

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

XIAOYING FU	§	
Plaintiff Below,	§	
Appellee	§	
	§	
VS	§	C.A. No. JP13-24-007394
	§	
	§	
DARLENE TORO	§	
JOSE CINTRON	§	
Defendant Below,		
Appellant		

TRIAL DE NOVO

Submitted: August 28, 2024

Decided: September 25, 2024

APPEARANCES:

Xiaoying Fu, Plaintiff, appeared represented by attorney Ping Xu, Esquire

Darlene Toro, Defendant, appeared Pro se

Jose Cintron, Defendant, failed to appear

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
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CIVIL ACTION NO: JP13-24-007394

XIAOYING FU VS DARLENE TORO ET AL

ORDER ON TRIAL DE NOVO

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

On August 28, 2024 a three-judge panel consisting of Deputy Chief Magistrate Sean McCormick and Judges Peter Burcat and Maria Perez-Chambers convened to hear a *Trial de Novo* (“TDN”) in the above-referenced matter. The action was originally filed on May 28, 2024 on behalf of the Appellee/Plaintiff below Xiaoying Fu by Ping Xu, Esq. against Appellant/Defendant below Darlene Toro and Jose Cintron. Plaintiff/Appellee sought possession as a result of a rental debt concerning the unit known as 1213 Lancaster Avenue, Wilmington, Delaware 19805. A trial date was set for July 26, 2024. Present that date was Landlord/Plaintiff Fu, Mr. Xu, and Tenant/Defendant Toro; Defendant/Tenant Cintron failed to appear. After taking testimony from the available parties the Court below held in favor of the Plaintiff and against Defendant Darlene Toro. Ms. Toro admitted that the rent was due but felt that she had a right to withhold it because of issues with the property. She verbally raised an unspecified counterclaim asserting that mold in the unit caused her and her children to be hospitalized. Further, she asserted the Landlord had been cited by the City of Wilmington for the conditions and had failed to comply with an order that an air quality test be taken. Aside from her testimony no evidence to support the counterclaim was provided. As such, the counterclaim failed. A Judgment awarding possession to Landlord Fu as well as \$6,000 in back rent plus court costs was issued against Tenant/Defendant Toro on August 1, 2024. As Mr. Cintron failed to appear for the trial, a Judgment by Default was issued against Tenant/Defendant Cintron. Ms. Toro has filed the present appeal of the Judgment entered against her by the trial court.

At the time of the appeal, Appellee/Plaintiff Fu through the assistance of counsel evidenced the rent claim, which as of the date of the appeal had risen to \$7,650.00. All of the documents offered – the lease, 5-day notice of demand, proof of mailing, etc. -- were sufficient for their purpose. Again, Appellant/Defendant Toro admitted that the rent was due, and again she raised a counter-claim. This time, the amount sought was specified -- \$25,000.00. Ms. Toro advised that, because her complaint that a previous unit she had rented from Fu had caused her illness, Fu agreed to move her to a different unit – that being 1213 Lancaster Avenue -- in November of 2023. She advised that when her health didn’t improve she decided to withhold the rent starting with April of 2024. Further, she felt that she should be awarded all back rent paid by her for both units. Lastly, she claimed that she had suffered property damage that the mold purportedly caused to her furniture, clothing, and other personal items. Other than her claim matching this Court’s jurisdictional limit of \$25,000.00, no identifiable valuation was placed on any segment of her counter-claim. Although she never directly claimed that she should be awarded for her pain and suffering, it was inferred throughout the claim. In support of her claim, Ms. Toro offered a host of documents to the panel, including photographs of her person covered in sores she claimed were caused by the mold in the unit(s), photographs of the 1213 Lancaster Avenue property bathroom, a copy of the city-issued violation (dated May 22, 2024 regarding the 1213 Lancaster Avenue property,) an e-mail sent from the city inspector to Fu dated July 2, 2024 acknowledging receipt of the air quality test regarding the 1213 Lancaster Avenue property; and a large amount of medical

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documentation concerning either herself or her children (including blood test results, doctors notes, general medical history, etc.) stretching out over the entirety of 2023. All of the documentation – whether regarding her, or her children – diagnose the source of their repeated hospital visits as a result of severe and persistent asthma. One document dated May 10, 2023 indicated that the attending physician believed that her visit was most likely due to asthma exacerbation, but might have been triggered by an infectious etiology. None of the medical documentation specify that any particular strain of mold might have been the trigger to the asthmatic episodes. As to the city-issued violation relating to the 1213 Lancaster Avenue property, the presence of mold was not specified as a source of violation. The notice did require that an air-quality test be taken. The e-mail supplied by Torres supports the fact that the test was done (despite her repeated assertions otherwise.) Put in its simplest terms, the counterclaim wanted to withhold rent due for the unit Torres currently resided in due to a claim that conditions found in a previous rental unit she had rented from the same landlord caused her ill health.

The panel dismissed without prejudice the counterclaim for lack of jurisdiction. Although Toro repeatedly tried to skirt the issue, in essence the claim sought pecuniary damages for conditions supposedly suffered while she was in an entirely different tenancy – and such damages are without the jurisdiction of this court to consider. Judgment was then awarded to Plaintiff/Appellee in the amount of \$7,650.00, plus the cost of filing, per diem rent at the rate of \$50.00, 10% Post-Judgement Interest on the debt, and possession of the unit known as 1213 Lancaster Avenue, Wilmington, DE 19805.

IT IS SO ORDERED 25th day of September, 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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