

**IN THE JUSTICE OF THE PEACE COURT NO. 16  
OF THE STATE OF DELAWARE IN AND  
FOR KENT COUNTY**

DEVERELL DELAWRE REALTY LLC., :

C.A. No. JP16-10-006010

Plaintiff Below,  
Appellant,

v.

JOSEPH MAGNER,  
LAURA HATFIELD,

Defendants Below,  
Appellees.

***TRIAL DE NOVO***

Submitted: January 6, 2011

Decided: January 6, 2011

Adam Perza, Esquire, Lynn, May & Perza, P.A., Dover, Delaware. Attorney for  
the Plaintiff/Appellant.

Joseph Magner, Defendant/Appellee, *pro se*.

Laura Hatfield, Defendant/Appellee, *pro se*.

***ORDER***

Arndt, J  
Murray, J  
Cox, J

On January 6, 2011, this Court, comprised of the Honorable Ernst M. Arndt, the Honorable James A. Murray, and the Honorable D. Ken Cox acting as a special court pursuant to 25 *Del. C.* § 5717(a)<sup>1</sup> held a trial *de novo* in reference to a Landlord/Tenant Summary Possession petition filed by Deverell Delaware Realty LLC., (hereinafter referred to as Plaintiff), against Joseph Magner and Laura Hatfield (hereinafter referred to as Defendant or Defendants). For the following reasons the Court enters judgment in favor of the *Plaintiff*.

### **Factual and Procedural Background**

Plaintiff filed a Landlord/Tenant Summary Possession petition with Justice of the Peace Court No. 16 seeking possession, court cost, and accrued rent. This action is based on the Defendants' failure to pay rent. Trial was held on December 20, 2010, and judgment was entered in favor of the Defendants.<sup>2</sup> Thereafter, the Plaintiff filed a timely appeal of the Court's Order pursuant to 25 *Del. C.* § 5717(a). Trial *de novo* was thereafter scheduled and held on January 6, 2011.

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<sup>1</sup> 25 *Del. C.* § 5717(a). *Nonjury trials*. With regard to nonjury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing, within 5 days after judgment, a trial *de novo* before a special court comprised of 3 justices of the peace other than the justice of the peace who presided at the trial, as appointed by the chief magistrate or a designee, which shall render final judgment, by majority vote....

<sup>2</sup> *Deverell Delaware Realty LLC., v Manger et al*, Del. J.P., C.A. No. JP16-10-006010, Wall, J. (Dec. 20, 2010).

### **Plaintiff's Testimony/Evidence**

The Plaintiff presented a demand letter pursuant to 25 *Del. C.* § 5502 which was personally served by Steven Smith on both of the Defendants.<sup>3</sup> Further, a lease agreement dated June 21, 2010, (which had been signed by each Defendant and the property manager Catherine Bent) for the property located at 1925 South DuPont Hwy., Dover, DE 19901, for the monthly rent of \$850.00<sup>4</sup> was presented without objection.<sup>5</sup>

Plaintiff's witness, Catherine Bent, testified in addition to the above items that the Defendants failed to pay rent for the months of October, November, December (2010) and January (2011) including late fees.

### **Defendant's Testimony/Evidence**

Defendant Magner asserted in his testimony that they are entitled to a credit as he has performed work to the rental unit in exchange for a rent credit/deduction. Catherine Bent under examination by Defendant Magner, testified that he was given two credits for work performed in the month of September. The Defendants did not provide any other tangible evidence to support their claim.

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<sup>3</sup> Plaintiff's Exhibit #1. Demand letter dated November 4, 2010, demanding payment of \$1,742.50 for back rent due.

<sup>4</sup> Payment of rent is due on the first day of each month.

<sup>5</sup> Plaintiff's Exhibit #2.

## Discussion

The Plaintiff has established that a landlord/tenant relationship exist between the Plaintiff and the Defendants. The Plaintiff filed a petition with this court which complies with the requirements of 25 *Del. C.* § 5707.<sup>6</sup> The Defendants were served with notice of said petition and were personally served with a demand letter for back rent due as required by 25 *Del. C.* § 5502.<sup>7</sup> Further, testimony indicates that the Defendants are in arrears for non-payment of rent for the months of October, November, December (2010) and January (2011).

The Defendants failed to establish through any testimony or evidence that they are entitled to a credit/deduction for work preformed for the months of October, November, December (2010) or January (2011). They withheld the entire amount of rent due for each of those months respectively.

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<sup>6</sup> Plaintiff waited the appropriate amount of time between serving the Defendants with a demand letter and providing them a time to cure and the filing of their petition.

<sup>7</sup> Steven Smith testified that he personally served each Defendant with a copy of said demand letter. This testimony was undisputed.

**Conclusion**

Based on the Court's fact finding inquiry, the Court's above-referenced conclusions of law and by a preponderance of evidence, the Court by unanimous verdict hereby enters *Judgment for the Plaintiff*.

**Judgment amount: \$2,889.98** (\$2,550.00 rent for October, November, December (2010) @ \$850.00 per month; \$170.00 late fees for those including the month of January (2011); \$169.98 for January = six days @ 28.33).

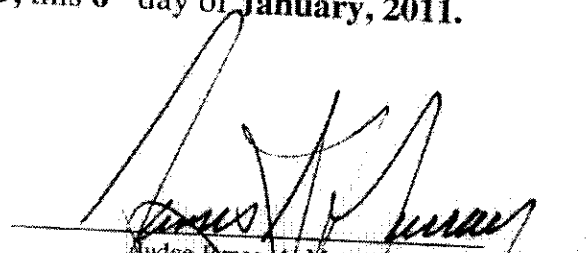
**Possession of rental unit located at: 1925 South DuPont Hwy. Dover, DE 19901.**

**Per diem rent @ \$28.33 until possession is relinquished.**

**Court Cost: \$30.00.**

**IT IS SO ORDERED, this 6<sup>th</sup> day of January, 2011.**

  
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Judge Ernst M. Arrdt

  
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Judge James A. Murray

  
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Judge D. Ken Cox