

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY
COURT NO. 17**

SEAFORD EXECUTIVE CENTER LLC	§	
Plaintiff Below,	§	
Appellee	§	
	§	
	§	C.A. No. JP17-20-003257
VS	§	
	§	
OTIS SMITH	§	
Defendant Below,	§	
Appellant		

TRIAL DE NOVO

Submitted: March 18, 2021

Decided: March 22, 2021

APPEARANCES:

Craig D. Aleman, Esquire represented the plaintiff.
Joseph B. Neutzling, Esquire represented the defendant

Richard D Comly, Justice of the Peace
Christopher A Bradley, Justice of the Peace
Jennifer N Sammons, Justice of the Peace

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
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CIVIL ACTION NO: JP17-20-003257

SEAFORD EXECUTIVE CENTER LLC VS OTIS SMITH

ORDER ON TRIAL DE NOVO

The Court has entered a judgment or order in the following form:

On March 18, 2021 a trial *de novo* was held via Zoom before a three-judge panel consisting of the Honorable Richard D. Comly, Jr., the Honorable Jennifer N. Sammons and the Honorable Christopher A. Bradley.

On July 31, 2020, the plaintiff as landlord filed this action against the defendant as tenant seeking \$1,500.00 in alleged unpaid rent and possession of the rental unit located at 221 High Street, Apartment 205, Seaford, Delaware.

On February 18, 2021 after a trial was held with the parties, the Honorable Scott H. Willey issued a decision in favor of the plaintiff and against the defendant. The Court granted the plaintiff possession of the rental unit, a judgment amount of \$2,250.00 with any rent owed at the *per diem* rate of \$25.00 along with \$50.00 court costs and post-judgment interest to accrue at the legal rate of 5.25% *per annum*. Subsequently, on February 25, 2021 the defendant filed for an appeal of the decision before a three-judge panel.

Just prior to the commencement of the trial *de novo*, the defendant's representative made a motion to dismiss the case alleging the plaintiff's notice of unpaid rent failed to be in proper accordance with 25 *Del. Code* § 5502. After a recess for consideration, the panel ruled the notice provided before the trial *de novo* was sufficient to proceed.

At the trial *de novo*, it was established that the defendant has continued to reside within the rental unit. The defendant has made several payments towards the balance owed but could not provide an exact amount outstanding. The plaintiff asserted that the defendant continues to owe rent for the month of January 2021 to the present day. Both the defendant and the plaintiff's property manager, Sarah Latsch provided testimony regarding the defendant's rent payments.

After considering all the evidence provided at the trial *de novo*, the panel finds by a preponderance of the evidence that the plaintiff failed to formally introduce into evidence a proper five-day notice of unpaid rent as required under 25 *Del. Code* § 5502. Additionally, as there was no evidence presented at the trial *de novo* of any written reservation of rights being provided to the defendant in proper accordance with 25 *Del. Code* § 5502 (d), possession of the rental unit cannot be awarded to the plaintiff.

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Accordingly, the panel enters a judgment in favor of the defendant and against the plaintiff. Consequently, possession of the rental unit remains with the defendant.

IT IS SO ORDERED 22nd day of March, 2021

/s/ Christopher A Bradley (SEAL)
For the Three-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).

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