

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

GREGORY C. HUBBARD and )  
TUESDAY S. BANNER, )  
 )  
Appellants – Below Defendant, )  
 )  
v. ) C.A. No. N15A-07-008 CEB  
 )  
MIN DING, )  
 )  
Appellee – Below Plaintiff. )

Submitted: July 19, 2016  
Decided: October 25, 2016

**ORDER**

This 25th day of October, 2016, upon consideration of the petition of Defendants Gregory Hubbard and Tuesday Banner (“Tenants”) seeking review of the decision of the Justice of the Peace Court ordering that Plaintiff Min Ding (“Landlord”) is entitled to rent sought from Defendants in the amount of \$6,826.76 plus Court costs of \$40.00 and dismissing defendants’ counterclaim, it appears that:

1. Before the Court is a Petition for a Writ of Certiorari. The underlying proceeding was a Landlord Tenant Summary Possession proceeding in the Justice of the Peace Court No. 13, C.A. No. JP13-15-000294.

2. The Tenants present two arguments. First, they allege that the three judge panel of Magistrates that considered their appeal erred in concluding that Landlord

was not required to file a Form 50. Second, they assert that the Justice of the Peace three judge panel erred in their finding that the action taken by the Landlord was not a retaliatory eviction.

3. The parties entered into a lease in February 2014 for one year for property located at 15 Paxton Lane, Bear, DE 19707 for rent of \$1,250.00 per month. On February 10, 2014, the Landlord changed out the water heater, but did not remove the old one, leaving it in the basement. Tenants paid the rent for a period of time, but in November 2014 they paid only \$800, deducting \$450.00, that the Tenants claimed represented \$50.00 per month for 9 months “for storage and extraction of the water heater.” The Landlord sent Tenants a 5-day notice on November 13, 2014 for the unpaid balance of November rent.

4. Tenants paid \$1,250.00 December rent. The Landlord applied \$450.00 of this payment to the unpaid balance for November. At some point on or around November 27, 2014, while in default of payment on the lease, the Tenants called New Castle County Code Enforcement to address the used hot water heater in their basement. No rent was paid beyond the \$1,250.00 in December 2014. Plaintiff sent a second 5-day letter January 7, 2015 seeking unpaid balances from December and January rent plus late fees.

5. A summary possession action was brought by Landlord against Tenants and Tenants filed a counterclaim for retaliatory eviction and emotional distress.

The case was originally heard before a single Judge (Ufberg, J.) on March 10, 2015, as a result of which two preliminary issues were decided: first, that Landlord need not file a form 50 prior to filing the complaint and second, that a claim for emotional distress could not be brought in the Justice of the Peace Court.

6. In a Pre Trial Order, dated March 18, 2015, the Court ruled against Tenants in both respects: Plaintiff was the landlord under the lease and thus permitted to proceed with a summary possession action within the Justice of the Peace Court without filing a Form 50. The Court also ruled the Tenants' claim for emotional distress is a personal injury action and the Justice of the Peace Court did not have subject matter jurisdiction.

7. On April 7, 2015, a trial on the merits was heard by a single Magistrate (Ross, J.). In the Court's decision, dated May 4, 2015, the Landlord prevailed on her claim for unpaid rent and summary possession. The Court found no evidence of retaliation and thus the Tenants were not awarded payment on their counterclaim for retaliation damages.

8. On May 11, 2015 the Tenants filed their appeal *de novo* to a 3 judge panel.<sup>1</sup> The Tenants failed to post bond to avoid eviction and on May 28, 2015 the Constable delivered possession of the rental property to the Plaintiff.

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<sup>1</sup> 25 Del. C. 5701 (See *Maddrey v. Justice of Peace Court 13*, 956 A.2d 1204 (Del. 2008) ("The Delaware Code provides that a party aggrieved by an initial single judge's judgment in a summary possession hearing may request a trial *de novo* before a three judge Justice of the Peace panel.")).

9. The 3 judge panel held its *de novo* hearing on June 11, 2015. With the Writ of Possession previously executed to the Plaintiff, the summary possession claim was moot.

10. On June 17, 2015, the 3 judge panel issued its decision holding (1) the Plaintiff is a “Landlord” as defined by the Code and therefore not required to file a Form 50 and (2) finding for the Plaintiff in the amount of \$6,826.76. As to the Tenants’ claimed retaliatory eviction, the Court found “no evidence of retaliation” and therefore dismissed the counterclaim.

11. On August 18, 2015, Tenants filed this Petition for a Writ of Certiorari in the Delaware Superior Court seeking review of the final judgment of the Justice of the Peace Court No. 13.

12. The Superior Court has original and exclusive jurisdiction among trial courts under the Delaware Constitution to issue common law Writs of Certiorari to inferior tribunals, including the Justice of the Peace Court, in all cases, regardless of subject matter.<sup>2</sup> The Superior Court’s scope of review on common law Writs of Certiorari issued to any inferior tribunal is limited to errors on the face of the record.<sup>3</sup> The record reviewable by the Superior Court on a common law writ of

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<sup>2</sup> *Maddrey*, 956 A.2d at 1207.

<sup>3</sup> *Id.*

certiorari consists only of the complaint initiating the proceeding, any written answer or response, and the docket entries.<sup>4</sup>

13. Petitioners for a Writ of Certiorari must satisfy two threshold conditions: the judgment must be final and there can be no other available basis for review.<sup>5</sup> This petition meets the threshold requirement as there is no dispute here that the decision of the 3 judge panel of the Justice of the Peace Court constituted the final adjudication of the summary possession complaint.

14. The Court must next determine whether the petition raises a claim reviewable by certiorari. The reviewing Court does not consider the merits of the case.<sup>6</sup> It considers only those issues historically considered at common law; namely, whether the lower tribunal (1) committed errors of law, (2) exceeded its jurisdiction, or (3) proceeded irregularly.<sup>7</sup> A decision will be reversed for an error of law committed by the lower tribunal when the record affirmatively shows that the lower court has ‘proceeded illegally or manifestly contrary to law’.<sup>8</sup> Certiorari

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<sup>4</sup> *Id.*

<sup>5</sup> See *Capano Inv. v. Levenberg*, 564 A.2d 1130, 1131 (Del. 1989) (noting that “this Court has long held that no appeal may be taken to Superior Court in summary possession actions” and 25 Del. C. §5717(a) did not “confer a right of appeal to Superior Court, particularly in light of the language regarding ‘final judgment’”)

<sup>6</sup> *Maddrey*, 956 A.2d at 1214.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

requires a review of only such errors as appear on the face of the record being considered.<sup>9</sup>

15. The Tenants' petition for Certiorari before this Court challenges the conclusion of the Justice of the Peace Court that Landlord was not required to file a Form 50 and the lower Court's conclusion that the action was not a retaliatory eviction. Because these rulings are rulings as a matter of law, they are subject to Certiorari review.

16. As to the first issue, we find that the 3 judge panel properly determined that Landlord is not an artificial entity requiring a Form 50 to be filed. Pursuant to Delaware Supreme Court Rule 57, business entities transacting business in the State of Delaware are required to file a "Form 50" appointing a representative prior to entering an appearance before the Justice of the Peace Court in a civil proceeding. In this case, Landlord executed the lease in her personal name and capacity, identifying herself as the landlord in the lease. While Tenant argues that she is not the owner of the property, ownership is not determinative of who is the "landlord." The Landlord-Tenant Code defines a "landlord" as "any person held out by any landlord as the appropriate party to accept performance, whether such person is a landlord or not", or "any person with whom the tenant normally deals

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<sup>9</sup> *Castner v. State*, 311 A.2d 858 (Del. 1973).

as a landlord.”<sup>10</sup> Here, the Landlord is not an artificial entity, Tenants have always dealt with plaintiff as the landlord and therefore Plaintiff was not required to file a Form 50 prior to entering an appearance before the Justice of the Peace Court in the civil proceeding.

17. Turning to the second issue before the Court, the Justice of the Peace Court properly concluded that the Landlord’s complaint was not a prohibited retaliatory eviction<sup>11</sup>. Retaliatory acts are those undertaken by the landlord because of some lawful complaint raised by the tenant and stem directly from the landlord’s effort to stifle the complaint. But the prohibition against retaliatory eviction does not mean the landlord must accept a tenant’s unilateral rent reduction because the tenant has decided for himself by how much the rent should be diminished or the cost to repair the defective condition. Rather, the Landlord-Tenant Code spells out a specific procedure to remediate complaints of conditions. Pointedly, the tenant is limited to \$200 rent abatement – far less than the \$450 deducted by the Tenant in this case.<sup>12</sup>

The Tenants’ withholding \$450.00 is an arbitrary amount, unsupported by any necessary work or proof of receipts, and exceeds the amount allowed by statute. The 5-day letter sent in November after the Tenants’ unilateral reduction is

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<sup>10</sup> 25 Del. C. §6102(2).

<sup>11</sup> 25 Del. C. §5516.

<sup>12</sup> 25 Del. C. §5307.

therefore lawful. Furthermore, Code Enforcement was not called in over defunct water heater until November 27, 2014, two weeks after the initial 5-day letter was sent by the Landlord. There was thus substantial evidence in the record below from which the lower court could find that the Landlord's eviction was not retaliatory. Given the limited scope of our review, the Court finds no basis upon which to reverse the findings of the Justice of the Peace Court.

WHEREFORE, the Writ of Certiorari is **GRANTED** and the decision of the Justice of the Peace Court is **AFFIRMED**.



Judge Charles E. Butler