

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
COURT NO. 13**

| | | |
|-----------------------------------|---|-------------------------|
| VINCENT ADVANCED REALTY SOLUTIONS | § | |
| Plaintiff Below, | § | |
| Appellee | § | |
| | § | |
| VS | § | C.A. No. JP13-23-013866 |
| | § | |
| | § | |
| KEVIN WHITE | § | |
| Defendant Below, | § | |
| Appellant | § | |

TRIAL DE NOVO

Submitted: March 22, 2024
Decided: April 16, 2024

APPEARANCES:

Advanced Realty Solutions, Plaintiff, appeared represented by Form 50 agent Vincent Josephs
Kevin White, Defendant, failed to appear

Peter Burcat, Justice of the Peace
Marie Page, Justice of the Peace
Christopher Portante, Justice of the Peace

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
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COURT NO. 13**

CIVIL ACTION NO: JP13-23-013866

ADVANCED REALTY LLC VS KEVIN WHITE

ORDER ON TRIAL DE NOVO

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

On March 22, 2024, this Court, consisting of the Honorable Peter Burcat, the Honorable Marie Page, and the Honorable Christopher Portante (collectively, “the Panel”), acting as a special court pursuant to 25 *Del. C.* § 5717(a), convened a trial *de novo* in reference to the November 17, 2023 complaint (the “Complaint”) filed by Plaintiff/Appellee Advanced Property Management, LLC (“Plaintiff”) against Defendant/Appellant Kevin White (“Defendant”).

PROCEDURAL BACKGROUND

Plaintiff’s Complaint in the above-captioned action (“this Action”) seeks possession of the rental unit, known as 101 West 20th Street #1, Wilmington, Delaware 19802 (the “Unit”), for Defendant’s failure to pay rent. A trial before a single judge was held on February 14, 2024. On February 20, 2024, the court below issued a judgment by argument against Defendant for possession and rental arrears. Subsequently, Defendant filed a timely request for appeal for this trial *de novo* on February 27, 2024 which was accepted the following day.

FACTS

On October 10, 2023, Plaintiff sent Defendant a past-due rent notice (the “Notice”), dated October 9, 2023, by first-class mail with Certificate of Mailing. The Notice advised Defendant that he had rental arrears in the amount of \$2,160.29 as of the mailing of the Notice. The listing of debits on the Notice includes not only rent, late fees, and water charges, but also two (2) credit card (listed as “CC”) convenience fees (the “Convenience Fees”) of \$40.83 and \$16.91.

DISCUSSION

The Convenience Fees listed in the Notice are not considered rent under Delaware Landlord Tenant Code (“the Code”). When the Court raised this issue, Plaintiff argued that those fees had already been covered by Defendant and were not part of the amount being sought—yet they were listed on the Notice and were obviously part of the total computation of rent.

While “rent” is not specifically defined in the Code, there are references to what may be considered rent throughout it. The dictionary definition of rent is a common sense one: that is, “payment received periodically for the use of property.” *Black’s Law Dictionary*. Under the Code, permissible late fees are also considered rent: “...A late charge is considered as additional rent for the purposes of this Code....” 25 *Del. C.* § 5501(d). In addition, “[c]harges for utility services made by a landlord to a tenant shall be considered rent for all purposes under this Code.” 25 *Del. C.* § 5312(e). Other fees are permitted under the Code, however none of the language permitting them states that such fees are considered *rent*

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under the Code. The inclusion of the Convenience Fees in the Notice and their calculation as rent renders the Notice overstated.

CONCLUSION

The Court finds that Plaintiff failed to comply with the Code by including fees in the Notice which are not considered rent under the Code, thereby rendering the Notice overstated. As a court of statutory jurisdiction, the Justice of the Peace Court lacks subject matter jurisdiction when the party bringing suit in a landlord-tenant action fails to comply with governing statute. Notwithstanding Justice of the Peace Court Civil Rule 72.1(f)¹, the Panel opines here that, having been made aware at the trial *de novo* of Plaintiff's non-compliance with statutory requirements in the filing of this Action, it has an obligation to dismiss the instant action without prejudice *sua sponte* for lack of jurisdiction; the Panel does not believe it can allow a lower ruling to stand when it is aware of its lack of subject matter jurisdiction which was already an extant condition upon the original filing of this Action. Based on the foregoing, this Action is hereby

DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED 16th day of April, 2024

/s/ CHRISTOPHER PORTANTE
JUSTICE OF THE PEACE
ON BEHALF OF THREE JUDGES



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).

¹ "In either an appeal by trial de novo or an appeal on the record, if the appellant (or both parties) fails to appear for trial of the appeal, the judgment below shall stand." J.P. Civ. R. 72.1(f).