

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

DALE COHEE DBA PINEHAVEN M/H AND R/V  
PARK

Plaintiff Below,  
Appellant

VS

CATHERINE BATES  
Defendant Below,  
Appellee

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

C.A. No. JP17-20-004313

**TRIAL DE NOVO**

Submitted: March 11, 2021  
Decided: April 6, 2021

**APPEARANCES:**

Dale Cohee, self-represented  
Erika Tross, Esquire for Catherine Bates

Deborah Keenan, Deputy Chief Magistrate  
John Martin, Senior Justice of the Peace  
Alan Davis, Chief Magistrate

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

**CIVIL ACTION NO: JP17-20-004313**

**DALE COHEE DBA PINE HAVEN VS CATHERINE BATES**

**ORDER ON TRIAL DE NOVO**

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

This is a three-judge panel opinion memorializing the judgment of the Court delivered during a remote trial held on March 11, 2021. For the reasons stated during the hearing and for the reasons stated herein, the Court dismisses the appeal.

**FACTS & PROCEDURAL POSTURE**

The facts of this case are relatively undisputed. In March 2020, Catherine Bates moved into a rental unit on the property of the Plaintiff. The rental unit is an R/V travel trailer, which has been attached to the property to greater or lesser degrees by a porch, access to electric and sewer, and skirting. Ms. Bates sought to purchase the trailer. The purchase price was agreed upon at \$3900, with her paying a down payment and making a \$250 payment along with \$500 rent every month. Soon after she moved in she ceased paying rent or the payments on the trailer, though she did make a partial payment in May of 2020.

In August, Plaintiff hand-delivered a demand for payment to Defendant. When she failed to make any payment, Plaintiff turned off essential utilities to the rental unit. Bates brought an action for unlawful ouster (JP17-20-003848), which was heard forthwith. The Court ordered the reinstatement of the utilities and set the matter for a later trial on the issue of whether the rental unit fell within the Landlord-Tenant Code or the Manufactured Home Owners and Community Owners Act.

After that initial hearing, Cohee sent a certified letter that included a five-day notice. That notice was unclaimed and returned to Plaintiff. Plaintiff brought an action for summary possession thereafter. In the interests of judicial economy, the Court below combined the actions regarding ouster and possession. At the trial below, Cohee asserted that the property did not fall under either chapter of the Code, as it was a travel trailer. Defendant contended that the circumstances of this case dictated that it should be considered a property covered by the dictates of the Landlord-Tenant Code. Ultimately, the trial judge agreed with the defense. Judgment was found in favor of Defendant in both cases.

Subsequently, Plaintiff timely appealed only his summary possession action, and this Court heard the matter on March 11, 2020. At the close of Cohee's case-in-chief, the defense moved for judgment as a matter of law on two bases. First, Bates claims that the 5-day notice is improper under the standards of *Lasocha v. Weir*, Del. J.P. , C.A. JP16-08-003647 (Sept 2, 2008). While several of those standards were put forth to the Court, Bates relies specifically on the standard that the five-day notice is not itemized. Second, Defendant claims that this matter is not covered by the Landlord-Tenant Code and is therefore improperly before the Court. The Court ultimately granted the motion, partially based on the first ground.

VIEW YOUR CASE ONLINE: <https://courtconnect.courts.delaware.gov>

## DISCUSSION

The Court will dispose of the second part of the motion first. In the case below, Defendant claimed most vociferously that the Landlord-Tenant Code applied to the situation at hand. She won on that issue in the combined cases below. Cohee only appealed the summary possession action. He did not appeal the original unlawful ouster claim. As such, the Court's determination with regard to whether the Landlord-Tenant Code ("the Code") applies to this situation is undisturbed - at least the issue of the applicability of the Code to these specific circumstances. Plaintiff acquiesced to that portion of the Court's decision and brought this appeal in good faith. Defendant did not appeal the Court's decision. Defendant may not now change her position and claim the Code is inapplicable. The doctrine of judicial estoppel applies when (i) a litigant advances a position inconsistent with a position taken in the same or earlier legal proceeding and (ii) the court was persuaded to accept the previous argument as a basis for its earlier ruling. *In re Rural/Metro Corp. Stockholders Litigation*, 102 A.2d 205 (Del. Ch. 2014) at 246. This Court is bound by and accepts its previous determination because, despite this being an appeal de novo of the possession action, the applicability of the Code remains decided as part of the ouster claim which was not appealed.

The Court now turns its attention to the motion to dismiss based on the five-day notice. Under 25 Del C. §5502(a):

*(a) A landlord or the landlord's agent may, any time after rent is due, including the time period between the date the rent is due and the date under this Code when late fees may be imposed, demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in such notice, to be not less than 5 days after the date notice was given or sent, the rental agreement shall be terminated. If the tenant remains in default, the landlord may thereafter bring an action for summary possession of the dwelling unit or any other proper proceeding, action or suit for possession.*

Defendant relies on this section of the Code and the teachings of *Lasocha v. Weir*, Del. J.P., C.A. No. JP16-08-003647, Arndt, J. (September 2, 2008) to assert that, since the notice that was sent was not itemized it therefore did not put Bates on specific notice of what was being demanded. Therefore, this action must be dismissed on the basis of an improper five-day letter.

This Court cannot say clearly and loudly enough: *Lasocha v. Weir* is **not** controlling authority on **any** Court for just about **any** purpose. The procedural posture of that case was that it was a default judgment at the three-judge panel level. The Court in that case was correct that it is always obligated to ensure that there is legal merit to an action before it enters a default judgment. However, instead of addressing the limited issue before it, the Court engaged in a 12-page exegesis on every potential issue that might arise in the examination of a default, even many that it concluded did not apply in that case. Straw men do not make case law. In short, nearly the entire case is pure unadulterated dicta, with little application to the case before it and it provides no controlling authority.

Further, many of the purported standards set forth in *Lasocha* have no demonstrable legal support. Such is the case in the ideals *Lasocha* attempts to impose on the contents of a five-day letter. *Lasocha v. Weir*, p. 5-6 posits the following:

*The landlord's demand for past due rent must be in written form to the tenant(s) and said notice must contain the following:*

- (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 the amount of rent being demanded).*
- (3) Notice must identify the rental unit by address for which the rent is being demanded.*

VIEW YOUR CASE ONLINE: <https://courtconnect.courts.delaware.gov>

- (4) *Tenant(s) must be given a time period in which to cure non-payment of rent. This period shall not be less than five (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 by mail).*
- (6) *Notice must state should the tenant(s) fail to pay the outstanding balance within the time frame mentioned the lease shall be terminated.*
- (7) *Notice must state should the tenant(s) fail to pay the outstanding balance the landlord may bring an action for summary possession. (Emphases in original).*

This Court agrees that this list represents the gold standard for a five-day notice. A five-day notice **should** contain all of these elements, and if it does, it is likely above meaningful challenge. However, not all of this is required by statute or supporting case law, and, therefore, a notice might not contain some of these elements and still be perfectly valid under the circumstances of a case before this Court. For instance, the date of a notice might be clearly inferred by the tenant through the circumstances of its sending or posting. Likewise, the language of a notice does not require the address of the rental unit be on it, though a lack thereof opens the door for attack by the defense or examination by the Court. Further, no magical language is necessary to say that the lease is being terminated. To that end, if the landlord simply says that payment must be made in the time stated in the notice or they will seek possession through the Court, that may be sufficient notice to the tenant that the landlord is seeking to terminate the tenancy, as there is no legal self-help eviction in this State. (The Court posits no opinion on whether failing to specifically state that the lease is being terminated waives the right of the landlord to seek statutory damages for holdover tenancy.)

With regard to the element of guidance specifically relied upon by the tenant in this case – that the notice must be itemized - again there is no specific statutory requirement in this regard. (Perhaps this is evidenced by the fact that it is a parenthetical thought, even in the *Lasocha* case.) Although it stands to reason, and three-judge panels have ruled in every county, that the notice must be sufficiently detailed to give the tenant an understanding of the amount owed as rent and that anything that inflates that amount beyond the actual statutory rent due is grounds for dismissal, that is a different standard than “the notice must contain an itemized list.” This Court reiterates that, while this “itemization” standard is definitely helpful to both tenants and the Court, in everyday legal practice the landlord makes a demand and, if a tenant disputes the amount, they can challenge it – either through private interaction or in Court. The landlord must support the amount owed in its case-in-chief and must defend it subject to cross-examination or other questioning. Greater clarity may lead to less confrontation and litigation, but it is not legally essential.

*Lasocha's* standards heighten formality over substance in notice cases. Cases should be decided as often as possible on their merits not on technicalities of practice that, frankly, are nearly unachievable in a court predominated by self-represented litigants. Further, unquestioning devotion to unsupported standards eradicates one of the primary purposes of a court – to give meaning to statutory standards through application of the law to the facts of the case. We reject *Lasocha's* hyper technicality and instead look specifically to the facts of this case.

Landlord's notice in this instance stated (italicized items were hand-written in original, typographical errors present in original):

Date: 9-15-20

Tenant: *Kathy Baker*

VIEW YOUR CASE ONLINE: <https://courtconnect.courts.delaware.gov>

This is a notice that you have 5 business days to pay all past due monies to Dale C. Cohee for back rent. If you fail to do so I will file judgment papers with the court system to get back rent and take possession of home.

Amount owed is \$4750 – till Oct. 1<sup>st</sup>

/s/ Dale Cohee

Dale C Cohee (owner)

Applying the *Lasocha* standard, this notice fails miserably. It does not state the address of the rental unit. It does not specifically state that the tenancy will be “terminated.” It does not have an itemized breakdown of what is owed. With the facts before the Court, and applying the actual requirements of the Code, none of those omissions are fatal. Within context, this notice makes sense to both the tenant and the Court. This is the only unit that Ms. Bates rents from Mr. Cohee. She knows who Mr. Cohee is and there is no confusion about what he is demanding rent for. He says that he will initiate court process if she does not pay; that is clearly an effort to terminate the tenancy. Finally, he makes a demand for an amount; he claims it is rent. On its face, this notice is legally sufficient under §5502(a).

But as with everything that has prima facia validity, the notice can be questioned on its substance. In this instance the notice fails on that substance, a fact which came out through cross-examination and questioning by the Court. The rental amount requested of \$4,750, includes \$250 per month unpaid on the purchase contract of the travel trailer. This separate contract amount, under the terms of our statutory structure, is not a permissible demand for “additional rent” such as utilities or other statutorily permitted items might be. Only legally permissible rent can be claimed as necessary to be paid before legal action is taken. Itemization itself would not have resolved this particular issue, though it would have highlighted the issue. Because of this substantive overinflation of the amount demanded, this appeal must be, and is hereby, dismissed.

IT IS SO ORDERED 06th day of April, 2021

/s/ Alan Davis  
Chief Magistrate  
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).

VIEW YOUR CASE ONLINE: <https://courtconnect.courts.delaware.gov>