

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

CIVIL ACTION NO: JP13-24-017535

SHAKIRA GARDNER VS JAMES STREET ENT LLC

ORDER ON TRIAL DE NOVO

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

On November 21, 2024, Plaintiff SHAKIRA GARDNER brought an illegal ouster summary possession action against Defendant JAMES STREET ENTERPRISES LLC. The Court below heard the matter and issued a decision on January 28, 2025, awarding both possession and a monetary judgment to Plaintiff. On January 29, 2025, Defendant filed a timely appeal.

On February 27, 2025, a three-judge panel consisting of Deputy Chief Magistrate Sean McCormick, Justice of the Peace Nina Bawa, and Justice of the Peace Peter Burcat convened for the trial de novo appeal via Zoom. Trial commenced, but had to be continued due to technical difficulties. Trial was completed on April 1, 2025. Plaintiff is represented by Dorronda Bordley, Esq. Defendant is represented by Form 50 Agent Nazir Nisar. Pre-trial, Plaintiff seeks treble damages due to illegal ouster. Defendant indicates he does not seek any counterclaim at the commencement of trial, but raises a verbal counterclaim in the middle of trial. At the time of the hearing, Plaintiff no longer seeks possession of the rental unit.

The parties stipulated to both the original lease dated September 1, 2023, and the October 14, 2024 lease. The parties also stipulated to the fact that the most recent rent was \$925.00 per month.

Plaintiff Gardner testified that she and the landlord came to a verbal agreement that the landlord would provide her with funds from the rental assistance program if the tenant agreed to vacate. Plaintiff Gardner packed up the majority of her items with the intention of leaving the unit. Plaintiff argues that the landlord agreed to give her \$1830.00, but only gave her a check for \$830.00, so she did not surrender possession of the rental unit. Plaintiff asserts she left some of her belongings and intended to return to the unit to get the rest of her items and the remaining money. Plaintiff testifies that since she was short on funds, her new place fell through. Plaintiff testifies that she went back to the rental unit where some of her belongings remained the same night and the door was unlocked, but since her bed had been moved she stayed at her boyfriend's place that night. Plaintiff testifies when she went back the following day, the unit was locked and her key did not work. Plaintiff testifies that the landlord told her to "stay the F away..." from the unit or he would call the police for criminal trespass. Plaintiff testifies that the items left behind included a television, air conditioner, and obituaries and pictures. Plaintiff testifies she never got the balance of the money the landlord promised her, she never got her security deposit, and she never regained possession of the rental unit. Plaintiff testifies she stayed in hotels and paid to stay in her boyfriend's mother's home. Plaintiff testifies that she still has the key. Plaintiff submits into evidence the stipulated agreement from the parties from a prior court action, rental assistance approval letter, photographs of the items left behind in the unit, receipt for the television, hotel receipts, and text messages.

Defendant argues that he gave the Plaintiff both \$1000.00 cash and \$830.00 via check at the time she moved out. Defendant asserts that Plaintiff left the unit and gave the landlord the key. Defendant testifies he did not change the locks. Defendant testifies that the security deposit had been used for prior rent. Defendant testifies that the

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tenant surrendered possession of the unit so he re-rented it to a new tenant in December 2024. Defendant submits into evidence the ledger, \$830.00 check paid to the tenant, and text messages.

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.

25 Del. C. §5313. Unlawful ouster or exclusion of tenant.

If removed from the premises or excluded there from by the landlord or the landlord's agent, except under color of a valid court order authorizing such removal or exclusion, the tenant may recover possession or terminate the rental agreement. The tenant may also recover treble the damages sustained or an amount equal to 3 times the per diem rent for the period of time the tenant was excluded from the unit, whichever is greater, and the costs of the suit excluding attorneys' fees.

The Court finds, by a preponderance of the evidence, that Plaintiff failed to meet the burden of proof to show that this was an illegal ouster. The Court is the finder of fact in a bench trial. Plaintiff must prove each element of a claim by a preponderance of the evidence. Because the Court is the finder of fact, it is up to the Court to weigh the credibility of witnesses and resolve conflicts in witness testimony. Plaintiff and Defendant had contradicting testimony, and neither parties' credibility outweighed the other. As such, Plaintiff failed to tip the scales in their favor to show that an illegal ouster occurred. Using the reasonable person standard, Plaintiff's intent upon leaving the rental unit was clear that she intended only to pick up items and not to reoccupy the property. The Court finds that Plaintiff left the unit with her personal belongings and surrendered possession, but then changed her mind when she was unable to access her new unit.

As to Defendant's counterclaim, the Court disallows the counterclaim as untimely. At the commencement of the trial de novo appeal trial on February 27, 2025, Defendant indicated on the record that no damages were sought. However, at the time the trial resumed on April 1, 2025, Defendant raised a verbal counterclaim for back rent and damages. As this was in the middle of the proceeding, the Court disallowed the counterclaim as untimely and improperly filed. The Court reviewed the ledger to determine the amount of the security deposit. The ledger indicates the tenant also paid the last month's rent. 25 Del. C. § 5310 prohibits any "assurance money" or other payment that is not an application fee, security deposit, surety bond, or pet deposit. Since this is prohibited by code, and Defendant intended no financial claim (regardless of attempts to do so mid-trial), the Court holds that both the security deposit and last month's rent should be returned to Plaintiff as a matter of law. As such, the Court awards to Plaintiff the return of both last month's rent (\$995.00) and security deposit (\$995.00).

Finally, as to the notion put forth by Plaintiff that the only way to terminate a lease is via court order, this is inaccurate and without standing. Tenants often surrender possession to the landlord without a court order.

The Court enters judgment in favor of Plaintiff Gardner and against Defendant James Street Enterprises LLC in the amount of \$1990.00 plus \$45.00 court costs plus 9.5% post judgment interest per annum.

IT IS SO ORDERED 02nd day of May, 2025

/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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