

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE  
IN AND FOR SUSSEX COUNTY  
COURT NO. 17**

DELAWARE STATE HOUSING AUTHORITY	§	
Plaintiff Below,	§	
	§	
	§	
VS	§	C.A. No. JP17-24-000742
	§	
	§	
DIANA FOXWELL	§	
Defendant Below,	§	

TRIAL DE NOVO

Submitted: August 22, 2024  
Decided: October 8, 2024

**APPEARANCES:**

DSHA represented by Wali Rushdan II, Esq.  
Foxwell represented by Jayce Lesniewski, Esq.

Alan Davis, Chief Magistrate  
Deborah Keenan, Deputy Chief Magistrate  
John Martin, Senior Justice of the Peace

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE  
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**CIVIL ACTION NO: JP17-24-000742**

**DELAWARE STATE HOUSING AUTHORITY VS FOXWELL**

**ORDER ON TRIAL DE NOVO**

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

Delaware State Housing Authority filed this action against Diana Foxwell on February 5, 2024, requesting a forthwith summons. While that forthwith request was granted, this case has lingered and been subject to both attempts at settlement and thorough litigation. A single judge heard motions to dismiss and a trial, concluding on June 14<sup>th</sup> that Ms. Foxwell was subject to eviction. She filed a timely appeal, and the court scheduled a three-judge panel trial for August 7<sup>th</sup>. Both parties filed motions, and the Court used that hearing date to consider arguments on the motions. Subsequently, the Court heard trial on August 22<sup>nd</sup>. The various motions have been decided separately, and this is the Court's decision after trial. For the reasons stated below, the Court finds by a preponderance of the evidence that the Plaintiff has proven serious and continuing violations of the lease terms and is entitled to possession of the unit.

**Facts and Positions of the Parties**

The Court finds the following facts with regard to this case. DSHA is the operator of Huling Cove, a residential housing complex in Lewes, Delaware for low income seniors. There is a significant waiting list of eligible seniors for this housing. The contract that residents sign, including Ms. Foxwell, contains the following language:

10(b) The tenant agrees to:

- (1) Keep the unit clean;
- (2) Use all appliances, fixtures and equipment in a safe manner and only for the purposes for which they are intended;
- (3) Not litter the grounds or common areas of the project;
- (4) Not destroy, deface, damage or remove any part of the unit, common areas, or project grounds;
- (5) Give the landlord prompt notice of any defects in the plumbing, fixtures, appliances, heating and cooling equipment or any other part of the unit or related facilities; and
- (6) Remove garbage and other waste from the unit in a clean and safe manner.

DSHA relies primarily on the first and sixth parts of this provision of the lease to allege that Ms. Foxwell is in breach.

In short, the evidence shows Ms. Foxwell has large piles of materials, papers, products, and general debris throughout her house. Although she contends that this is not garbage or waste, it is clear from photos and testimony that the accumulation of material poses a significant risk to anyone on the property. It is nearly impossible to move in the house except along designated pathways. Ms. Foxwell

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needs assistance in ambulating, to the extent that she uses a scooter everywhere except in her home. Despite the protestations of Ms. Foxwell to the contrary, the condition of her household presents at least a fall risk for her. There was also evidence presented that the condition of her home is affecting others, with rodents being encountered in a unit adjacent to hers.

DSHA became aware of a significantly unkempt condition of Ms. Foxwell's unit as a result of a service call on September 25, 2023, and gave a seven-day notice to her on the same day, requesting that she remove the debris and be subject to an inspection. On the day of that inspection she refused entry to the unit. She requested additional time to address the issue, which DSHA staff allowed. However, she once again refused entry on the new date.

After Ms. Foxwell received notice of termination of her lease, she properly requested a meeting with DSHA staff. At that meeting and in subsequent contacts, Ms. Foxwell indicated she should simply be moved to another unit. DSHA was reluctant to do so, without assurance that a new unit would not become similarly encumbered.

The record shows that DSHA has taken extraordinary steps to accommodate and provide resources for Ms. Foxwell. For instance, recognizing that Ms. Foxwell may be having difficulty addressing the need to clean up her unit, DSHA arranged to have a visiting nurse from Delaware Health and Social Services Division of Services for the Aging and Adults with Physical Disabilities. Ms. Foxwell declined to allow the nurse to meet with her on several occasions and did not respond to calls and materials sent to her from the Division.

Further, in January 2024, in response to a request for service related to a leaking hot water heater, an outside company technician reported that the property was nearly impassible. The technician had to be convinced by DSHA to bring in a new hot water heater and make the repairs, despite his concern that it was unsafe to move about the unit carrying heavy items. Finally, despite that DSHA staff had made special accommodations for Ms. Foxwell to have an independent trash container available to her, not requiring her to transport material to the common trash collection locations in the complex, the unsafe conditions remained.

For Ms. Foxwell's part, she claims the materials in the unit are not trash. She has made attempts to clean up, including purchasing a small shed unit that she had hired someone to put together, but that effort ended when the person failed to put the unit together and DSHA told her she could not have an ancillary building on the property. She further states that the real problems in her unit are related to the hot water heater leak.

### **Discussion**

This Court is not without empathy for the position that Ms. Foxwell is in. She has limited means, both physically and financially, to remediate her unit. This has been her home for many years and, if evicted, she faces an uncertain future. Eviction will bar her from future subsidized housing.

However, we are also cognizant of the fact that Ms. Foxwell has refused nearly every support that has been offered her. This Court appreciates that DSHA has gone to great lengths to find some reasonable solution for this situation that would not result in her eviction, only to be thwarted by Ms. Foxwell at each turn. In the end, their only recourse is for the health, safety and welfare of all of their residents, and for Ms. Foxwell herself.

The photographs, documentary evidence and testimony in this case point to only one conclusion in this case: that DSHA has met its burden of proof in showing that Ms. Foxwell has failed to maintain her

unit in a safe and clean manner. This failure is a substantial risk to her own health and welfare, as well as a potential threat to others. The Court specifically finds that this is a substantial breach of the contract, for which DSHA can seek and should obtain possession of the property.

### Conclusion

For the reasons stated above, the Court finds in favor of the plaintiff, DHS A and against the defendant, Diana Foxwell. An order of possession is granted to DSHA. However, the Court is *sua sponte* extending the period within which the plaintiff may request a writ of possession to up to 60 days from the date of this decision. With any request for a writ, DSHA must also file an affidavit detailing its efforts to relocate Ms. Foxwell. Defense counsel is ordered to assist in the development of that relocation plan. If the reason for the lack of a reasonable relocation plan is Ms. Foxwell's refusal to participate, the Court will take that into consideration in issuing the writ of possession.

IT IS SO ORDERED 08th day of October, 2024

/s/Alan G. Davis \_\_\_\_\_ (SEAL)  
Chief Magistrate  
For the 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).