

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
COURT NO. 9**

MICHAEL WILSON
APRIL WALLACE
Plaintiff Below,

VS

MICHAEL WILSON
APRIL WALLACE
Defendant Below,

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C.A. No. JP9-24-000399

TRIAL DE NOVO

Submitted: June 24, 2025
Decided: August 7, 2025

APPEARANCES:

Michael Wilson, Plaintiff/Appellant, appeared Pro se
April Wallace, Defendant/Appellee, appeared represented by attorney Eric Episcopo

Sean McCormick, Deputy Chief Magistrate
Peter Burcat, Justice of the Peace
Nina Bawa, Justice of the Peace

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6CF14A3J (3/1/19)

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
COURT NO. 9**

CIVIL ACTION NO: JP9-24-000399

MICHAEL WILSON VS APRIL WALLACE

ORDER ON TRIAL DE NOVO

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

Procedural History of the Case at Bar.

This matter began as an action seeking summary possession filed by Plaintiff and Landlord Michael Wilson against Defendant and Tenant April Wallace on December 26, 2024. The complaint alleged that Wallace was short a portion of December's rent as well as utilities; the amount claimed was \$771 plus possession of the unit. A trial date was initially set for February 7, 2025. However, events quickly overtook that date. On January 22, 2025 Wallace sought pursuant to 25 Del. Code § 5115 a forthwith hearing, claiming that Wilson had cut off the electricity to the unit on December 30, 2024. Since the heating system ran on electricity the unit had no heat in addition to lighting or function cooking appliances. Fearing for her children, Wallace left the unit and stayed initially with family and then in a hotel. She claimed that Wilson advised her on January 13, 2025 that he had changed the locks and was in the process of moving her possessions to a shed in the fenced-in back yard of the property. Given the nature of the allegation – that Wilson had intentionally and constructively evicted Wilson and possibly had caused irreparable harm to Wallace's property – the application for a forthwith hearing was granted and a hearing date set for January 31, 2025.

At the time of that hearing the Court below found that Wallace had been unlawfully ousted from the property. It was at this juncture that Wallace advised the Court that she did not wish to re-possess the property, rather she simply wished to retrieve her personal property. Accordingly, the Court below held that the rental agreement between the parties was terminated. The Court then arranged a date (February 6, 2025 at 3 pm) by which the parties along with Court Constables would meet at the property to allow Wallace to recover her property. The Court closed the forthwith hearing by advising the parties that the February 7, 2025 trial date would be maintained and that the claim for rental debt as well as any damages suffered as a result of the loss of power or the lockout would be considered at that time (although as of the date of the forthwith hearing no counter-claim for damages had been articulated of filed.) Both parties were encouraged to seek counsel. Wallace did so. Thomas McDonough, Esq. of

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Delaware Volunteer Legal Services, Inc. entered his appearance on February 7, 2025 along with an unspecified claim for damages. He then sought a continuance given that he had just become involved with the case. The continuance request was granted and the debt and damages hearing was rescheduled to March 31, 2025.

In the intervening time counsel was substituted – Eric Episcopo Esq. of the Community Legal Aid Society entered his appearance as well as an extensive counterclaim that sought treble damages pursuant to 25 Del. Code § 5313 as a result of Wallace being intentionally excluded from the unit as well as the value of property that was destroyed or damaged as a direct cause of Wilson’s actions. The cost of storage of personal items, the cost of staying in a hotel, and rent-abatement based upon conditions were but some of the claims articulated. Simultaneously Mr. Episcopo filed a motion seeking to dismiss the initial filing of Wilson seeking back rent and possession.

At the time of the March 31, 2025 hearing the Court below granted the motion to dismiss, holding that the 5-day letter upon which the filing was based was insufficient for its purpose in that it did not meet the requirements set forth within 25 Del. Code § 5502. Not only was the verbiage insufficient, but the letter – which was dated December 26, 2024 – did not give Wallace 5 days to comply given that the case was filed on December 26. The Court also held that the initial complaint itself was defective in that it did not comply with the requirements set forth within 25 Del. Code § 5707. The Court noted that the dismissal was without prejudice leaving Wilson the right to refile as he saw fit. Thereafter, given the anticipated breadth of Wallace’s counterclaim, and given that the parties had not completely served each other with evidence, the Court continued the counter-claim portion of the suit to April 25, 2025. Again, it was suggested that counsel be obtained.

The April 25th hearing went forward with the Court reminding the parties of its previous holding that the rental agreement was terminated by its order stemming from the January 31st hearing and that the initial rental complaint was dismissed as a result of the March 31st hearing. The Court then went on to consider testimony and evidence regarding Wallace’s damage claim. In an order dated May 19, 2025 the Court awarded Wallace a judgment in the amount of \$16,421.10. From this Wilson filed an appeal on May 22, 2025 to a three-judge panel pursuant to 25 Del. Code § 5717. The appeal was taken up on June 24, 2025 by Deputy Chief Magistrate Sean McCormick and Judges Nina Bawa and Peter Burcat. Prior to the appeal date, Mr. Episcopo filed motions seeking dismissal of the appeal.

The Motion for Dismissal

The motion filed on June 6, 2025 sought dismissal based upon two grounds – firstly, that the appeal was untimely filed in that it should have been filed as a result of the ruling given on as a result of the March 31st hearing (in which the Court below dismissed Wilson’s rent and possession claim) as

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opposed to the final order delivered by the Court below on May 19th; and secondly, that a three-judge panel was not the appropriate forum for this appeal.

Counsel's assertion in the first part – that the ruling resulting from the March 31st hearing which dismissed Plaintiff's case – should have been treated as a final verdict on the matter is wholly without merit. Although the Court below advised that the Plaintiff's claims would be dismissed at that juncture, the balance of the matter – the counter-claim – had yet to be considered. Simply put, the entirety of the case had yet to be considered. The final decision regarding the entirety of the claims was not announced until May 19th. It is that date that begins the count for appellate purposes. What Counsel suggests is that parties should file interlocutory appeals at any moment that the Court holds against them in a portion of the claims. This is simply not appropriate. Hypothetically, if Wallace's counterclaim had come to nought, would Wilson have had reason to appeal? While he may not have succeeded in his rental claim, he did regain possession and was granted the opportunity to refile his rent claim in the form of a debt action.

It is the second part of the motion to dismiss that is meritorious. It is uncontested that, at the time the matter first came before the Court below (January 31, 2025) possession was no longer at issue. In-point-of-fact, included in Wilson's appeal exhibits was an undated letter on Delaware Volunteer Legal Service's letterhead seeking a return of Wallace's security deposit. In the body of the letter it states that Wallace had vacated the unit on December 31, 2024. If that were the case, it would mean that Wallace complied with Wilson's demands included in his 5-day letter (dated December 26, 2024) within 5 days, leaving only the issue of the rental debt for consideration. The Court below recognized this fact. The order resulting from the January 31, 2025 hearing was clear that, since possession was no longer an issue, that matter would move forward solely as a debt action. And, if now a debt action, appeals should be taken pursuant to 10 Del. Code § 9571 to the Court of Common Pleas and not to a three-judge panel. To this end, Counsel supplied the panel with caselaw supporting his position (*Wise v. G-Town Partners, LP*, 2015 WL 24615 *4 (Del. Com. Pl. January 20, 2015; Rennie, J.) and *Gary v. Sophia's Place West*, 2019 WL 2714816 (Del. Com. Pl. June 28, 2019; Smalls, J.)) both of which followed fact patterns nearly identical to this instant matter. For this reason, the matter is dismissed for lack of jurisdiction.

The fact that the matter is dismissed is only announced in the body of this order, but the possibility that it might be caused Wilson to ask the panel a multitude of questions at the time of its hearing in June. He blamed the Court staff for giving him the wrong appeal information and inquired if he might still appeal to the Court of Common Pleas. To this end, he was given the same advice by that panel that he was given by the Court below – perhaps he should consult with an attorney. The appeal threshold allowed for pursuant to 10 Del. Code § 9571 is 15 days; the threshold allowed for pursuant to

25 Del. Code §5717 is 5 business days. Wilson filed this appeal on the 3rd day after the decision of the Court below was rendered. Might the fact that he filed an appeal to a three-judge panel toll the time period upon which a Court of Common Pleas may be sought? That question is left to the Court of Common Pleas to answer should Wilson inquire.

THIS MATTER IS HEREBY DISMISSED FOR LACK OF APPELLATE JURISDICTION.

IT IS SO ORDERED 07th day of August, 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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