

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

**FIRST CLASS PROPERTIES,**

Plaintiff Below,  
Appellee,

v.

**JOSEPH MCCAIN,**

Defendant Below.  
Appellant.

C.A. No. JP16-20-005892

**TRIAL DE NOVO**

Appearances:

First Class Properties, appearing represented by David C. Zerbato, Esq.,  
Joseph McCain, was represented by Tasha M. Stevens, Esq.

**ORDER**

Wilson, J.  
Hutchison, J.  
Alston-Jackson, J.

On March 18, 2021 this Court, consisting of the Honorable Kevin L. Wilson, the Honorable Cathleen M. Hutchison and the Honorable Nicole Alston-Jackson, acting as a special court, pursuant to 25 Del. C. §5717(a)<sup>1</sup> convened for a trial *de novo*<sup>2</sup> in reference to a Landlord-Tenant Summary Possession petition filed by First Class Properties ("Plaintiff") against Joseph McCain ("Defendant").

Pretrial, Defendant motioned the Court for dismissal on the basis of failure to meet requirements of Landlord-Tenant Code, 25 Del. C. §5707. The statute states plainly, the complaint *shall*:

- (1) State the interest of the plaintiff in the rental unit from which removal is sought;
- (2) State the defendant's interest in the rental unit and defendant's relationship to the petitioner with regard thereto;

<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 435 (6<sup>th</sup> ed. 1990).

- (3) Describe the rental unit from which removal is sought;
- (4) State the facts upon which the proceeding is based and attach a copy of any written notice of the basis of the claim as an exhibit to the complaint; and
- (5) State the relief sought which may include a judgment for rent due if the notice of complaint contains a conspicuous notice that such demand has been made.

Upon review of Plaintiff's complaint filing, dated December 10, 2020, the Court determined the petition constitutes a statutory violation, in that it lacks specificity. The complaint fails to state a concise statement of facts as required by 25 Del. C. §5707.

Defendant further reasoned dismissal of the complaint filing pursuant to 25 Del. C. §5708.<sup>3</sup> Defendant argued *Urban v. Justice of the Peace Court 13* appropriately applied statute relative to the motion before the Court.<sup>4</sup> However, the Court will not yield to Defendant's argument in this regard, as language codified in this section and the case law scenario, apply to rules violations under the Landlord-Tenant Code. The complaint filing before the Court is based on nonpayment of rent, therefore §5708 of the statute is not applicable.

For the foregoing reasons, Defendant's Motion to Dismiss is **GRANTED**. The petition is hereby **DISMISSED WITHOUT PREJUDICE**.

**Decision announced in open court.**

**IT IS SO ORDERED**, this 18<sup>th</sup> day of **March, 2021**.

**For the Court,**

 (SEAL)  
Hon. Nicole Aston-Jackson

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<sup>3</sup> 25 Del. C. § 5708. **Additional contents of certain complaints.** If possession of the rental unit is sought on the grounds that the tenant has violated or failed to observe a lawful obligation in relation to tenant's use and enjoyment of the rental unit, the complaint shall, in addition to the requirements of the foregoing section:...

<sup>4</sup> *Urban v. J.P. Ct. No. 13, No. 92A-05-014, 1992 WL 423846 (Del. Super. Ct. 1992).*