

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

**COURT ADDRESS:
23730 SHORTLY ROAD
GEORGETOWN DE 19947**

CIVIL ACTION NO: JP17-10-001990

BARBARA WRIGHT VS JULIE HOLSTON

**SYSTEM ID: @36698
BARBARA WRIGHT
20398 FOREST RD
MILTON DE 19968**

Submitted: July 26, 2010
Decided: July 30, 2010

Appearances: Both parties appeared *pro se*

Before: Sheila G. Blakely, John C. Martin, and Stephani L. Adams
Justices of the Peace

Adams for the Court

NOTICE OF JUDGMENT/ORDER

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

Barbara Wright (hereinafter "Plaintiff") filed suit pursuant to 25 Del C. §5702(2) to recover unpaid rent and possession of the rental property occupied by the tenant Julie Holston (hereinafter "Defendant"). Trial was ultimately held on June 25, 2010 and on the same date judgment was entered against the Defendant and on behalf of the Plaintiff. A timely appeal was filed by the Defendant and pursuant to 25 Del. C §5717(a), a trial *de novo* was ordered. Below is the decision of the three Judge Panel hearing this appeal.

HISTORY

The Plaintiff and Defendant entered into a lease agreement shortly after Christmas in 2009. On March 2, 2010, the Plaintiff sent a letter to the Defendant demanding past-due rent for February and March, and subsequently filed suit on May 17, 2010 to recover possession and the past-due rent which had continued to accrue. The Defendant failed to appear and a default judgment was entered on behalf of the Plaintiff on June 7, 2010. The Defendant, alleging that she had not received notice of the hearing, moved the Court to vacate the default judgment on June 10, 2010. The motion was granted, and the matter was heard for trial on June 25, 2010. Upon argument of the case, the Plaintiff was awarded a judgment of \$541.50 for unpaid rent, as well as court costs of \$40 and accruing per diem rent at \$21.67, and possession of the rental property. On June 30, 2010, the Defendant filed an appeal of the decision. On the following day, the Defendant filed a forthwith motion alleging that she was without water and sewer services. A non-suit was entered when the Defendant/movant failed to appear for the hearing on the forthwith motion.

The Plaintiff filed a pre-trial motion to dismiss the appeal on grounds that it was frivolous. The Defendant's appeal was filed within the time limit and the Defendant is entitled to an appeal, therefore the Plaintiff's motion to dismiss the appeal is denied.

The Defendant did not refute the Plaintiff's claim that she had sent a demand letter and that the Defendant remained in arrears on rent. The Defendant did dispute the amount of rent, claiming that the original agreement was for \$600 per month while the Plaintiff asserted that it was \$650. The Defendant testified that the lease entered into evidence by the Plaintiff differed from the original lease, however the lease that the defendant presented contained no rental amount. The Defendant also testified that she used the amount of \$650 when she applied for rental assistance. Therefore by a preponderance of the evidence the Court finds that the rent was \$650 per month.

The testimony and evidence offered by the Defendant pertained largely to the water and septic issues alleged in the forthwith filing. The Defendant claimed that the Plaintiff failed to take action to correct waste backing up through the plumbing into the home, so the Defendant at her own expense of \$200 hired a company to come out to the residence and empty the septic tanks. When this did not resolve the problem, the Defendant employed her minor son to go under the trailer and clear a blocked pipe for \$80. The Defendant and her son testified that they were without water for several days during this time. The Court finds that because the Defendant was deprived of the essential services of sewer and water, the Defendant is entitled to recoup the \$280 used to restore those services.

The Plaintiff has shown by a preponderance of the evidence that she is entitled to collect \$1300 which consists of rent for the months of June and July. After giving credit for the \$280 in septic repairs, a judgment is entered in favor of the Plaintiff and against the Defendant in the amount of \$1020 plus court costs of \$40 and possession of the property. Rent shall continue to accrue at the rate of \$21.67 per day until the landlord obtains possession of the rental property. Post judgment interest shall be at 5.75% per annum.

IT IS SO ORDERED this 30th day of July, 2010

A. Blakely for Stephani Adams
(SEAL)
Justice of the Peace/Court Official

