

**IN THE JUSTICE OF THE PEACE COURT NO. 16
OF THE STATE OF DELAWARE IN AND
FOR KENT COUNTY**

J and J Mobile Home Park, Inc.,	:	
	:	
Plaintiff- Below,	:	
Appellant,	:	
	:	
v.	:	C.A. No. JP16-20-001008
	:	
Sherita Fisher,	:	
	:	
Defendant-Below,	:	
Appellee.	:	

TRIAL DE NOVO

Submitted: June 22, 2020

Decided: July 7, 2020

APPEARANCES:

J and J Mobile Home Park Inc., Plaintiff/Appellant, appeared represented by James P. Sharp, Esquire.

Sherita Fisher, Defendant/Appellee, appeared represented by Erika Y. Tross, Esquire.

ORDER

Hutchison, DCM

Tracy, J

Hicks, J

A Three Judge Panel convened on June 22, 2020, acting as a special court pursuant to 25 *Del. C.* §5717(a).¹ This panel was comprised of the Honorable Cathleen M. Hutchison, Deputy Chief Magistrate, the Honorable Dana M. Tracy, and the Honorable Jamie L. Hicks. The Court held a trial *de novo*² in reference to a landlord tenant summary possession petition filed by J and J Mobile Home Park, Inc., (“Plaintiff”) against Sherita A. Fisher (“Defendant”). The Court reserved its decision after hearing testimony and evidence. The following is the Court’s decision.

FACTUAL AND PROCEDURAL BACKGROUND

A landlord tenant summary possession petition was filed by the Plaintiff on February 7, 2020 seeking past due rent \$2804.20, court costs \$46.50, post judgment interest and possession. Plaintiff’s claim is based on Defendant’s alleged failure to pay rent.

Trial was held on March 4, 2020 and judgment was entered in favor of Defendant.³ Plaintiff filed a timely appeal of the Court’s order pursuant to 25 *Del. C.* §5717(a). Accordingly, a trial *de novo* was scheduled and held.

¹ 25 *Del. C.* § 5717(a). *Nonjury trials.* With Regard to nonjury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing, within 5 days after judgment, a trial *de novo* before a special court comprised of 3 justices of the peace other than the justice of the peace who presided at the trial, as appointed by the chief magistrate or a designee, which shall render final judgment, by majority vote....

² *De novo* trial. Trying a matter anew; the same as if it had not been heard before and as if no decision had been previously rendered. Black’s Law Dictionary 435 (6th ed. 1990).

³ *J and J Mobile Home Park, Inc. v. Fisher*, Del. J.P., C.A. No. JP16-20-001008, Murray, J. (March 4, 2020).

TESTIMONY AND EVIDENCE

Witness for the Plaintiff and form 50 agent Deborah Case-Lasher (Witness) currently employed by J and J Mobile Home Park, Inc., testified that First State Rental Company, LLC, (whom she was previously employed) transferred ownership of the mobile home park to Plaintiff on June 1, 2019. Witness testified her employment duty was/is exclusively to appear in Court and represent her employer. She was the sole witness for this trial.

The Defendant's initial lease in 2015⁴ and now current lease were with First State Rental Company, LLC.⁵ Witness testified the current lease between First State Rental Company, LLC, and Defendant was signed on December 1, 2017.⁶ This lease is for the lot rental and a lease with option to buy the mobile home unit located on 32 Skinner Lane. The lease was scheduled to come to term on September 1, 2019 for the lease purchase of the mobile unit. The lease combined purchase price payments and lot rent. This listed the purchase price of the mobile home for \$5000.00, monthly installments of \$612.00, \$220.00 of which is applied towards the purchase price and \$392.00 applied towards lot rent. Witness testified there was a

⁴ Plaintiff's Exhibit 1.

⁵ Plaintiff's Exhibit 3.

⁶ Plaintiff's Exhibit 3.

\$12.00 rent increase from the previous lease⁷ \$380.00 to the \$392.00 monthly lot rent on the current lease.⁸

Plaintiff submitted a ledger completed by First State Rental Company's owner John (who was not present at trial).⁹ Witness stated she used said ledger as a reference to determine some of Defendant's arrearage. Witness stated the initial entry of said ledger was "2/13/2015 payment \$380.00" typed (from John) and handwritten by Witness was "lot rent, trash Feb". Witness testified the \$380.00 charge included a \$30.00 trash charge according to her handwriting on the ledger. Witness testified a demand letter was sent to Defendant on November 27, 2019 for past due rent and possession.¹⁰ Witness stated they retracted that demand letter because the amounts were incorrect.

Plaintiff sent a second seven day demand letter dated January 8, 2020.¹¹ Witness stated the amounts in that demand letter were correct. Witness testified she transferred title for the 32 Skinner Lane mobile home unit to Defendant on January 20, 2020.

DISCUSSION

⁷ Plaintiff's Exhibit 1.

⁸ Plaintiff's Exhibit 3.

⁹ Plaintiff's Exhibit 4.

¹⁰ Defense's Exhibit 1.

¹¹ Plaintiff's Exhibit 6.

The January 8, 2020 seven day demand letter reads in pertinent part:

- Your rent is overdue for **July 2019** in the amount of \$365.20
- Your rent is overdue for **August 2019** in the amount of \$612.00. The trash removal fee is \$30.00. The late fee is \$30.60. This total is \$672.60.
- Your rent is overdue for **September 2019** in the amount of \$392.00. The trash removal fee is \$30.00. The late fee is \$19.60. This total is \$441.60.
- Your rent is overdue for **October 2019** in the amount of \$392.00. The trash removal fee is \$30.00. The late fee is \$19.60. This total is \$441.60.
- Your rent is overdue for **November 2019** in the amount of \$392.00. The trash removal fee is \$30.00. The late fee is \$19.60. This total is \$441.60.
- Your rent is overdue for **December 2019** in the amount of \$392.00. The trash removal fee is \$30.00. The late fee is \$19.60. This total is \$441.60.

This seven day letter demanded a \$30.00 trash removal fee for five of the six months listed on the demand letter. Plaintiff's ledger indicates the initial rent charge of \$380.00 included the trash charge of \$30.00.¹² There was a rent increase of \$12.00 in the updated lease agreement signed on December 1, 2017, as testified.¹³ Therefore, there should not be an additional \$30.00 monthly charge for trash if, as testified, it was included in the monthly \$380.00 rent which only incurred a \$12.00 increase to \$392.00. If the trash fee is already accounted for in the rent amount, then each of those five months containing an additional trash charge of \$30.00 are overstated and invalidates Plaintiff's demand letter.

¹² Plaintiff's Exhibit 4.

¹³ Plaintiff's Exhibit 3.

The title to the Mobile home listed at 32 Skinner Lane was transferred to Sherita Fisher on January 20, 2020. The initial filing on February 7, 2020 reflected the demand letter issued on January 8, 2020 with the August line amount of \$612.00 with a total amount of \$672.60. From Witness's testimony, this amount matches the amount charged for the lease purchase option of the combined rent price of the lot and the payment of the lease purchase option. Therein, claiming there are still monies owed on the title that was transferred to the Defendant on January 20, 2020. It begs the question, "How is a title transferred with a balance owed?" This Court knows of no institution that would hand over a title to a car or a house, for example, unless that item was paid in full. Assuming no balance was owed because the title was transferred, the demand letter reflected for August is an inflated \$231.00.¹⁴ Therefore, the line for August 2019 is overstated.

In addition to the late charges and the overstated trash charges, it is unclear what amounts are owed and the origins of the charges. Which part of the payment is lot rent and what part is lease to purchase payment? The amounts are not itemized to reflect an exact and specific accountability of each charge. The demand letter is not itemized clearly as to where the charges originated.¹⁵

¹⁴ Plaintiff's Exhibit 6.

¹⁵ Plaintiff's Exhibit 6.

Lasocha v Weir states, in pertinent part:¹⁶ “Notice must state specific amount of rent due. (This amount must be itemized so that the tenant may understand how the landlord determined the amount of rent being demanded).” In the first line of the demand letter, July’s total is different from the others. There is no indication as to what composes the \$365.20 charge. There is no way to discern if the amount charged is lot rent, a balance on the lease option, a combination of the two or if trash removal (since no charge was listed) was particularly expensive in July.

There are multiple issues with Plaintiff’s accounting. The Defendant provided a receipt of which Plaintiff had no record.¹⁷ Defendant supplied a receipt from Plaintiff of payment with a higher amount than recorded in the ledger.¹⁸ By Witness’s own admission, the accounting on the retracted first demand letter dated

¹⁶ *Lasocha v. Weir*, Del. J.P., C.A. No. JP16-08-003647, J. Arndt, J. Murray, J. Pennella (Sept. 2, 2008) (Trial De Novo)

- (1) Notice must include the date in which said notice was written.
- (2) Notice must state the specific amount of rent due. (This amount must be itemized so that the tenant may understand how the landlord determined to amount of rent being demanded).
- (3) Notice must identify the rental unit by address for which rent is being demanded
- (4) Tenant(s) must be given a time period in which to cure non-payment of rent. This time period *shall not* be less than (5) days.
- (5) Notice must be addressed and mailed separately to every tenant on the lease agreement. (When there are multiple tenants on a rental agreement, the landlord may compose 1 demand notice which includes the name of every tenant on said rental agreement but a copy of said demand notice *shall* be mailed to each tenant if the landlord chooses to obtain service via mail).
- (6) Notice must state should the tenant(s) fail to pay the outstanding balance within the timeframe mentioned the lease agreement shall be *terminated*.
- (7) Notice must state should the tenant(s) fail to pay the outstanding balance within the timeframe mentioned the landlord may bring an action for summary possession in court.

¹⁷ Defense’s Exhibit 3.

¹⁸ Defense’s Exhibit 3.


November 27, 2019 was incorrect.¹⁹ Upon scrutiny of Plaintiff's accounting, it is riddled with inconsistencies and errors.

CONCLUSION

After careful consideration of the testimony and evidence presented, by preponderance of the evidence, the Court unanimously enters judgment for **Defendant.**

IT IS SO ORDERED this 7th day of **July, 2020.**

For the Court,



Judge Dana M. Tracy (SEAL)

¹⁹ Defense's Exhibit 1.