

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

AMIT SETHI	§	
Plaintiff Below,	§	
Appellant	§	
	§	
V.	§	C.A. No. JP13-23-015096
	§	
JULIAN ANNAMARIE FAGAN, f/k/a JULIAN	§	
ANNAMARIE FAGAN-TOLUHU, and	§	
MICHAEL NATHANIEL BRISCOE	§	
Defendants Below,	§	
Appellees	§	

TRIAL DE NOVO

Submitted: April 11, 2024

Decided: April 16, 2024

APPEARANCES:

Amit Sethi, Plaintiff, *pro se*

Julian Annamarie Fagan, Defendant, *pro se*

Michael Nathaniel Briscoe, Defendant, *pro se*

Sean McCormick, Deputy Chief Magistrate

Christopher Portante, Justice of the Peace

Peter Burcat, Justice of the Peace

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

CIVIL ACTION NO: JP13-23-015096

AMIT SETHI VS JULIAN ANNAMARIE FAGAN-TOLUHI ET AL

ORDER ON TRIAL DE NOVO

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

On April 11, 2024, this Court, consisting of the Honorable Sean McCormick, the Honorable Christopher Portante, and the Honorable Peter Burcat (collectively, “the Panel”), acting as a special court pursuant to 25 *Del. C.* § 5717(a), convened a trial *de novo* in reference to the December 18, 2023 complaint (the “Complaint”) filed by Plaintiff/Appellant Amit Sethi (“Plaintiff”) against Defendants/Appellees Julian Annamarie Fagan and Michael Nathaniel Briscoe (together, “Defendants”).

PROCEDURAL BACKGROUND

Plaintiff filed the instant action (“this Action”) with the Justice of the Peace Court, seeking possession of the rental unit known as 1706 Saint Elizabeth Street, Wilmington, Del. 19805 (the “Property”), based on a claim that Defendants had failed to pay rent. Plaintiff also sought a monetary judgment for that unpaid rent and an unrelated loan debt. In his Complaint, Plaintiff also referenced (and attached) a 60-day notice, but did not explicitly state in his Complaint how it constitutes a cause of action here.

A trial before a single judge was held on March 8, 2024. On March 13, 2024, the court-below issued a judgment by argument against Defendants for rental arrears only. The Court ordered that possession of the Property remain with Defendants; it did not address the loan debt. Subsequently, Plaintiff filed a timely request for appeal for this trial *de novo* on March 13, 2024 which was approved the same day.

FACTS

On September 25, 2023, Plaintiff sent Defendants a 60-day lease termination notice (the “Notice”) by first-class mail which stated that Defendants’ January 5, 2022 lease would be terminated on November 28, 2023. It continues: “The Landlord hereby gives sixty (60) days’ notice pursuant to § 5106(d). Said period shall begin on the first day of the month following the day of notice herein.”

STANDARD OF REVIEW

The Delaware Landlord-Tenant Code (“the Code”) provides that a party aggrieved by a single judge’s judgment in a summary possession matter may request a trial *de novo* before a three-judge panel. 25 *Del. C.* § 5717(a). “In the broadest sense, a trial *de novo* is a new trial in an appellate court on the entire case addressing questions of law and fact as if there were no trial in the first instance.” 5 C.J.S. Appeal and Error § 907.

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

DISCUSSION

Plaintiff and Defendants agree that Defendants' lease term was month-to-month as of the date Plaintiff sent the Notice. As clearly stated in 25 Del. C. § 5106(d), "[w]here the term of the rental agreement is month-to-month, the landlord or tenant may terminate the rental agreement by giving the other party a minimum of 60 days' written notice, *which 60-day period shall begin on the first day of the month following the day of actual notice* (emphasis added)." Plaintiff's own Notice to Defendants mentions the statutory time computation that is applicable, however Plaintiff either chose to ignore it or was negligent in his failure to follow the Code. Having been sent on September 25, 2023, the first day of the 60-day period would have been October 1, 2023.

Plaintiff's claim for possession of the Property is based solely on the September 25, 2023 Notice. Even though Plaintiff mentions failure to pay rent in his Complaint, no 5-day notice accompanied the Complaint, nor did Plaintiff furnish any other potentially valid notice with his Complaint.

Plaintiff asked the Panel to allow him to collect on the monetary damages awarded in the court below. The Court explained that, when he appealed the court below's decision to award Plaintiff monetary damages but deny him summary possession, and the Court accepted Plaintiff's appeal for a trial *de novo* (anew), the prior judgment was, consequently, nullified—as if it had never been issued. The Court added that Plaintiff had supplied no 5-day notice or ledger to account for the amount of money Plaintiff claimed was owed; therefore, in its *de novo* review, the Panel could neither consider rent owed as a factor for possession or a monetary judgment.

Furthermore, the Court advised that Plaintiff's request for a judgment based on Defendants' alleged failure to repay a loan was not related to summary possession and was, therefore, improperly included in this Action.

CONCLUSION

The Panel finds that Plaintiff's Notice to Defendants to terminate their month-to-month lease does not comply with the Code, as Plaintiff did not adhere to the statutory computation of the 60-day notice period. As a court of statutory jurisdiction, the Justice of the Peace Court lacks subject matter jurisdiction when the party bringing suit in a summary possession action fails to comply with governing statute. Based on the foregoing, this Action is hereby

DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED 16th day of April, 2024

/s/ SEAN MCCORMICK
DEPUTY CHIEF MAGISTRATE
ON BEHALF OF THREE JUDGE



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>