

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

OTHELIA JOHNSON,

Plaintiff Below,
Appellee,

v.

C.A. No. JP16-20-005348

PAULETTE DURHAM &
CHRISTOPHER CARTER,

Defendants Below,
Appellants.

TRIAL DE NOVO

Submitted: March 2, 2021
Defendants' Exhibits Submitted: March 4, 2021
Decided: March 16, 2021

APPEARANCES VIA ZOOM:

Othelia Johnson, Plaintiff, was represented by Sean M. Lynn, Esquire.

Paulette Durham & Christopher Carter, Defendants, appeared *pro se*.

ORDER

Alan G. Davis, Chief Magistrate
Cathleen M. Hutchison, Deputy Chief Magistrate
Kevin L. Wilson, Justice of the Peace

On March 2, 2021 this Court, consisting of the Honorable Alan G. Davis, the Honorable Cathleen M. Hutchison and the Honorable Kevin L. Wilson, acting as a special court pursuant to 25 *Del. C.* § 5717(a) convened a trial *de novo* in reference to a Landlord/Tenant Summary Possession petition filed by Othelia Johnson (“Plaintiff”), against Paulette Durham and Christopher Carter (“Defendants”). Following the receipt of evidence and testimony, the Court reserved decision. In addition, the defendants were permitted to submit text message evidence to the Court by March 4, 2021. Plaintiff was given five days to respond to the evidence. This is the Court’s final decision and order.

Factual and Procedural Background

Plaintiff filed a Landlord/Tenant Summary Possession petition with Justice of the Peace Court No. 16 seeking unpaid rent, post judgment interest, possession and court costs. A single Justice of the Peace heard the original trial on January 25, 2021 and found in favor of the plaintiff.¹ Defendants filed an appeal of the Court’s Order that was not timely. However, the appeal was allowed due to defendants being informed that they had 15 days to appeal. Consequently, trial *de novo* was scheduled.

Testimony and Evidence

Prior to trial, plaintiff informed the Court that they were no longer seeking a monetary judgment. Defendants had no objection. The monetary judgment claim was dismissed. Plaintiff is still seeking possession of the rental unit at 1429 S. Hancock Avenue, Dover, DE. Plaintiff sent a notice to quit on July 27, 2020 giving defendants 60 days to vacate the rental unit. Defendants were to surrender the premises to the landlord by 12 noon on

¹ *Johnson v. Durham*, Del. J.P., C.A. No. JP16-20-005348, Hicks, J. (Jan. 26, 2021).

October 1, 2020.² The notice was delivered by the USPS on July 29, 2020 at 12:30 p.m.³ Defendant Durham admitted to receiving the notice and did not object to the evidence being admitted. Ms. Durham moved into the residence on September 1, 2017. Initially the agreement was between Ms. Durham's mother and the plaintiff. The initial agreement was Ms. Durham's mother paid the gas and electric and Ms. Durham paid the mortgage. However, her mother left owing a gas bill and defendants were unable to get gas to the residence due to the unpaid bill. After Ms. Durham's mother moved out in 2018, Ms. Durham took over the responsibility of paying the rent and utilities. There was no written agreement. Defendant Carter moved in around November of 2017. Mr. Carter admitted to receiving the notice to vacate and testified he did not have a written lease agreement with the plaintiff.

While there was argument between the defendants and witness Gerald Haygood concerning who prepared and sent the 60-day notice, testimony and evidence show that Gerald Haygood and his brother, Brian Haygood drafted the 60-day notice. The notice was signed by the plaintiff and Brian Haygood. The notice was mailed by Brian Haygood. Both defendants admitted to receiving the 60-day notice.

Defendants raised numerous issues with the rental property to include no heat, no electricity and that the plaintiff allowed her son and his family to move into the residence while they were still occupying it. Defendants are using kerosene heaters to heat the home. Mr. Haygood was supposed to pay one-eighth of the electric bill but failed to do so. Ms. Durham testified that she planned to move, but due to the pandemic she is having a difficult time finding another place to live. In addition, her son has COVID and she doesn't

² Plaintiff's Exhibit 1.

³ Plaintiff's Exhibit 2.

have any information when he will be clear. Ms. Durham advised that she had text messages from the plaintiff and was unsure when she should leave. Ms. Durham testified that she is willing to leave, but just wants a date from the plaintiff. Ms. Durham admitted to not paying a mortgage payment since July of 2020.

Plaintiff testified that she is the owner of the residence at 1429 S. Hancock Avenue. Plaintiff allowed her sister, her sister's daughter and grandchildren to move into the residence. The verbal agreement was that her sister would pay the mortgage, gas and electric. After her sister moved out in 2018, the plaintiff allowed her niece (Ms. Durham) to stay at the house with the condition that she continue to pay the mortgage and utilities. Rent hasn't been paid since June of 2020. Plaintiff had to pay \$5,000 to get the house out of foreclosure.

Defendants submitted text messages to the Court on March 4, 2021. The messages contain the same information that was testified to at trial. It is clear from the messages that defendants were aware that the plaintiff wanted them to vacate the premises. Plaintiff provided no response to defendants' exhibits.

Discussion and Findings

The monetary claim was dismissed pre-trial, so the Court will focus on the possession portion only. Plaintiff provided a 60-day notice as required by 25 *Del. C.* § 5106(d) which reads as follows:

Where the term of the rental agreement is month-to-month, the landlord or tenant may terminate the rental agreement by giving the other party a minimum of 60 days' written notice, which 60-day period shall begin on the first day of the month following the day of actual notice.

Plaintiff's notice was dated July 27, 2020 and was received by defendants on July 28, 2020. The defendants both testified that they received the notice. The Court finds that the 60-day notice is valid and complies with 25 *Del. C.* § 5106(d). As to defendants' claim that they have been without gas and electric, the Court is unable to consider this claim because defendants have not provided documentation or notice as required by 25 *Del. C.* § 5308.

The panel finds Plaintiff has proven her case by a preponderance of the evidence for possession of the premises.

Conclusion

Based on the foregoing, the panel finds by unanimous verdict in favor of the Plaintiff Othelia Johnson and against Defendants Paulette Durham and Christopher Carter for possession of the premises located at 1429 S. Hancock Avenue, Dover, DE.

Interest of Justice Hearing

After trial was completed, 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.⁴ Plaintiff contends that defendants are on a month-to-month lease and that the 60-day notice was provided to them. The defendants signed for the notice which informed them to vacate by October 1, 2020. Defendants have not vacated the premises. Defendants have not paid any rent since July of 2020. It is undisputed that the defendants are without electric. Plaintiff is concerned that the pipes could break.

Defendant Durham informed the Court that her son has been diagnosed with COVID-19. She has no information as to when he will be


⁴ 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>.

clear. They have been living without heat and electricity. In addition, Plaintiff allowed another person and his family to move into the premises while they were still occupying it.

The panel, after hearing both parties have determined in the interest of justice that the eviction should be delayed because of the implication that defendant's son has COVID. The panel delays the eviction for 45 days. Defendants shall vacate the premises no later than noon on April 30, 2021. If defendants have not vacated the premises by that date, the plaintiff may file a writ of possession immediately.

IT IS SO ORDERED, this 16th day of March 2021.

For the Court,

 (SEAL)
Cathleen M. Hutchison

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