

**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: JP17-12-002943

SUE BAILEY VS JOE L STEPHENSON ET AL

**SYSTEM ID: @2383397
SUE BAILEY
19855 PINE TREE
GEORGETOWN DE 19947**

Appearances: All parties appeared *pro se*.

Submitted: August 6, 2012

Decided: August 9, 2012

NOTICE OF JUDGMENT/ORDER

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

A trial *de novo* was held before a three judge panel consisting of the Honorable Sheila G. Blakely, the Honorable Larry R. Sipple and the Honorable Christopher A. Bradley.

On June 7, 2012, the plaintiff as landlord filed this action against the defendants seeking \$2,112.23 in alleged unpaid rent, late fees and electric bills as well as possession of the rental unit located at 165 West Lake Drive, Milton, Delaware.

On June 25, 2012, after a trial was held with the parties, the Honorable William P. Wood issued a decision awarding the plaintiff \$690.00 and court costs, but possession of the rental unit remained with the defendants.

At the trial *de novo*, it was established that the defendants had moved into the rental unit in February of 2012 and that the monthly rent for this unit was \$800.00. It was also established that payment of the electricity for the rental unit was payable to the plaintiff from the defendants.

In presenting her case, the plaintiff introduced into evidence an accounting of amounts she alleged that the defendants still owed to her (Exh. P-1), a copy of a May 9, 2012 electric bill for the rental unit (Exh. P-2) and a copy of a "Rental Agreement" signed by the defendants dated February 3, 2012 (Exh. P-4). The plaintiff also introduced into evidence a copy of a notice letter from the plaintiff to the defendants of unpaid rent dated May 15, 2012 (Exh. P-5), a copy of a letter from the defendants to the plaintiff dated June 5, 2012 regarding their payment of \$150.00 for rent with a statement of "...Soon as we get the money will call (yo)u. Thank (yo)u + sorry for the inconvenience..."(Exh. P-6), and a copy of a letter from the plaintiff to the defendants dated June 6, 2012 acknowledging their payment of \$150.00 along with a reservation of rights to proceed with court action for the unpaid balance of rent due (Exh. P-3). Further introduced into evidence was a copy of an inspection list for the rental unit that the plaintiff had given to an employee for inspection of the rental unit on August 3, 2012 (Exh. P-7).

In his testimony as a witness for the plaintiff, Mr. Leonard Slade, an employee of the plaintiff, told the Court that he had personally hand delivered the May 15, 2012 notice of unpaid rent to Defendant Susana Stephenson. The defendants responded in their testimony that they did not recall ever receiving the plaintiff's notice of unpaid rent.

The defendants told the Court in their testimony that they were withholding the rent for repairs that they alleged were needed on the rental unit and had not been attended to by the plaintiff. The defendants further testified that they had given the plaintiff at least three written notices of problems

with the rental unit with their rent payments, but did not have a copy of any of these written notices to submit to the Court. The plaintiff and her employee, Mr. Leonard Slade, denied ever receiving any written notice from the defendants regarding any needed repairs for the rental unit.

The defendants admitted in their testimony to the Court that the last rent they had paid to the plaintiff was \$150.00 for the month of June and had not paid any rent since that time. Additionally, the defendants also admitted that they owed a remaining \$31.85 for electricity to the rental unit that the plaintiff was seeking.

After considering all the evidence provided at the trial de novo, the Court finds by a preponderance of the evidence that with the exception of paying \$150.00 during the month of June (which the plaintiff applied to the electric bill) that the defendants have not only not paid the remaining owed balance for the month of June, but have not paid any rent for the months of July or August. The June 5, 2012 letter written by the defendants introduced into evidence does not support their claim that they were withholding their rent for needed repairs, as it not only makes no mention of needed repairs, but conveys the impression that the defendants would pay the plaintiff the unpaid rent as soon as the defendants had the funds available.

While remedies exist for tenants for needed repairs to a rental unit under 25 Del. Code § 5307 (which includes possible deduction from the rent for such repairs up to half the month's rent, but not to exceed \$200), those remedies do not include a tenant being able to withhold all of the rent as the defendants have claimed to have done in this case, since paying \$150.00 during the month of June. Consequently, the Court holds that the defendants are still responsible to the plaintiff for the remaining unpaid balance of rent for the months of June, July and August as well as for the late fees for those same months at a rate of \$40.00 per month.

Despite any repair issues the rental unit may have had, the defendants are still responsible for paying the rent. The plaintiff provided a proper notice letter of unpaid rent on May 15, 2012 as required under 25 Del. Code § 5502 and since the rent remained not fully paid, the plaintiff is also entitled to possession of the rental unit.

Accordingly, the Court enters a judgment in favor of the plaintiff and against the defendants in the amount of \$1,991.79 which includes rent due through August 9, 2012, \$120 in late fees and \$31.85 for electric. Possession of the premises, plus *per diem* rent at the rate of \$26.66, is awarded to the plaintiff until such time as the plaintiff obtains actual possession of the rental unit. Court costs of \$40.00 are also awarded plus post-judgment interest at the current legal rate of 5.75% *per annum*.



IT IS SO ORDERED this 09th day of August, 2012

Christopher Brodley (SEAL)
Justice of the Peace/Court Official

NOTICE OF APPEAL RIGHTS

Any party has 15 days starting the day after the judgment is signed by the judge to appeal the judgment of the Justice of the Peace Court to the Court of Common Pleas of the above county. If the judgment involves an action for summary possession in a landlord/tenant case, then either party has 5 business days, starting the day after the judgment is signed by the judge, to appeal the judgment to a three judge panel at the Justice of the Peace Court where the judgment was ordered. You must complete all of the appeal requirements within those periods. To prevent dismissal, the appeal must name all of the parties as they were originally named in the Justice of the Peace Court action. (This applies even if the action was dismissed in the Justice of the Peace Court against one or more of the parties.) Additional information on appeal procedures is found in the attached sheet entitled "Justice of the Peace Courts Civil Post-Judgment Procedures". (J.P. Civ. Form No. 14A) If no appeal is filed, parties may remove all exhibits from the Court no sooner than 16 days and no later than 30 days, from the date of this judgment. If not removed, the Court may dispose of the exhibits without further notice to the parties.

Final Date of Appeal of a Civil Case to the Court of Common Pleas is 15 days from the judgment.

Final Date for Appeal of a Landlord/Tenant case to a 3 Judge Panel is 5 days from the judgment.