defendants' failure to pay rent pursuant to 25 Del. C. §5502. The Court below conducted a trial on January 14, 2020. At the time of trial, Plaintiff appeared as well as Defendant Donna Marieno. Defendants Shanell Marieno and Maria Silva failed to appear.

On January 21, 2020, the Court below entered an Order finding in favor of Plaintiff for possession, as well as rent due and owing. Defendant Donna Marieno appealed the decision to a three-judge panel.

Defendants Shanell Marieno and Maria Silva did not appear for the original court hearing, thus default judgments were entered against them. Defendant Shanell Marieno filed a Motion to Vacate the Default on January 30, 2020.

On February 21, 2020, a three-judge panel consisting of Deputy Chief Magistrate Sean McCormick, Justice of the Peace Thomas Brown, and Justice of the Peace Susan Ufberg ("the Panel") was convened to hear the trial de novo in the above-captioned matter. Plaintiff was represented by Form 50 Agent Lori Samuels. Defendants Donna Marieno and Shanell Marieno appeared pro se. Defendant Maria Silva did not appear.

Plaintiff seeks a judgment against Defendants of \$942.32 consisting of rent, late fees, and a trash fee as well as per diem rent of \$63.39 per day. Plaintiff also seeks Possession of the unit.

PRELIMINARY LEGAL MATTER

The Court shall now consolidate both the Appeal and the Motion filed to serve the interest of Judicial economy. Judicial economy refers to efficiency in the operation of the courts and the judicial system. It is the efficient management of litigation so as to minimize duplication of effort. It also avoids wasting the **judiciary's** time and resources. For example, a court may consolidate two cases for trial to save the court and parties from having two trials.

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In the matter presently before the panel, both the Appeal and the Motion involve the same set of facts, the same parties and same issues in dispute. Rather than further delay the final resolution of the matters in controversy and to avoid further prejudice to the litigants, the Court shall consider all issues involved in one proceeding.

Factual Findings

Defendants rented a residential unit located at 907-01 Cedartree Lane, in Claymont, Delaware pursuant to a written lease agreement commencing in 2018 at an initial rate of at a rate of \$1210 per month. Defendants were also responsible for a trash collection fee of \$5.00 per month. The initial rent was increased to its current level of \$1266.00 in June 2019. Throughout the course of the rental term, Defendants regularly fell behind in rent and incurred late fees of 5% of the rent due in accordance with the lease terms.

On September 11, 2019, Plaintiff sent individual notice letters to each of the Defendants alerting them that a portion of rent remained due for August 2019 as well as September 2019. The notice letters contained wording advising the Defendants that unless they made full payment within the five-day period prescribed by law, the Plaintiff would terminate the lease and proceed to Justice of the Peace Court for summary possession. Defendants failed to make full payment within the five-day period.

Defendants alleged that the instant action was retaliatory and discriminatory. Defendants failed to present any evidence to substantiate these claims.

Legal Analysis

All landlord-tenant matters in Delaware are governed by the Delaware Landlord Tenant Code. *See*, 25 Del. C. §5101.

The Code very specifically outlines a landlord's remedies where a tenant fails to pay rent, as follows in pertinent part:

§ 5502. Landlord remedies for failure to pay rent. (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. (b) A landlord or the landlord's agent may bring an action for rent alone at any time after the landlord has demanded payment of past-due rent and has notified the tenant of the landlord's intention to bring such an action. This action may include late charges, which have accrued as additional rent. (c) If a tenant pays all rent due before the landlord has initiated an action against the tenant and the landlord accepts such payment without a written reservation of rights, the landlord may not then initiate an action for summary possession or for failure to pay rent. (d) If a tenant pays all rent due after the landlord has initiated

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an action for nonpayment or late payment of rent against the tenant and the landlord accepts such payment without a written reservation of rights, then the landlord may not maintain that action for past due rent.

Thus, where a tenant is delinquent, prior to filing a Summary Possession action, the landlord must send a notice letter, commonly referred to as the “five-day letter.”

Plaintiff has established by a preponderance of the evidence that an individual “five-day letter” was sent to each of the Defendants in this matter on September 11, 2019. Furthermore, Plaintiff has established that Defendants failed to make payment within the five-day statutory period. It is noted that on the trial date of January 14, 2020 Defendants did make a payment of \$6800.00 to Plaintiff. However, Plaintiff sent a timely reservation of rights letter to Defendants on January 15, 2020 thereby reserving its right to proceed with the Summary Possession action.

Defendants argue that Plaintiff’s application for Summary Possession should be denied claiming that the action is retaliatory and discriminatory. Defendant Donna Marieno testified that she believed that the action was taken because she had previously complained about neighbors being too noisy. Other than her testimony, Defendant Donna Marieno provided no additional evidence that she provided actual notice to the Plaintiff of the condition or that it significantly impacted the tenancy.

The Landlord-Tenant Code provides specific prohibitions relating to retaliatory acts as follows, in pertinent part:

§ 5516. Retaliatory acts prohibited. (a) Retaliatory acts are prohibited. (b) A retaliatory act is an attempt on the part of the landlord to: pursue an action for summary possession or otherwise cause the tenant to quit the rental unit involuntarily; demand an increase in rent from the tenant; or decrease services to which the tenant is entitled after: (1) The tenant has complained in good faith of a condition in or affecting the rental unit which constitutes a violation of a building, housing, sanitary or other code or ordinance to the landlord or to an authority charged with the enforcement of such code or ordinance; ...or (4) The tenant has pursued or is pursuing any legal right or remedy arising from the tenancy...It shall be a defense to a claim that the landlord has committed a retaliatory act if: (1) The landlord has given appropriate notice under a section of this part which allows a landlord to terminate early...

Thus, even if it could be determined that Defendant Donna Marieno’s verbal testimony alone was sufficient to establish that the noise arose to a level that it violated various contract terms or housing ordinances, under the Code, the Plaintiff may present a defense against a claim of retaliation if it can establish that they have given appropriate legal notice of a condition which would have otherwise allowed it to terminate a tenancy.

In this instance Plaintiff has indeed presented sufficient evidence to establish that it provided adequate notice of rent due pursuant to 25 Del. C. §5502 and that it was entitled to relief. Consequently, Defendants cannot prevail upon a retaliation theory.

CONCLUSION

The Panel finds that Plaintiff met its burden of proof in establishing that Defendants failed to pay rent when due as reflected in the resident ledger. The Panel further finds that Defendants failed to establish that Plaintiff's action in filing for summary possession was retaliatory in accordance with the requirements of 25 Del. Code §5516.

Based upon forgoing the Panel enters the following Order:

1. **Defendants' Appeal and Motion are denied with prejudice;**
2. **The Order of January 21, 2020 shall stand granting Possession to Plaintiff and a Writ may immediately issue;**

Any rent payments made to Plaintiff subsequent to the Court hearing of January 14, 2020 shall be credited against the account.

IT IS SO ORDERED 06th day of April, 2020

/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).