



On February 26, 2021 this Court, consisting of the Honorable Cathleen Hutchison, the Honorable Alexander J. Montano, and the Honorable Kevin L. Wilson acting as a special court pursuant to 25 *Del C.* § 5717(a)<sup>1</sup> convened a trial *de novo*<sup>2</sup> in reference to a Landlord/Tenant Summary Possession petition filed by Paula D. Holmes and Mc Clennon R. Holmes (“Plaintiffs”), against Marissa Stambro and David Stambro (“Defendants”). At the conclusion of trial, the Court announced its decision entering judgment for the Plaintiffs. This is the Court’s oral decision reduced to writing.

### **BACKGROUND**

Plaintiffs filed a Landlord/Tenant Summary Possession petition on July 2, 2020 seeking unpaid rent, court costs, and possession of the rental unit located at 1532 Spider Web Road, Felton, Delaware. Trial was held on January 21, 2021 and a judgment was entered in favor of the Plaintiffs.<sup>3</sup> The Defendants filed a timely appeal on January 25, 2021 and a trial *de novo* was held.

### **TESTIMONY OF PARTIES**

The Plaintiffs testified both parties entered into a new month to month rental agreement on January 20, 2020 for the aforementioned property at a rate of \$850.00 per month. As of today, the Defendants owe past due rent in the amount of \$16,401.50, which includes the entire month of February 2021. The Plaintiffs attest they sent the Defendants several demand for rent notices, two of which were returned because they were refused by the Defendants.<sup>4</sup> Plaintiffs are now concerned the rental unit has experienced damages after the renovations to the unit, that trash will need to be removed, and they would like all of their keys returned to them. Plaintiffs are being further financially strained for every day the Defendants remain in the rental unit.

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<sup>1</sup> 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.

<sup>2</sup> *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* 300 (6<sup>th</sup> ed. 1991).

<sup>3</sup> *Holmes v. Stambro*, Del. J.P., C.A. No. JP16-20-005004, Tracy, J. (Jan. 21, 2021).

<sup>4</sup> Plaintiffs’ Exhibits #3, #4, and #5

Plaintiffs further testified they have tried to work with the Defendants in the past when they fell behind on rent in 2019. That all parties signed a Promissory Repayment Agreement for Past Due Rent but now even that debt remains unpaid.<sup>5</sup> Lastly, Plaintiffs attest Defendants are finally in receipt of their October 6, 2020 Demand for Rent letter, and presented proof of mailing that someone at the Defendant's household signed receipt of the letter on October 7, 2020.<sup>6</sup> The following Plaintiffs' Exhibits (Pl. E.) were entered into evidence without legal objection from the Defendants<sup>7</sup>:

- Pl. E. #1: Attachment #1, Concise Statement of Facts
- Pl. E. #2: Attachment #2, Month-to-Month Lease Agreement, signed January 20, 2020
- Pl. E. #3: Attachment #3, Demand for Rent Letter & 60-day Notice dated February 25, 2020 with proof of mailing returned "unclaimed"
- Pl. E. #4: Attachment #4, Demand for Rent Letter, dated March 10, 2020 with proof of mailing returned "unclaimed"
- Pl. E. #5: Attachment #5, Demand for Rent Letter, dated May 11, 2020
- Pl. E. #A: Demand for Rent Letter, dated October 6, 2020 with proof of mailing signed/received on October 7, 2020.
- Pl. E. #B: Envirocorp Laboratories, Inc., Ground Water Analysis Report "Acceptable", dated January 15, 2020.
- Pl. E. #C: Promissory Repayment Agreement for Past Due Rent in the Amount of \$5,730.00, signed on November 17, 2019
- Pl. E. #D: Affordable Home Repairs, Water Treatment Description of Work Log, ticket #141533
- Pl. E. #E: JB Willimon Inc.'s Work Completion Summary dated February 3, 2021, with proof of mailing signed/received on February 17, 2021.

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<sup>5</sup> Pl. E. #C: Promissory Repayment Agreement for Past Due Rent in the Amount of \$5,730.00, signed on November 17, 2019.

<sup>6</sup> Pl. E. #A: Demand for Rent Letter, dated October 6, 2020 with proof of mailing signed/received on October 7, 2020.

<sup>7</sup> Due to the virtual-based trial, the Court took a brief recess to ensure exhibits were properly identified.

The Defendants testified they have had complications with the Plaintiffs from the beginning of their landlord/tenant relationship. That because the house did not have a fuel tank, the Plaintiffs told them to go out and acquire one. However, after reaching out to multiple companies, they learned that the property owners pay to install them and the renters are then required to keep the tanks full. The Plaintiffs responded in kind by offering the Defendants electric heaters.

The Defendants also disagree with the Plaintiffs' list of completed work because the projects have not been finished.<sup>8</sup> As a result their belongings remain packed up in a corner of the living room. The floor is damaged and buckling everywhere, the water is dirty, the kitchen cabinets remain without doors, and the Defendants were the ones who replaced the water heater. The following Defendants' Exhibits (Def. E.) were entered into evidence without legal objection from the Plaintiffs:<sup>9</sup>

Def. E. #1: 7 images of the following: several images of "dirty" water in containers, portable heaters, cabinets without doors, area with "missing fuel tank", belongings stacked into the corner of a room.

Lastly, the Defendants stated they have already moved out anyway, that they just have a few more things to clean out and that they will be leaving the keys on the counter.

### **DISCUSSION**

Through the testimony of both parties, it is undisputed that a month-to-month landlord/tenant relationship exists between the parties. The Defendants also did not dispute the past due rent amount. Instead, the Defendants, to a limited extent, argued they have not enjoyed the tenant's bargain and they have also lacked essential services.

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<sup>8</sup> Pl. E. #E: JB Willimon Inc.'s Work Completion Summary dated February 3, 2021, with proof of mailing signed/received on February 17, 2021.

<sup>9</sup> Due to the poor quality of the images, the evidence and testimony was given its "due weight".

However, in order to prevail in either argument the Defendants needed to further substantiate their claim.

Argument: Enjoyment of the Tenant's Bargain

The Landlord/Tenant Code states, in part: "If there exists any condition which deprives the tenant of a substantial part of the benefit or enjoyment of the tenant's bargain, the tenant may notify the landlord in writing of the condition and, if the landlord does not remedy the condition within 15 days following receipt of notice, the tenant may terminate the rental agreement".<sup>10</sup> In this instance, the Defendants have not presented proof of such notice.

Argument: Lack of Essential Services

The Landlord/Tenant Code states: "If the landlord substantially fails to provide hot water, heat, water or electricity to a tenant, or fails to remedy any condition which materially deprives a tenant of a substantial part of the benefit of the tenant's bargain in violation of the rental agreement; or in violation of a provision of this Code; or in violation of an applicable housing code and such failure continues for 48 hours or more, after the tenant gives the landlord actual or written notice of the failure, the tenant may: (1) Upon written notice of the continuation of the problem to the landlord, immediately terminate the rental agreement; or (2) Upon written notice to the landlord, keep 2 /3 per diem rent accruing during any period when hot water, heat, water, electricity or equivalent substitute housing is not supplied. The landlord may avoid this liability by a showing of impossibility of performance".<sup>11</sup> In this instance, the Defendants have not presented proof of such notice. Furthermore, the Defendants also failed to provide facts that would have allowed the Court to calculate a sum certain suffered by the Defendants.

Determination for Possession of the Property:

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<sup>10</sup> 25 Del. C. § 5306(a) **Tenant's remedies relating to the rental unit; termination**

<sup>11</sup> 25 Del. C. § 5308(a) **Essential services; landlord obligation and tenant remedies.**



The Plaintiffs offered proof of a 60-day notice dated February 25, 2020.<sup>12</sup> The notice gives the Defendants until April 30, 2020 to vacate the premises. However, the Defendants claimed they never received notice. Although the certified proof of mailing was returned “unclaimed”, service is considered complete.<sup>13</sup> Therefore, the 60-day notice is considered sufficient notice and grounds for the Plaintiff to gain possession of the unit.<sup>14</sup>

Determination of Money Owed:

The Plaintiffs testified that as of today, the Defendants owe a total of \$16,401.50 for past due rent which includes all of February’s rent. Although the Defendants did not object to the amount, the Plaintiffs can only claim through February 26, 2021.<sup>15</sup> The Court has calculated the amount owed by the Defendants to be \$16,344.84. This amount deducts two days of per diem from the month of February.

**CONCLUSION**

After considering the evidence and testimony presented, the panel finds Plaintiffs have proven their case by a preponderance of the evidence and issues a unanimous decision in favor of the Plaintiffs and against the Defendants as follows:

***Judgment in the Amount of \$16,344.84.***

***Per Diem @ 28.33/day (applicable after February 26, 2021)***

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<sup>12</sup> Pl. E. #3: Attachment #3, Demand for Rent Letter & 60-day Notice dated February 25, 2020 with proof of mailing returned “unclaimed”.

<sup>13</sup> J.P. Civ. R. 4. Process. (f) Service of process; how made. -- (V) (A) Upon a defendant of any class referred to in subsections (I) and (III) of this rule, it is sufficient if the summons, complaint and affidavit, if any, are served in the following manner: (i) in a civil action for debt, service is made by certified mail, return receipt requested. When service is made in this manner, service is complete when it is signed for by the defendant, or by some person of suitable age and discretion acting as agent for the defendant, or with the word "unclaimed" or "refused" noted thereon by postal authorities.

<sup>14</sup>25 Del. C. § 5106(c) **Rental agreement; term and termination of rental agreement.** The landlord may terminate any rental agreement, other than month-to-month agreements, by giving a minimum of 60 days’ written notice to the tenant prior to the expiration of the term of the rental agreement. The notice shall indicate that the agreement shall terminate upon its expiration date. A tenant may terminate a rental agreement by giving a minimum of 60 days’ written notice prior to the expiration of the term of the rental agreement that the agreement shall terminate upon its expiration date.

<sup>15</sup> February 26, 2021 is the date of this trial and when the judgment was announced.

***Court Costs of \$40.00.***

***Post Judgment Interest @ 5.25%.***

***Possession to Plaintiffs.***

The Court announced its decision on February 26, 2020 in open court and reduced it to writing on this date.

**INTEREST OF JUSTICE HEARING**

After the trial was completed, in accordance with J.P. Administrative Order 2020-1, the Court held a hearing to determine “in open court and on the record, the issue of whether it is in the “interest of justice” for the Court to allow eviction to go forward”.<sup>16</sup> The following is an account of the hearing:

The Plaintiffs testified they are being financially strained for every day the Defendants remain in the rental unit. They have tried to work with the Defendants multiple times but now they refuse to communicate. Lastly, that they no longer have money to keep fixing the unit, either.

The Defendants stated they plan on leaving the unit and only have a few more things to move out of the unit. That they should be out of the unit by the end of the day.

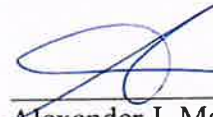
The Court, after hearing both parties have determined that it is in the interest of justice to allow the eviction to go forward, due to hardships suffered by the Plaintiffs and due to the Defendants’ lack of cooperation.

The Court announced its decision on February 26, 2020 in open court and reduced it to writing on this date.

**IT IS SO ORDERED** this 3<sup>rd</sup> day of March 2021.

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<sup>16</sup> *J.P. Administrative Order 2020-1* (Sept. 11, 2020) available at <https://courts.delaware.gov/rules/pdf/Justice-of-the-Peace-Court-Administrative-Order-2020-1.pdf>



(SEAL)

Alexander J. Montano  
Justice of the Peace  
FOR THE COURT

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