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

WYOMING W. ROSS,	:	
Defendant Below, Appellant,	:	
v.	:	**C.A. No. JP16-21-003255**
OWNER'S MANAGEMENT COMPANY,	:	
Plaintiff Below, Appellee.	:	

TRIAL DE NOVO

Submitted: October 22, 2021
Announced in Court: October 22, 2021
Reduced to Writing: October 27, 2021

Wyoming W. Ross, Defendant/Appellant, appeared represented by Colton Fleu, Esquire.
Owner's Management Company, Plaintiff/Appellee, appeared represented by Craig T. Eliassen, Esquire.

ORDER

Murray, J
Hicks, J
Alston-Jackson, J

On October 22, 2021 this Court, consisting of the Honorable James A. Murray, the Honorable Jamie Hicks and the Honorable Nicole Alston-Jackson, acting as a special court pursuant to 25 *Del. C.* § 5717(a)[1] held a trial *de novo*[2] in reference to a Landlord/Tenant Summary Possession petition filed by Owner's Management Company, (hereinafter referred to as Plaintiff), against Wyoming W. Ross (hereinafter referred to as Defendant). For the following reasons the Court enters judgment in favor of the **Defendant**.

FACTUAL and PROCEDURAL BACKGROUND

Plaintiff filed a Landlord/Tenant Summary Possession petition with Justice of the Peace Court No. 16 seeking possession. This action is based on an alleged Rules Violation. Trial was held on September 30, 2021 and judgment was entered in favor of the Plaintiff.[3] Defendant filed a timely appeal of the Court's Order pursuant to 25 *Del. C.* § 5717(a). Consequently, trial *de novo* was scheduled and held.

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[1] 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....

[2] ***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 (6th ed. 1990).

[3] *Owner's Management Company, v. Ross*, Del. J.P., C.A. No. JP16-21-003255, Dillard, J. (Sept. 30, 2021).

TRIAL/MOTION FOR DIRECTED VERDICT

Upon Plaintiff resting their case, Defense motioned the Court for a directed verdict.[4] Plaintiff presented three witnesses and 12 exhibits during the presentation of their case. Whereas the Court announced its decision in open court, the Court will not opine exhaustively on all testimony and evidence presented but will opine on the testimony and exhibits utilized in reaching its decision.

There is a landlord/tenant relationship between the Parties as proven by a signed lease agreement for the property located at 5 Linstone Lane, Apartment #223, Milford, Delaware 19963.[5] Defendant signed the lease on July 22, 2016.[6] Between December 21, 2018 and July 26, 2021 Plaintiff noticed Defendant repeatedly of an alleged Rules Violation by way of seven notices.[7] Plaintiff chose not to file an action for summary possession until after their fifth notice dated June 18, 2021.[8] Plaintiff filed their petition on July 1, 2021. Then on July 26, 2021 Plaintiff sent Defendant

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[4] Directed verdict. In a case in which the party with the burden of proof has failed to present a prima facie case for jury consideration, the trial judge may order the entry of a verdict without allowing the jury to consider it, because, as a matter of law, there can be only one such verdict. A directed verdict may be granted either on the court's own initiative or on the motion of a party. Black's Law dictionary 459 (6th ed. 1990).

[5] Plaintiff's exhibit #1.

[6] *Id.*

[7] Six of the seven notices were submitted as exhibits by Plaintiff.

[8] Plaintiff's exhibit #11.

notice for the same alleged Rules Violation as consistent with all other notices sent to Defendant.[9]

DISCUSSION

A landlord's remedies relating to breach of rules and covenants are addressed pursuant to 25 *Del. C.* § 5513(a) thru (c). Section 5513(a) states:

> If the tenant breaches any rule or covenant which is material to the rental agreement, the landlord shall notify the tenant of such breach in writing, and shall allow at least 7 days after such notice for remedy or correction of the breach. This section shall not apply to late payment of rent which is covered under § 5502 of this title.

Section (a)(1) states:

> Such notice shall substantially specify the rule allegedly breached and advise the tenant that, if the violation continues after 7 days, the landlord may terminate the rental agreement and bring an action for summary possession. Such notice shall also state that it is given pursuant to this section, and if the tenant commits a substantially similar breach within 1 year, the landlord may rely upon such notice as grounds for initiating an action for summary possession. The issuance of a notice pursuant to this section does not establish that the initial breach of the rental agreement actually occurred for purposes of this section.

Plaintiff filed their petition based on a notice which was not submitted to the Court as evidence. Whereas Plaintiff did not submit this notice as evidence, the Court shall not address whether this notice meets the statutory requirements or not to be considered a valid notice.

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[9] Plaintiff's exhibit #12.

The Court will first address Plaintiff's notice dated June 18, 2021.[10] While Plaintiff advises Defendant "You are to correct this problem no later than (7) days from the date of this notice and meet with the management within (10) days from the date of this notice to discuss the corrective action taken", this notice does not advise Defendant as required under § 5513(a)(1), "...if the tenant commits a substantially similar breach within 1 year, the landlord may rely upon such notice as grounds for initiating an action for summary possession." Additionally, proof of service of this document was not submitted to the Court.[11] Based on the date of notice, Plaintiff allowed an appropriate amount of time to cure to pass before filing their petition in compliance with § 5513(a)(1).[12] However, thereafter Plaintiff elected to provide another notice dated July 26, 2021 to Defendant, this notice occurred after the filing of Plaintiff's petition.[13] Again, this notice fails to advise Defendant, "...if the tenant commits a substantially similar breach within 1 year, the landlord may rely upon such notice as grounds for initiating an action for summary possession." Also, no proof of service was provided to the Court regarding this

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[10] Plaintiff's exhibit #11.

[11] 25 *Del. C.* § 5113(b). In lieu of personal service or by copy of the notice or process required by this Code, a copy of such notice or process may be sent by registered or certified mail or 1st-class mail as evidenced by a certificate of mailing postage-prepaid, addressed to the tenant at the leased premises, or to the landlord at the landlord's business address as set forth in the lease or as otherwise provided by landlord ...[T]he return receipt of the notice, whether signed, refused or unclaimed, sent by registered or certified mail, or the certificate of mailing if sent by 1st-class mail, shall be held and considered to be prima facie evidence of the service of the notice or process.

[12] The Court is basing the time to cure lapse off the date of notice and date of filing said petition as no date of proof of service was submitted to the Court.

[13] Plaintiff's exhibit #12.

notice. Most importantly, by providing another notice to cure to Defendant, the Plaintiff reset the time Defendant had to cure the alleged Rules Violation. Pursuant to § 5513(a)(1) "...if the violation continues after 7 days, the landlord may terminate the rental agreement and bring an action for summary possession." By providing Defendant another notice to cure, Plaintiff created a situation where they filed their summary possession petition prematurely. Whereas Plaintiff's petition is filed prematurely, the Court need not proceed any further with trial.

CONCLUSION

Based on the Court's fact-finding inquiry, the Court's above-referenced conclusions of law and by a preponderance of evidence, the Court by unanimous verdict hereby ***GRANTS*** Defendant's Motion for a ***DIRECTED VERDICT***. The Court hereby enters ***JUDGMENT for the DEFENDANT***.

IT IS SO ORDERED, this **27th** day of **October, 2021**.

For the Court,

(SEAL)

Judge James. A. Murray

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