



IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT KRAVIS,	:	
	:	
Petitioner Below/ Appellant,	:	
	:	No. 311,2022
	:	
v.	:	
	:	On Appeal from the
JUSTICE OF THE PEACE COURT No. 17 and MHC MCNICOL PLACE, LLC	:	Superior Court of the State of Delaware, C.A. No. S22A-804-001
	:	
	:	
Respondents Below/ Appellee.	:	

**CORRECTED**  
**APPELLANT'S OPENING BRIEF**

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## NATURE OF THE PROCEEDING

This is an appeal from Superior Court’s dismissal of a Petition for Writ of *Certiorari* seeking review of a Justice of the Peace Court decision granting an order of possession to MHC McNicol Place, LLC (“McNicol”) against Robert Kravis (“Kravis”). The central issue in dispute is whether Justice of the Peace Court must recognize and apply the United States Fair Housing Act, 42 U.S.C. § 3601 *et seq.*, and the Delaware Fair Housing Act, 6 *Del. C.* § 4600 *et seq.*, when deciding whether to grant a judgment of possession. which limit the rights of landlords dealing with tenants who are “persons with disabilities” under those statutes

The order of possession was entered by a three-judge court on March 21, 2022. Order On Trial *De Novo* (“*De Novo* Order”); J.P. Dkt. 3/21/2022; A009.<sup>1</sup> On April 9, 2022 Kravis filed a Petition for Writ of *Certiorari* and a Motion for Stay of Eviction, asserting that the decision had to be voided and remanded to the trial court for a new trial because of errors of law by the three-judge panel. Petition for Writ of *Certiorari* at 8-9; A054-55. Superior Court granted a stay of the possession order pending its decision on the writ. Super. Dkt. #1; A006.

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<sup>1</sup> Justice of the Peace Court’s docket entries are cited herein as “J.P. Dkt. [and the date of the entry.]” This Court’s docket is cited “Supr. Dkt. \_\_\_.” Superior Court’s docket is cited “Super. Dkt. \_\_\_.”

On August 26, 2022 Superior Court dismissed the petition. Superior Court Memorandum Opinion (“Mem. Op.”), attached hereto as Exhibit A. This appeal was filed on August 30, 2022. Super. Dkt. #24; A002. Superior Court then issued a stay of the execution of the order of possession pending the decision of this Court. Super. Dkt. #29; A001.

Superior Court’s dismissal of the petition was based in part on 25 *Del. C.* § 7016(b)(2), which gives landlords of manufactured home communities a right to terminate rental agreements under certain circumstances. *Id.*, Mem. Op. ¶ 12. The Superior Court opinion did not discuss whether landlords may exercise that right when doing so would violate the Fair Housing Acts.

By this appeal Kravis seeks rulings that (1) Justice of the Peace Court’s failure to consider whether the Fair Housing Acts prohibited McNicol from evicting Kravis because he had unauthorized caregivers living with him, and (2) its prohibition of discovery of evidence relating to the fair housing issue on the ground that it was not relevant, were errors of law manifest on the face of the record, and (3) Superior Court erred by dismissing the writ notwithstanding those errors. Kravis further seeks an order requiring a new trial and directing Justice of the Peace Court to determine whether Kravis is a person with a disability, as defined under 42 U.S.C. § 3602(h) and 6 *Del. C.* § 4602(10) referencing 6 *Del. C.* § 4502), and whether excusing his noncompliance with the lease requirement

upon which the landlord relied to obtain the order of possession would be a “reasonable accommodation” to which he is entitled under 42 U.S.C. § 3604(f)(3)(B) and 6 *Del. C.* § 4603A(a)(2).



## STATEMENT OF FACTS

Appellant Kravis, Defendant in Justice of the Peace Court and Petitioner in Superior Court, owns and resides in a manufactured home located on a rented lot. McNicol is the landlord for the rented lot. Complaint and attachments, J.P. Dkt. 6/17/2021; A019.

McNicol brought a summary dispossess action against Kravis in Justice of the Peace Court alleging, *inter alia*, that he had violated his lease by allowing “guests/residents” who had not been authorized by the landlord to live in the home with him. *Id.*<sup>2</sup> They were Kravis’ grandson and girlfriend (hereinafter “Losonczy and Jacobs”) who acted as caregivers for him, *De Novo* Order, A018. His need for them to live with him because of his condition – he had just returned to his home after two years of hospitalization and rehabilitation - was the basis of his defense. A017-18. The court rejected that defense, stating it did not want to “handicap” landlords “faced with the eviction of aged or infirm tenants,” and entered an order of possession. *De Novo* Order; J.P. Dkt. 3/21/2022; A018. The

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<sup>2</sup> The other violation alleged by the landlord was that Kravis had not repaired the damage to his home caused by a falling tree. Complaint and attachments, A021, 023. The lease required McNicol to maintain and remove large trees when necessary, *id.*, A026 and Kravis argued that the damage was from a tree McNicol should have had cut down. *De Novo* Order, A018 The *De Novo* Order does not say which party was responsible for repairing the tree damage, and did not refer to the tree damage as a basis for the order of possession. A017-18.

court did not discuss the Fair Housing Acts, which place special burdens on landlords of tenants who are “persons with disabilities” thereunder. *See* 17-18 *infra*.

Kravis sought *certiorari* review, asserting in his petition that Justice of the Peace Court had committed an error of law by basing its decision on its desire to avoid disadvantaging landlords who had infirm tenants, without considering or even acknowledging the federal and state statutory law requiring that when the facts are appropriate persons with disabilities be excused from some lease requirements. Petition for Writ of *Certiorari*, A051-52.

The *certiorari* petition also sought review of the trial court’s reaffirming of the denial of discovery and the quashing of a trial subpoena, both of which sought information relating to the landlord’s denial of Losonczy’s and Jacobs’ applications for approval to reside in Kravis’ home, on the ground that the information was not relevant. *De Novo* Order; A017. Kravis sought *certiorari* review of that ruling, as an error of law appearing on the face of the record – the *De Novo* Order’s explicit rejection of tenants’ rights and landlords’ obligations flowing from the Fair Housing Acts.

The Superior Court dismissed the Petition, stating that “Petitioner's evidentiary contentions and the application of allegedly relevant disability accommodation statutes are not the proper subject of *certiorari* review.” Mem. Op.

¶ 12. This conclusion appears to be based on the belief that the Delaware Landlord-Tenant Code does not leave room for other statutes that govern tenants' rights. *See* Mem. Op. ¶ 12.

\*\*\*\*

Kravis believes that the *De Novo* Order and the Complaint alone provide an adequate record for review with regard to whether Justice of the Peace Court proceeded manifestly contrary to law, because they show that the court rejected a central tenet of the Fair Housing Acts, that tenants with disabilities are entitled to special consideration, *see infra* 17-18, and that the court ruled that information relevant to determining whether Kravis had a right under the Acts to have the caregivers reside with him, notwithstanding the landlord's disapproval was not relevant to the case. However, if this Court determines that more information is necessary for proper *certiorari* review, additional documents in the docket that contain pertinent information may be considered part of the reviewable record, in accordance with *Black v. Just. of the Peace Ct. 13*, 105 A.3d 392 (Del. 2014) discussed *infra* 12.

Specifically, the *De Novo* Order indicated that Kravis was infirm and that his grandson and his girlfriend were acting as caregivers for him but did not include any other facts about his need for live-in care. A17-18 The documents linked to the entry at J.P. Dkt. 2/18/2022, Response to Motion to Quash and

Motion for Reconsideration (“Response”), A041, A043, and the entry at J.P. Dkt. 2/10/2022, Defendants’ Motion for Discovery in a Summary Dispossess Matter (“Discovery Motion”), A034 contain, *inter alia*, the following information that the trial court had before it granted the *De Novo* Order: Kravis is 78 years of age. A041. He has had a traumatic brain injury and multiple strokes, with resulting memory problems. A034. He was hospitalized, housed in a nursing home and in a group home due to medical problems from January 2020 to February 2022. A041. Because of his medical condition, when he was ready to return to his home from a nursing home he needed live-in help in order to be safe at home. A044.

The *De Novo* Order stated that Losonczy and Jacobs had applied for residency in late December 2021 or early January 2022 but did not include information about their request. The Response includes a copy of a January 3, 2022 letter from Kravis’ counsel to McNicol’s counsel asking for an explanation for the denial of the applications and explaining the basis for counsel’s belief that Kravis was a person with a disability as defined by the Federal Fair Housing Act 42 U.S.C. § 3602(h) and the State Fair Housing Act, 6 *Del. C.* § 4602(10) due to his traumatic brain injury and multiple strokes, and that he was therefore entitled under the Fair Housing Acts, to a “reasonable accommodation.” This accommodation would have allowed Losonczy and Jacobs to reside with him in order to help him with his disability, notwithstanding the landlord’s desire to

exclude them. A043. The Discovery Motion noted Losonczy's and Jacobs' history of living with, and providing caregiving services to, Kravis for several years without objection by the landlord. A034-36.

The *De Novo* Order also rejected Kravis' efforts to obtain and have at trial information relating to McNicol's denial of Losonczy's and Jacobs' applications for approval to reside in Kravis' home, on the ground that the information was not relevant. *De Novo* Order, A017 The relationship between the request for approval of the caregivers' residing in Kravis' home and his rights under the Fair Housing Acts is not addressed in the Order, but the Discovery Motion provides that information. A036.

## SUMMARY OF ARGUMENT

### I.

1. Justice of the Peace Court proceeded contrary to law in granting an order of possession because, as its Order on Trial *De Novo* shows, it rejected the statutory requirement that a landlord grant a “person with a disability” a “reasonable accommodation,” as those terms are defined under the statutes, such as an exemption from particular lease provisions and landlord practices, when necessary to enable the tenant to have an equal opportunity to use and enjoy his dwelling.

2. The Face of the record shows that Justice of the Peace Court rejected the statutory requirement that tenants with disabilities be given special consideration, and did not apply the Fair Housing Act, 6 *Del. C.* § 4600 *et seq.* and the United States Fair Housing Act, 42 USC 3601 *et seq.* to determine whether Kravis was person with a disability who, as a result, was entitled to the accommodation he sought – an exemption from the lease requirement that live-in help be allowed only as approved by the landlord. The court did so because, as the Order on Trial *De Novo* states, the court did not want to “handicap every landlord faced with the eviction of aged or infirm tenants, whose caregivers do not abide by the community rules.

3. Superior Court erred because it did not rule that the trial court’s desire to avoid handicapping landlords of infirm persons, in contravention of the Fair

Housing Act requirements, and its failure to perform the statutorily required analysis, were errors apparent on the face of the record. made.

## II.

4. Justice of the Peace Court also proceeded contrary to law when it prohibited discovery and quashed a trial subpoena, both of which sought evidence relating to why the landlord's denial of the request that Kravis's caretakers be permitted to live with him, on the ground that the information was not relevant, even though it is relevant under the Fair Housing Acts to the issue of whether an accommodation is a reasonable accommodation.

5. Superior Court erred by failing to recognize that Justice of the Peace Court's decision finding that type of information irrelevant was not a mere evidentiary decision that cannot be reviewed on *certiorari*. Superior Court was not called on to weigh the evidence or review the record. It was called on to rule that Justice of the Peace Court commits a reviewable error of law when it says evidence made relevant by the Fair Housing Acts is irrelevant.

**I. JUSTICE OF THE PEACE COURT ERRED BY DISREGARDING THE TENANT’S FAIR HOUSING ACT RIGHTS AND FAILING TO DETERMINE WHETHER HE WAS ENTITLED TO A REASONABLE ACCOMODATION EXEMPTING HIM FROM THE LEASE PROVISION ON WHICH THE ORDER OF POSSESSION WAS BASED, AND SUPERIOR COURT ERRED BY APPROVING THAT.**

**Question Presented**

Was Superior Court required to rule that the trial court acted contrary to law by granting an order of possession without determining whether the fair housing acts entitled the tenant to an exemption from the lease provision upon which the order of possession was based? This issue was raised below at A057-58, 072, 074-081.

**Scope of Review**

This Court reviews issues of law *de novo*. *Est. of Jackson v. Genesis Health Ventures*, 23 A.3d 1287, 1290 (Del. 2011).

For a common law writ of *certiorari* to issue, the judgment being reviewed must be final and there must be no other basis for review. *See Maddrey v. Justice of the Peace Court 13*, 956 A.2d 1204, 1213 (Del. 2008). If the petition meets these threshold requirements, the reviewing court must determine if it raises the type of claim reviewable on *certiorari*. *See id.*, citing *Shoemaker v. State*, 375 A.2d 431, 437 (Del. 1977); *In Re Butler*, 609 A.2d 1080, 1082 (Del. 1992).



The only issues that may be reviewed on a common law writ of *certiorari* are “whether the lower tribunal (1) committed errors of law, (2) exceeded its jurisdiction, or (3) proceeded irregularly. *See Maddrey*, 956 A.2d at 1213, citing *Woolley* at § 896 and cases.

Review is on the record. Reversal for an error of law is appropriate where “the record affirmatively shows that the lower tribunal has ‘proceeded illegally or manifestly contrary to law.’” *Id.* 1214 (citing *Christiana Town Ctr., LLC v. New Castle County*, 2004 WL 2921830, at \*2 (Del. 2004)). Reversal for irregularities of proceedings occurs “if the lower tribunal failed to create an adequate record for review.” *Id.*

The record reviewed should be “nothing more than the initial papers, limited to the complaint initiating the proceeding, the answer or response (if required), and the docket entries.” *Id.* at 1216. If Justice of the Peace Court does not sufficiently docket the basis for its decisions and the docket entries do not contain an adequate record for review, “the docket itself can refer to a separate document that contains this information,” which may be reviewed as part of the record. *See Black, supra*, 105 A.3d at 396 n. 17 (finding that the court had proceeded irregularly and reversing dismissal of petition for *certiorari* where the court’s docket entry did not “demonstrate what evidence was considered, what standard was applied, and

whether the evidence met that standard,” and no document referred to in the docket contained that information).

### **A. Merits of Argument**

Superior Court and Justice of the Peace Court both erred by concluding that, because the landlord had established a *prima facie* case under the eviction statutes, it was entitled to a judgment for possession. A tenant with a disability is protected by fair housing laws. If he needs an accommodation he is entitled to request it, and if the request is reasonable, the landlord is obligated to provide the accommodation. *See 17-18 infra*. Where a landlord is violating the Fair Housing Acts by proceeding with an eviction complaint instead of granting the accommodation, the Justice of the Peace Court would be committing legal error by entering a judgment for possession. An order of possession was granted against Kravis because he had two unauthorized people living in his home with him, a violation of a provision in his lot lease agreement. A017-18. Justice of the Peace Court erred by failing to determine whether the Fair Housing Acts’ reasonable accommodation requirement entitled him to an exemption from that lease provision, and Superior Court erred by not finding that to be an error of law.

Superior Court viewed the Delaware Landlord-Tenant Code to be the only relevant law. It found that Justice of the Peace Court did not “proceed illegally or manifestly contrary to law” because there were sufficient grounds for eviction under

that statute Mem. Op. ¶ 12. Superior Court’s analysis was straightforward but incomplete. It made four points

1. the Delaware Landlord Tenant Code ‘regulates all legal rights and remedies that stem from a residential agreement’;
2. non-compliance with a reasonable lease provision is a ground for eviction under the Landlord-Tenant Code;
3. the landlord complied with the requirements of § 7016(b)(2);
4. the landlord met its burden of proof by a preponderance of the evidence.<sup>3</sup>

Superior Court concluded that the landlord “had sufficient grounds to initiate and prevail in a summary possession action,” so that Justice of the Peace Court had not proceeded manifestly contrary to law in granting the order of possession. Mem. Op. ¶ 12.

Superior Court’s analysis did not consider a tenant’s right to assert defenses, recognized by *25 Del. C. § 5709*.<sup>4</sup> Superior Court proceeded without recognizing

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<sup>3</sup> Although the court did not specify what was proved by a preponderance of evidence, presumably it was that there had been non-compliance with a reasonable lease provision and that the landlord had complied with the requirements of § 7016(b)(2).

<sup>4</sup> “At the time when the petition is to be heard, the defendant or any person in possession or claiming possession of the rental unit may answer orally or in writing. If the answer is oral, the substance thereof shall be endorsed on the complaint. The answer may contain any legal or equitable defense or counter-claim, not to exceed the jurisdiction of the court.” *25 Del. C. § 5709*.

that a landlord's establishment of a *prima facie* case of non-compliance with the lease does not necessarily entitle the landlord to an order of possession.

Kravis had a defense based on the Fair Housing Acts that had to be taken into account before Superior Court could conclude Justice of the Peace Court had not acted contrary to law when it granted the order of possession. The Delaware Fair Housing Act makes it unlawful to “discriminate in the ... rental of ... a dwelling to any person because of ... disability. 6 *Del. C.* § 4603(b)(2).

Discrimination on the basis of an individual's disability is defined to include “[a] refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” *Id.*, § 4603A(a)(2). The Federal Fair Housing Act has almost identical language. *See* 42 U.S.C. § 3604(f)(1) and (3).

Kravis' defense was that because of his infirmity he needed Losonczy and Jacobs to live with him as caretakers, even if the landlord had not authorized their residence with him, and the landlord did not otherwise allow non-authorized people to reside with tenants in their homes. *See* A017-18 (referring to Kravis's two-year hospitalization and rehabilitation, his argument that his grandson and girlfriend were acting as caregivers for him, and the court's intention not to establish a precedent that would handicap landlords faced with evicting certain infirm tenants).

Kravis' request to the landlord and the Justice of the Peace Court for special treatment was consistent with the Fair Housing Acts because they require that people with disabilities be treated differently than others. Tenants who are persons with disabilities are entitled to reasonable accommodations when necessary to "afford [a handicapped] person equal opportunity to use and enjoy a dwelling," and treat a failure to provide that as discrimination. *Samuelson v. Mid-Atlantic Realty Co., Inc.*, 947 F.Supp. 756, 759 (D. Del. 1996), (emphasis in the original).

Justice of the Peace Court rejected the idea of giving tenants with disabilities special treatment because it did not want to establish a precedent that would handicap landlords who had infirm tenants. A018. The *De Novo* Order did not mention the Fair Housing Acts or make any attempt to reconcile them with the court's intention to not to disadvantage landlords of persons with disabilities. Superior Court did not consider whether this basis for Justice of the Peace Court's rejecting Kravis' defense was an error of law, *inter alia*, because it did not consider the application of the Fair Housing Acts to be a proper subject for review in this case. Mem. Op. ¶ 14 (stating the "the application of allegedly relevant disability accommodation statutes [is] not the proper subject of *certiorari* review").

## The Fair Housing Acts

Whether Kravis was entitled to an exemption from the lease requirement depended on (1) whether he was a person with a disability, and (2) whether the exemption would have been a reasonable accommodation.

The term “‘person with a disability’ means any person who satisfies any 1 of the following: a. Has a physical or mental impairment which substantially limits 1 or more major life activities. b. Has a record of such impairment. c. Is regarded as having such an impairment.” 6 *Del. C.* § 4602(10), referencing 6 *Del. C.* § 4502(17). The same definition for a person with a handicap exists in federal law at 42 USC 3602(h.) Justice of the Peace Court did not decide whether Kravis met the statutory definition.

The Delaware District Court has described the reasonable accommodation requirement:

“Discrimination includes ‘a refusal to make *reasonable accommodations* in rules, policies, practices, or services, when such accommodations may be necessary to afford [a handicapped] person *equal opportunity to use and enjoy a dwelling*.” 42 USC 3604(f)(3)(B) (emphasis added). Under this provision, “affirmative steps are required to change rules or practices if [such steps] are necessary to allow a person with a disability an opportunity to live in the community.” *Horizon House Developmental Servs. Inc., v. Township of Upper Southampton*, 804 F.Supp. 683, 699 (E.D.Pa. 1992 ), *aff’d mem.*, 995 F.2d. 217 (3d Cir. 1993 ). Further, a reasonable accommodation “means changing some rule that is generally applicable to everyone so as to make its burden less onerous on the handicapped individual.” *Oxford House, Inc. v. Township of*

*Cherry Hill*, 799 F.Supp. 450, 462 n. 25 (D.N.J. 1992); *see Alliance for the Mentally Ill v. City of Naperville*, 923 F.Supp. 1057, 1078 (N.D.Ill. 1996).

*Samuelson*, 947 F.Supp. at 759 (emphasis in the original). *See also* Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations under the Fair Housing Act, May 14, 2004*, <https://www.justice.gov/crt/us-department-housing-and-urban-development> (*hereinafter*, “Joint Statement”). Justice of the Peace Court did not decide whether the exception sought by Kravis was a reasonable accommodation.

Kravis did not ask the Superior Court, nor is he asking this Court, to determine whether he is a “person with a disability” protected by the Fair Housing Acts and whether his request for permission to have Losonczy and Jacobs reside with him even if the landlord did not approve of them was a request for a “reasonable accommodation” under the Acts. That was something the Justice of the Peace Court should have done. Its failure to do so was legal error.

Superior Court considered the Delaware Landlord-Tenant Code to be the only relevant statute. *See* Mem. Op. ¶ 12 (“The Delaware Landlord-Tenant Code ‘regulates all legal rights and remedies that stem from a residential rental agreement.’”). Analyzing the matter before it without regard to the Fair Housing Acts, Superior Court held that once a breach of a lease occurs, and a landlord serves the required notices (25 *Del. C.* § 7016(b)(2), referenced in the Landlord Tenant

Code at 25 *Del. C.* § 5702(11)) the landlord is entitled to a judgment for possession. But the Landlord-Tenant Code did not supersede or nullify the Fair Housing Acts. There is no need to consider the statutes to be in conflict, since there is no reason the statutes cannot be simultaneously applied. Moreover, if there were a conflict between the Landlord-Tenant Code and the federal Fair Housing Act, the Supremacy Clause would require that the federal act prevail. *See O'Malley v. Boris*, 742 A.2d 845, 848 (Del. 1999) (“Under the Supremacy Clause of the United States Constitution, state law is preempted ... when the state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”)(internal quotation marks and citations omitted). Furthermore, if there were a conflict between the Landlord-Tenant Code and Delaware Fair Housing Act, the latter would control. *See Turnbull v. Fink*, 668 A.2d 1370, 1377 (Del. 1995) (“[I]f . . . two acts are irreconcilable, the later enacted statute must prevail over the earlier.”) 6 *Del. C.* § 4603A, the Fair Housing Act amendment, was enacted in 2006. 75 Del. Laws, c. 356, § 25 (2006). 25 *Del. C.* § 5101 was enacted in 1996., 70 Del. Laws, c. 513, § 1, (1996).

If not being held to a lease provision requiring landlord approval of live-in caretakers was a “reasonable accommodation” then landlord’s obligation under the Fair Housing Acts to provide that exemption would have provided Kravis with a defense to the eviction proceeding. Since Kravis would have been required not to



comply with the provision, his non-compliance could not have been a basis for terminating his lease and evicting him.

There is a suggestion in the *De Novo* Order that if the request for approval of Losonczy and Jacobs residing with Kravis to serve as his caretakers had been submitted closer to the time the complaint was filed, the court might have looked at the matter differently. *See De Novo* Opinion, A017-18. Under the Fair Housing Acts there is no limitation on when a request for reasonable accommodation must be made in order to be considered except that it must be made before there is an actual loss of possession, either voluntary or involuntary. *See, e.g., Radecki v. Joura*, 114 F.3d 115, 116 (8<sup>th</sup> Cir. 1997) (holding that the tenant could assert a reasonable accommodation request up until the time of the actual eviction.) *Douglas v. Kriegsfeld*, 884 A.2d 1109 (D.C. Cir. 2005) (Tenant’s request for accommodation, seeking delay of an eviction proceeding.)

Under the Fair Housing Act, unlawful discrimination occurs whenever “a dwelling is ‘denied’ to a renter because of that renter's handicap.” Under federal case law interpreting that provision, a discriminatory denial can occur at any time during the entire period before a tenant is “actually evicted”; actionable discrimination is not limited to the shorter cure period specified in a notice to cure or quit, or to any other period short of the eviction order itself.

884 A.2d at 1121, *citing Radecki, supra*. *See also Bos. Hous. Auth. v.*

*Bridgewaters*, 898 N.E.2d 848, 859 (Mass. 2009) (defendant in an eviction action should have had their reasonable accommodation claim assessed by the court, even

though accommodations were first requested during the eviction trial); *Sinisgallo v. Town of Islip Hous. Auth.*, 865 F. Supp. 2d 307, 339 (E.D.N.Y. 2012) (“The relevant date ... is not when the IHA sent the initial eviction notice, but when the Plaintiffs are actually evicted.”); *Hirsch v. Hargett*, 2019 WL 2613453, at \*5 (C.D. Cal. June 26, 2019) (“A discriminatory denial under the FHAA can occur at any time during the entire period before a tenant is actually evicted.”); *Springer v. Lincoln Shore Owners, Inc.*, 2007 WL 2403165, at \*4 (E.D.N.Y. Aug. 16, 2007) (defendants in a summary holdover proceeding had ability to raise previously unraised FHA defenses, and were barred by *res judicata* from raising them later due to their failure to do so).

Kravis’ request for accommodation was made well before the *de novo* trial, and months before the *de novo* order of possession.<sup>5</sup> The request was timely under the Fair Housing Acts, so there was no basis for disregarding Kravis’ Fair Housing Act rights because of the timing of the request, and Justice of the Peace Court should have determined his rights under the Acts.

By basing its decision on a desire not to handicap landlords who seek to evict infirm tenants, the trial court erred because the reasonable accommodation requirement in the state and federal fair housing laws is inherently burdensome upon

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<sup>5</sup> Kravis made his request for reasonable accommodation on January 3, 2022. Response, A043. The *de novo* trial occurred on February 24, 2022 and the order of possession was granted on April 4, 2022. J.P. Dkt., A009

landlords. The court below, although not applying the Fair Housing Acts' standards, seemed to accept that Kravis is a person with a disability by recognizing that he is an "infirm" tenant. Indeed, Kravis' infirmities, described above, support the conclusion that, because of his fragility, he needs to have someone living with him for him to live safely at home. Basing a decision on a desire to avoid handicapping landlords who are seeking to evict infirm tenants when, as here, the tenant is a person with a disability, is legal error because the fair housing statutes require reasonable accommodations, which by their very nature handicap landlords. Landlords cannot always apply to tenants with disabilities the same standards they use for other tenants. *See --- infra*. Justice of the Peace Court's decision was erroneous as a matter of law because it was based on a desire to avoid establishing a precedent that would reduce the power of landlords of tenants with disabilities, while the reasonable accommodation provision of exists for that very purpose.

**II. JP COURT’S RULING THAT INFORMATION RELATING TO THE LANDLORD’S REASONS FOR DENYING THE CARETAKERS PERMISSION TO RESIDE WITH KRAVIS WAS IRRELLEVANT IS AN ERROR OF LAW MANIFEST IN THE RECORD, SO SUPERIOR COURT ERRED BY FINDING IT EXEMPT FROM *CERTIORARI* REVIEW.**

**A. Question Presented**

Does the face of the record show that Justice of the Peace Court acted manifestly contrary to law when it denied discovery and quashed a subpoena seeking information about the basis for the landlord’s denial of permission for the caretakers to reside with Kravis in his home. This issue was preserved at A056-58, A070, A079-81.

**B. Scope of Review**

This Court reviews issues of law *de novo*. *Est. of Jackson v. Genesis Health Ventures*, 23 A.3d 1287, 1290 (Del. 2011).

*Certiorari* review is on the record. The record for *certiorari* purposes does not include the trial transcript, *Maddrey*, 956 A.2d at 1216, and on *certiorari* a reviewing court will not weigh evidence. It will reverse for an error of law where “the record affirmatively shows that the lower tribunal has ‘proceeded illegally or manifestly contrary to law.’” *Id.*, at 1213 (citing *Christiana Town Ctr., LLC*, 2004 WL 2921830, at \*2).

### C. Merits of Argument

The De Novo Order denied Kravis’s Motion to Reconsider the Court’s Order Denying Discovery made on February 15, 2022 and granted McNicol’s Motion to Quash the Subpeona served on February 17, 2022. (A17). Noting that the information sought “related to the denial of application for residency made by Kravis’s grandson and grandson’s girlfriend in late December 2021/early January 2022,” the court stated that “because the applications were not submitted during the time that this action was initiated, nor during the timeframe allowed to cure, the information requested is not relevant. *Id.*<sup>6</sup>

That was an error of law because, as discussed *supra* at 20-21, a request for reasonable accommodation under the Fair Housing Acts may be made at any time before there is an actual loss of possession. Thus, the application was timely under the Fair Housing Acts. The landlord’s reasons for denying the request are relevant to whether the request was for a reasonable accommodation, so the information was

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<sup>6</sup> Kravis believes Justice of the Peace Court’s description of the information at issue creates a record adequate for proper *certiorari* review. However, if this Court believes additional information is necessary, it is available as part of the reviewable record, in accordance with *Black v. Just. of the Peace Ct. 13, supra*, because the information requested is described in documents linked to J.P. Dkt. 2/10/2022; Discovery Motion, A033 and J.P. Dkt. 2/18/2022, A010; Subpoena, A039. They add to the record that asked that the community owner be ordered to (1) disclose the reasons the occupancy applications were denied, (2) provide copies of the reports and any other information used to support the decision to deny the applications, and (3) produce a copy of the standards or guidelines that McNicol used to evaluate the applications or to admit that no such standards exist. A037.

plainly relevant to Kravis’s Fair Housing Act defense. See *Hovsons, Inc. v. Twp. of Brick*, 89 F.3d 1096, 1104 (3d Cir. 1996) (To establish that the accommodation is not reasonable, a landlord is “required to prove that it could not have granted the variance without imposing undue financial and administrative burdens, imposing an undue hardship ... or requiring a fundamental alteration in the nature of the program...”)(citations omitted)

Superior Court recognized that Justice of the Peace Court ruled “that the evidence relating to the residency applications and fair housing law was not relevant because the applications were not submitted until several months after the summary possession action was initiated.” But it then said the matter was not a proper subject for *certiorari* review, because “there are no fundamental errors on the face of the record.” Mem. Op. ¶ 14. As indicated *supra*, the basis for Justice of the Peace Court’s decision on discovery and the trial subpoena – that the application for residency was not made sooner – rendered its decision a fundamental error of law. *Certiorari* review is appropriate.

## CONCLUSION

For the reasons set forth hereinabove, Kravis respectfully requests that this Court reverse the Superior Court decision and remand the case to the Justice of the Peace Court with instructions to conduct a new trial and to permit the discovery that was denied.

Respectfully submitted,

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