

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

SAMUEL PASSWATERS
Plaintiff Below,
Appellee

VS

MEGAN C VAMMINO
SEAN CALDWELL
Defendant Below,
Appellant

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C.A. No. JP17-19-007853

TRIAL DE NOVO

Submitted: January 22, 2020

Decided: February 5, 2020

APPEARANCES:

Samuel Passwaters, Plaintiff Below/Appellee, appeared *pro se*.

Megan C. Vammino, Defendant Below/Appellant, represented by Erika Tross, Esquire

Alan G. Davis, Chief Magistrate

John C. Martin, Senior Justice of the Peace

Jennifer Sammons, Justice of the Peace

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

CIVIL ACTION NO: JP17-19-007853

SAMUEL PASSWATERS VS MEGAN C VAMMINO ET AL

ORDER ON TRIAL DE NOVO

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

BACKGROUND

Plaintiff Below/Appellee filed a Summary Possession complaint with the Justice of the Peace Court in December 2019 seeking overdue rent for November 2019 and December 2019, per diem rent for January 2020, late fees and court costs. Judgment in the amount of \$1,518.00 plus court costs was awarded to the Plaintiff Below/Appellee. Possession of the rental property was awarded to the Plaintiff Below/Appellee as well. On January 16, 2020, Defendant Below/Appellant filed a timely appeal of the judgment pursuant to 25 *Del.C.* § 5717. This is the decision of the Three Judge Panel hearing the appeal as a Trial De Novo.

DISCUSSION

A Trial de Novo convened on January 22, 2020, before the 3-Judge panel of Judge Davis, Judge Martin and Judge Sammons pursuant to 25 *Del. C.* § 5717(a). At the time of the hearing, Defendant Below/Appellant's motion to dismiss based upon insufficient notice to both tenants was granted. Plaintiff Below/Appellee provided a 5-day notice to Defendant Below/Appellant dated December 5, 2019. This notice was addressed to her alone with the notation of hand delivery in addition to certificate of mailing. Notice was not provided to Sean Caldwell whom Defendant Below/Appellant asserts is also a tenant of the rental property. Plaintiff Below/Appellee asserts Mr. Caldwell, while listed on the original lease agreement, was not present during the signing of the lease agreement on May 23, 2019. Defendant Below/Appellant later verbally requested to have Mr. Caldwell added to the lease agreement.

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Plaintiff Below/Appellee maintains the original lease agreement was provided to the tenant for additional signatures but was never returned.

Pursuant to *25 Del.C. § 5110(b)*, “if the tenant does not sign a written rental agreement which has been signed and tendered to the tenant by the landlord, acceptance of possession and payment of rent by the tenant, without reservation, shall give to the rental agreement the same effect as if it had been signed by the tenant.” It was the expectation of all parties that Sean Caldwell would reside as a tenant in the property located at 17 South Walnut Street, Apartment #37B in Milford, Delaware 19963. Whether this was the initial expectation or not, all parties were aware of his presence at the rental property. Mr. Caldwell’s name clearly appears on the initial rental agreement regardless of whether his signature was on the lease agreement. Later conversations between the parties support the desire to have Mr. Caldwell added to the lease agreement as a tenant. The Plaintiff Below /Appellee received rental payments in this matter without reservation. Due to Mr. Caldwell being a tenant of the rental property, he is entitled to notice as outlined in *25 Del.C. § 5113*.

DECISION

Given that the Plaintiff Below /Appellee failed to provide proper notice as statutorily required to all tenants, the motion to dismiss is hereby GRANTED. This matter is dismissed without prejudice.

IT IS SO ORDERED 05th day of February, 2020

/s/Jenifer Sammons
Justice of the Peace
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).

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