

IN THE COURT OF THE JUSTICE OF THE PEACE OF
THE STATE OF DELAWARE, IN AND FOR NEW CASTLE COUNTY
COURT NO. 13

Plaintiff

Wilmington Housing Authority
c/o Joseph J. Farman III Esq.
1200 N. Broom Street
Wilmington, De. 19801

Civil Action No. JP13-08-012454

Defendant

Trina Rainey
c/o John P. Brady Esq.
100 W. 10th street, Suite 801
Wilmington, De. 19801

ORDER

Trial de novo was heard January 16, 2009. Plaintiff Wilmington Housing Authority was represented by Joseph J. Farman III, Esq. and Defendant Trina Rainey was represented by John Brady, Esq. The three-judge panel consisted of the Hon. Bonita N. Lee, the Honorable Katharine B. Ross and the Honorable Vernon A. Taylor.

Trial was commenced on the issue of possession only. Both parties agree that no rent was due at the time of trial.

At the conclusion of the Plaintiff's case-in-chief, the Defendant moved to dismiss pursuant to JP Civil Rule 41(b). Defendant argued that 25 Del. C. § 5502 requires the landlord to give the tenant a written reservation of rights letter if all rent due is paid after the landlord initiates an action for back rent. In the instant case, Defendant had paid all the rent due and more, however no reservation of rights letter was given.

Although Plaintiff does not dispute that no rent was due at the time of trial, they argue that a reservation of rights letter is not required for monies paid after the original trial, but prior to the appeal hearing. They also argue that the money was accepted as payment on the judgment ordered by the trial court. Further Plaintiff mentioned that no stay of execution was requested or entered.

The three-judge panel finds that the facts of this case support a dismissal pursuant to JP Court Civil Rule 41(b). We believe the Plaintiff should have provided the Defendant with a reservation of rights letter for any payments accepted after an action for nonpayment has been initiated. Therefore, Defendant's Motion to Dismiss is granted.

(2)

IT IS SO ORDERED this 22ND day of January, 2009.

Vernon A. Taylor
Justice of the Peace

Bonita N. Lee
Justice of the Peace

Katharine B. Ross
Justice of the Peace