

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

RODMAN MULLINS,	§	
Plaintiff Below,	§	
Appellee	§	
	§	
v.	§	Civil Action No. JP13-24-004195
	§	
YVONNE FISHER,	§	
Defendant Below,	§	
Appellant	§	

ORDER ON *TRIAL DE NOVO*

Submitted: August 9, 2024

Decided: August 21, 2024

APPEARANCES:

Rodman Mullins, Plaintiff, represented by Donald L. Gouge Jr., Esquire

Yvonne Fisher, Defendant, *Pro Se*

Sean McCormick, Deputy Chief Magistrate, Justice of the Peace

Peter Burcat, Justice of the Peace

Maria Perez-Chambers, 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: JP13-24-004195

RODMAN MULLINS VS YVONNE FISHER

ORDER ON TRIAL DE NOVO

The Panel has entered an Order in the following form:

On August 9, 2024, this Panel, consisting of the Honorable Deputy Chief Magistrate Sean McCormick, the Honorable Peter Burcat, and the Honorable Maria Perez-Chambers (collectively, "the Panel"), acting as a special court pursuant to 25 *Del. C.* § 5717(a), convened a *Trial de Novo* ("TDN") in reference to the April 10, 2024 complaint (the "Complaint") filed by Donald L. Gouge Jr., Esquire on behalf of Plaintiff/Appellee, RODMAN MULLINS ("Plaintiff") against Defendant/Appellant YVONNE FISHER ("Defendant").

Procedural and Factual Background

Plaintiff filed a Landlord-Tenant Complaint against Defendant YVONNE FISHER with the Justice of the Peace Court. Plaintiff sought a monetary recovery and summary possession of a rental unit located at 610 Tamara Circle, Newark, Delaware 19711 (the "Property"). Plaintiff alleged Defendant had failed to pay the monthly rent for the property.

On March 27, 2024, Plaintiff, through his counsel, Donald L. Gouge, Jr., Esquire, sent Tenant/Defendant/Appellant a past-due rent notice (the "Notice"), pursuant to 25 *Del. C.* § 5502(a), advising Ms. Fisher her rent was past due in the amount of \$4,200.00 (for the months of January, February, and March 2024). Ms. Fisher was further advised she must pay the total amount due within five (5) business days from the mailing of the Notice or the Rental Agreement ("Agreement") would be terminated and court action for summary possession would be initiated. As Tenant/Defendant/Appellant did not cure the default, Plaintiff/Appellee filed the underlying Complaint on April 10, 2024.

Trial was subsequently scheduled for June 12, 2024 via *Zoom*. On June 12, 2024, Mr. Gouge appeared with his client via *Zoom*. Ms. Fisher, *Pro Se*, likewise appeared via *Zoom*. After considering evidence and testimony presented at trial, the Court found that Plaintiff had proven by a preponderance of evidence that Defendant failed to pay rent, was notified of the rent default, and failed to cure the default. Judgment was entered in favor of Plaintiff/Appellee. From that Judgment, Defendant/Appellant filed a request for a TDN. On July 23, 2024, the request for a TDN was approved, bringing the matter before the Panel on August 9, 2024 via *Zoom*.

Prior to the commencement of the TDN, the Parties agreed possession was no longer at issue. Appellant believed she was only obligated to pay the rent through January 2024. Appellee disagreed and sought rent through June 12, 2024, the date possession was returned to Appellee. Ms. Fisher argued the trial below did not consider evidence she had but did not introduce into evidence at trial. The Panel took Judicial Notice the TDN was scheduled on July 30, 2024, with Notices issued that same day. The Notice of the TDN included instructions on how and when to timely file any exhibits for the TDN. The Panel took further Judicial Notice Appellee filed exhibits on August 2, 2024, but Appellant did not file exhibits until the morning of the TDN. Both Parties waived an opening statement. When asked about the exhibits, Appellee stated she had text messages, but those messages were absent from the untimely filed exhibits. Defendant/Appellant repeatedly stated, "I supplied the text messages, you (the Panel) just don't have them." Ms. Fisher requested a continuance to further attempt to file the exhibits properly. The request was denied, and the TDN was to move forward. Both sides waived an opening statement.

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Plaintiff/Appellee's first witness was Robert Abbott of the New Castle County Police Department. Mr. Abbott testified that on March 6, 2024, police were called to the Property for a breach of the peace incident. A police report was created as a result. Defendant/Appellant was listed on the police report as the occupant of the Property, and living at the Property. The police report further reflected Defendant/Appellant spoke with the reporting office and made a statement that was included in the police report.

Mr. Gouge called Plaintiff/Appellee RODMAN MULLINS as Plaintiff/Appellee's second and final witness. Mr. Mullins testified he was the owner of the Property at issue. Mr. Gouge had a Lease Agreement marked as "P-1." Defendant/Appellant objected to P-1 by claiming there was never a rental agreement for the 13 years she resided at the Property, and the signature on the Agreement was not hers. The objection was overruled. P-1 was admitted into evidence. Mr. Mullin stated the Lease Agreement with Defendant/Appellant ended May 31, 2023 and thereafter, as she continued her tenancy in the Property, the Lease Agreement continued on a month-to-month basis. Mr. Gouge had a Five-Day Letter dated March 27, 2024, with a Proof of Mailing, marked as Plaintiff/Appellee's exhibit "P-2." P-2 was admitted into evidence without objection. Mr. Mullins testified that to the best of his knowledge, Defendant/Appellant was residing at the Property until June 12, 2024. It was on that date he regained possession of the Property. He further testified that he would frequently visit the Property after January 31, 2024 to ensure it was not abandoned. Mr. Gouge had a ledger for the Property marked as Plaintiff/Appellee's exhibit "P-3." P-3 was admitted into evidence without objection. Mr. Mullins testified the Lease Agreement contained a late fee provision. Mr. Gouge had a sewer bill marked as Plaintiff/Appellee's exhibit "P-4." P-4 was admitted into evidence without objection. Mr. Mullins testified the tenant, Defendant/Appellant herein, pursuant to the Lease Agreement, was responsible for the sewer bill. Mr. Mullins stated the monthly rent for the Property was \$ 1,400.00 and rent was due and owing through June 12, 2024. Mr. Mullins further testified he was unable to put his name on the *Delmarva* electric account until June 15, 2024, as Defendant/Appellant opted to keep the account open in her name for months after she had allegedly vacated the Property. He stated he subsequently became aware electric power was shut off for the property on May 27, 2024. Upon inquiry from the Panel, Mr. Mullins testified the last time he spoke with Defendant/Appellant was on June 8, 2024 when he went to the Property. He stated he spoke to Defendant/Appellant through a window and he could see Defendant/Appellant in the Property. On cross-examination, Mr. Mullins testified he saw Defendant/Appellant's daughter when he went to the Property. Mr. Gouge had no re-direct questions for Mr. Mullins. Plaintiff/Appellee rested.

Defendant/Appellant called herself as her first and only witness. Ms. Fisher testified she left the property on January 31, 2024, and resided with her son afterward. She stated she did not have the utilities turned off right away. Ms. Fisher admitted she had an altercation with the police on March 6, 2024, and her only contact regarding the property was with a person named "Mulenberg." She stated during her brief testimony, "I'm done with this," and subsequently concluded her case. Mr. Gouge had no cross-examination questions for Ms. Fisher. Defendant/Appellant rested. Plaintiff/Appellee presented no rebuttal testimony.

Mr. Gouge made a closing statement. He argued it was "pretty clear" Defendant/Appellant remained in possession of the Property beyond January 2024. He referenced the police encounter at the property on March 6, 2024 and the fact electricity remained in Defendant/Appellant's name through May 2024. Mr. Gouge concluded by asking the Panel to award Plaintiff/Appellee rent through June 12, 2024 in the amount of \$ 7,600.00.

Ms. Fisher made a closing statement. She argued she was responsible for rent only through January 2024 and Plaintiff/Appellee has holding a security deposit. Mr. Gouge had no rebuttal argument.

Findings

The *Landlord-Tenant Code* regulates and sets forth the legal rights, remedies and obligations of all the parties to a residential rental agreement within the State of Delaware. A landlord's remedies for a tenant's failure to pay rent are set forth in 25 *Del.C.* §5502(a), which states in pertinent part:

A landlord or the landlord's agent may, any time after rent is due, including the time period between the date the rent is due and the date under this Code when late fees may be imposed, demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in such notice, to be not less than 5 days after the date notice was given or sent, the rental agreement shall be terminated. If the tenant remains in default, the landlord may

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thereafter bring an action for summary possession of the dwelling unit or any other proper proceeding, action or suit for possession.

Plaintiff/Appellee introduced into evidence a Lease Agreement (P-1) between the Parties for the Property at issue. The Panel rejects Defendant/Appellant's contention that it was not her signature on P-1. The Lease Agreement commenced June 1, 2022. The monthly rent was \$ 1,400.00. Defendant/Appellant continued to reside in the Property through 2024. Ms. Fisher paid that amount of rent through December 2023. As stated in 25 Del. C. §5502(a), the landlord is required to send a formal demand for payment to a tenant prior to commencing an action for Summary Possession. The demand notice is referred to as "the Five-Day Letter" or "Five Day Notice" because a landlord must provide the tenant at least a minimum of five (5) days to cure the non-payment of rent. The purpose of the letter is to advise the tenant that if the tenant fails to pay the rent that is due and owing the landlord, the lease agreement may be terminated, and the landlord could file an action in the JP Court seeking a monetary recovery and summary possession of the rental property. The Panel was presented testimony that no monies had been received from Defendant/Appellant since December 2023. The five-day letter, P-2, was dated March 27, 2024. Tenant/Defendant/Appellant did not cure the delinquency.

The only real issue before the Panel is the date Defendant/Appellant vacated the rental property. Defendant/Appellant testified she remained in the Property only through the end of January 2024, and therefore she was only responsible for rent through that period of time. The Panel does not find that contention to be credible. Plaintiff/Appellee's first witness Officer Robert Abbott testified the police responded to the property on March 6, 2024 and the responding officer spoke to the occupant, Ms. Yvonne Fisher (Defendant/Appellant herein) who was residing in the Property. In addition, Plaintiff/Appellee testified he spoke with Ms. Fisher at the property on June 8, 2024 as he could see her through a window inside of the Property. Mr. Mullins further testified the electric bill for the property remained in Ms. Fisher's name through the date the power was shut off on May 27, 2024. Ms. Fisher did not dispute this fact.

The Panel finds Plaintiff/Appellee has met his burden of proving his case by a preponderance of the evidence that a Landlord-Tenant relationship between the Parties existed, and Defendant/Appellant failed to pay the agreed rent through June 12, 2024, the date Plaintiff/Appellee regained possession of the Property.

As such, JUDGMENT for Plaintiff/Appellee as follows:

Judgement Total:	\$ <u>7,600.00</u>
Court Costs:	\$ <u>66.25</u>
Post Judgment Interest:	<u>10.50%</u>

IT IS SO ORDERED 21st day of August, 2024

/s/ Sean McCormick
Deputy Chief Magistrate
On Behalf of Three-Judge 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).

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