

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

TIM RIALE	§	
Plaintiff Below,	§	
Appellant	§	
	§	
VS	§	C.A. No. JP17-20-001765
	§	
	§	
ANN DYSON	§	
Defendant Below,	§	
Appellee	§	

TRIAL DE NOVO

Submitted: May 20, 2021

Decided: May 26, 2021

APPEARANCES:

The plaintiff, Tim Riale, was represented by Dean A. Campbell, Esquire.
The defendant, Ann Dyson, appeared pro se.

Deborah J Keenan, Deputy Chief Magistrate
Richard D Comly, Justice of the Peace
John C Martin, Senior Justice of the Peace

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

CIVIL ACTION NO: JP17-20-001765

TIM RIALE VS ANN DYSON

ORDER ON TRIAL DE NOVO

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

On March 5, 2020, the plaintiff filed this action seeking possession of the rental property located at 18455 Line Church Road, Delmar, Delaware because the defendant had an illegal cesspool for waste disposal. There was no monetary claim except for court costs. Trial was held on November 6, 2020 and on November 12, 2020 judgment for the defendant was entered. On November 18, 2020 the plaintiff filed a timely appeal of this judgment pursuant to 25 Delaware Code Section 5717. This is the decision of the three Judge Panel hearing the appeal as a trial de novo.

The plaintiff testified that he was hired to manage the property in 2019 by the current owner of the property following the death of the previous owner, David Walton. Mr. Walton was the person who entered into the lease with the defendant and her now deceased husband. He introduced a copy of the lease for the property, which had been given to him by the defendant. He said that this lease was created on December 13, 1997 and was to run for a term of 47 years. The monthly rent is \$150.00. At the time this lease began, sewage disposal on the property was by a cesspool system. An inspection of this system in 2019 by a person certified by the Department of Natural Resources and Environmental Control found that the system was illegal and needed to be replaced.

The plaintiff believed that the defendant was responsible for the cleanup and maintenance of the property according to the lease. He knew that the Plaintiff's counsel had sent a letter to the defendant in 2019 stating that the lease was in default because the defendant was not maintaining the property in a good and sanitary condition. Since this letter was sent, the waste system has not been repaired or replaced.

The defendant testified that after the lease was signed, she and her husband moved onto the property with a trailer. She continues to live in the trailer two or three days a week although she has a second residence in Delmar. She said that her son comes to visit her at the trailer to help her out. The parties to the lease agreed that in exchange for a long-term lease, she and her late husband would clean up the property and make it livable, which they did. She believed that while she had an obligation to make the property livable, she had no duty to replace the wastewater system that was in place when the property was first rented. She believed that this was the responsibility of the property owner.

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DISCUSSION

The parties are in disagreement on which of them is responsible for the replacement of the illegal cesspool system on the rented property. In its notice letter to the defendant, the plaintiff pointed to Paragraph 11 of the lease which provides that the tenant is responsible for arranging for and maintaining all utilities serving the property. Also, Paragraph 12 of the lease requires the defendant to maintain the property in a good and sanitary condition.

The lease introduced into evidence can be read clearly in some parts but not in others. The members of the Court closely read the lease and agree that Paragraph 12 does obligate the defendant to maintain the property in a good and sanitary condition; however, the last sentence of that Paragraph states that "major maintenance and repair" shall be the responsibility of the Lessor or his assigns.

The Court finds that the replacement of an outdated cesspool system with a modern septic system would certainly be a major repair and by the terms of the lease, that expense is the responsibility of the Lessor or his assigns.

ORDER

Therefore, after considering all the evidence presented, the Court finds that the plaintiff did not meet its burden of proof by a preponderance of the evidence and so enters judgment on behalf of the defendant and against the plaintiff. No court costs are awarded

IT IS SO ORDERED 26th day of May, 2021

/s/John C Martin

Senior Justice of the Peace
For the 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).