

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

ALICIA LINDINGER

Plaintiff Below/
Appellant,

v.

MEGAN GENTIS, ET AL,

Defendant Below/
Appellee,

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C.A. No. JP16-24-000387

TRIAL DE NOVO

Case Heard: April 12, 2024

Case Decided: April 12, 2024

*Amended On: April 24, 2024*¹

ZOOM-BASED APPEARANCES:

- Plaintiff, Alicia Lindinger, appeared *pro se*.
- Defendants Megan Gentis and Mark Genetic, represented by Attorney Erika Y. Tross.

ORDER

Wilson, J

Montano, J

Hicks, J

¹ Amended to correct the Review portion of the Order from "Plaintiff" to "Defendant". The Court's decision was not affected by the correction.

On April 12, 2024 this Court, consisting of the Honorable Kevin L. Wilson, the Honorable Alexander J. Montano, and the Honorable Jamie L. Hicks acting as a special court pursuant to 25 Del C. § 5717(a)² convened a trial *de novo*³ in reference to a Landlord/Tenant Summary Possession petition filed by Alicia Lindinger (“Plaintiff”), against Mark and Megan Gentis (“Defendants”). At the conclusion of the hearing, the Court announced its decision. This is the Court’s decision reduced to writing.

BACKGROUND

Plaintiff filed a Landlord/Tenant Summary Possession petition on January 16, 2024, seeking possession of the rental lot located at 411 Broad Street Houston DE 19954. The initial filing is regarding a Demand for Rent Notice, issued to the Defendant on January 6, 2024, informing the Defendants they had until January 13, 2024 to cure. Trial was held on February 26, 2024 and a judgment was entered in favor of the Defendants.⁴ The Plaintiff filed a timely appeal on March 4, 2024, and a trial *de novo* was held on April 12, 2024.

PRETRIAL

Prior to trial the Defense motioned the Court for a dismissal of this action on several counts. The first justification for the motion is due to a flawed 5-day demand for rent notice which does not provide a breakdown for the costs, then because it includes interest, and because the notice was not mailed to each of the Defendants. The final justification for the motion is that the second 5-day demand for rent notice was sent to the Defendants on March 6, 2024 and only gives them 4 days to cure the matter of past due rent.

² 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.

³ *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* (11th ed. 2019).

⁴ *Alicia Lindinger v. Megan Gentis, Et AL.*, Del. J.P., C.A. No. JP16-24-000387, Smith, J. (Feb. 26, 2024).

The Plaintiff was opposed to the Defense's motion and stated she didn't realize what she was doing and admitted to needing to do more research. Finally, that she would like to have access to her house (the rental property).

The Court took a brief recess to consider the arguments. Upon reconvening, the Court granted the motion to dismiss mainly because the Plaintiff's second demand for rent notice had reset the timeline for the Defendants to cure. However, the Court cautioned that it would provide a more thorough review of the Defendants' motion for a dismissal. The following is the review.

REVIEW

***Defendant's 1st Justification for a Dismissal: No Breakdown for Costs.**

On account that the Plaintiff's demand for rent notice does not provide a breakdown, i.e., "itemize the amount due". The Court recognizes this was a long-standing requirement in the Kent County Justice of the Peace Court as a result of *Lasocha v. Weir*.⁵ However, the Court would err if it does not recognize that *Dale Cohee DBA Pinehaven M/H and R/V Park v. Catherine Bates* clarified that such a requirement should only be a suggestion for landlords to follow.⁶ The Court finds this argument has no merit.

***Defendant's 2nd Justification for a Dismissal: Interest is Mentioned in the Notice.**

The next justification is that the demand for rent notice mentions collecting interest. The Court recognizes interest is not considered part of rent, nor is it considered a late fee, and should not be mentioned in the demand for rent notice. Although the Plaintiff could argue there was no amount mentioned, the harm with this is that the Defendants are still not aware what the amount due is and unclear on how to cure. For this reason, the Court finds the initial **demand for rent notice is, indeed, overstated.**

***Defendant's 3rd Justification for a Dismissal: Failed to Send Notices to Each Defendant.**

⁵ *Lasocha v. Weir*, Del. J.P. Ct., C.A. No. JP16-08-003647, Arndt, J, Murray, J, Pennella, J (September 2, 2008).

⁶ *Dale Cohee DBA Pinehaven M/H and R/V Park v. Catherine Bates*, Del. J.P. Ct., C.A. No. JP17-20-004313, Keenan, J, Martin, J, Davis, J, (April 6, 2021).

Regarding the Plaintiff's failure to deliver separate notices to each defendant, again, the Court recognizes this was another long-standing requirement in the Kent County Justice of the Peace Court as a result of *Lasocha v. Weir*.⁷ However, the Court would err if it does not recognize that *Dale Cohee DBA Pinehaven M/H and R/V Park v. Catherine Bates* clarified that such a requirement should only be a suggestion for landlords to follow.⁸

The Court also recognizes that *Ros Rentals, LLC v. Gutierrez* also mentions a need to provide notice to all tenants.⁹ However, both *Ros Rentals, LLC v. Gutierrez* and *Lasocha v. Weir* cite a Superior Court decision, *Eanes v. Custer*. In review of said case, the Court finds it concerns the replevin of a vehicle and the requirement to notify all parties pertains to Court notices only.¹⁰ In contrast, this matter is concerning a summary possession action and the notices being address are not Court notices, but instead the notices between litigants prior to the commencement of this action.

Finally, in review of the docket and in review of the interactions with both Defendants, the Court finds, both Defendants have been aware of this action. If one of the Defendants had stated they were not aware of this action, then perhaps, the argument for separate notice could be made if the Plaintiff knew they were estranged or if one moved out. However, in light of *Dale Cohee DBA Pinehaven M/H and R/V Park v. Catherine Bates*, it is not a compulsory requirement for the Plaintiff to provide separate notices to each tenant. The Court finds this argument to be without merit.

*Defendant's 4th Justification for a Dismissal: Second Notice's Insufficient Time to Cure.

The next justification for the motion is insufficient time to cure because the second demand for rent notice was sent to the Defendants on March 6, 2024 and only gives the Defendant four (4) days to cure the past due rent.¹¹ While it is correct that by including the weekend

⁷ *Lasocha v. Weir*, Del. J.P. Ct., C.A. No. JP16-08-003647, Arndt, J, Murray, J, Pennella, J (September 2, 2008).

⁸ *Dale Cohee DBA Pinehaven M/H and R/V Park v. Catherine Bates*, Del. J.P. Ct., C.A. No. JP17-20-004313, Keenan, J, Martin, J, Davis, J, (April 6, 2021).

⁹ *Ros Rentals, LLC v. Gutierrez*, Del. J.P. Ct., C.A. No. JP13-19-012715, Portante, J, Ufberg, J, Brown, J (February 27, 2020).

¹⁰ *Eanes v. Custer*, Super Ct., August 31, 1994, A.2d1994 WL 555463

¹¹ 10 Del. C. §5501. **Tenant obligations; rent.**

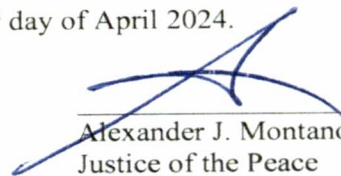
days, the Defendants only had 4 days to cure, this is not the significant problem because the filing of this action had already occurred on January 16, 2024.¹²

In other words, the more significant problem with sending a second notice to cure, is that the Plaintiff is on record giving the Defendants a new time to cure. In essence, the Plaintiff has offered a second opportunity to cure. Although, the initial 5-day demand for rent notice was appropriate respective to the timelines, the Plaintiff reset their timeline to cure when they sent the second notice. As such, the Court finds **this matter is premature for filing.**

CONCLUSION

After considering the evidence and testimony presented, the Defense's *Motion to Dismiss* is **GRANTED**. This matter is, hereby, dismissed without prejudice.

IT IS SO ORDERED this 15th day of April 2024.



Alexander J. Montano
Justice of the Peace
FOR THE COURT

(SEAL)

¹² 25 Del. C. § 5112. **Time computation.** In computing any period of time prescribed or allowed by order of the Court or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included unless specifically included by statute, order or rule. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation. [emphasis added]