

**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: JP17-11-005535

CROSSINGS AT OAK TA RIVER VS SHAKIZE STURGIS ET AL

SYSTEM ID: @2424729

**THE CROSSINGS AT OAK ORCHARD LLC TA RIVERWINDS
CO LAW OFFICE OF JOHN BRADY
18388 COASTAL HIGHWAY #9
LEWES DE 19958**

Appearances: John F. Brady, Esquire, represented the plaintiff.
Both defendants appeared *pro se*.

Before: Sheila G. Blakely, Deputy Chief Magistrate; John C. Martin and Stephani
A. Adams, Justices of the Peace

Martin for the Court

NOTICE OF JUDGMENT/ORDER

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

On October 2, 2011 the plaintiff filed this action seeking to recover possession of the rented lot located at 27832 Chris Drive, Millsboro, Delaware. Trial was held on November 4, 2011 and on December 1, 2011 judgment was entered on behalf of the plaintiff. On December 1, 2011 Mr. Andrews filed a timely appeal of this judgment in accordance with 25 Del.C. §5717. At the same time, he asserted a claim for damages because of sewage overflows into his home. He also posted an appeal bond of \$500.00. This is the decision of the three Judge Panel hearing this appeal as a trial *de novo*.

HISTORY

Ms. Sturgis testified that on June 1, 2011 the parties entered into a new lease for the subject property, which is lot 26 at the Crossings at Oak Orchard, a manufactured home community. Ms. Sturgis had lived at this same location for the past fifteen years. The last payment that the defendants made for the lot rent was in September 2011.

The Park Manager testified that the monthly rent for the defendants' lot is \$440.00 and no rent has been paid since September 2011. Up to the date of trial, the defendants owed \$6,040.08 in lot rent, Relocation Trust Fees and late fees, which included accumulating unpaid rent and fees as far back as December 2009. On September 13, 2011 a "7 Day Non

Payment Letter" was sent to Mr. Andrews. When the amount due went unpaid, this action was filed. The Manager was aware that Sussex County had installed sewer pipes in the area of the Park but to date, there has not been a connection made between these pipes and a treatment plant

Mr. Andrews testified that there has been a problem with the septic system at his home since 2009. Since then, he has had numerous conversations with the Park managers and he has sent them emails and certified mail about the damage being done to his home by sewage that backs up through the disposal system and runs through the interior of his home. He provided copies of these communications, the first of which was sent in January 2010.

Mr. Andrews stated that the owner of the Park has personally visited his home and has seen the problem. Mr. Andrews introduced a series of photographs taken over the last eight months of his yard and the interior of his home. The interior photos show sewage in the areas near his bathrooms. He stated that the sewage backups happen about every thirty to forty-five days and the only action that has been taken by Park Management is to have his septic system pumped out. No work has been done to fix the problem causing the backups. Mr. Andrews provided a work order for repairs to his home dated April 2010 in the amount of \$1,860.00. He said this work was related to damage from the sewer problem and the work had been completed and paid for. He also provided an estimate in the amount of \$12,280.00 for additional repairs to his home that he said were also related to this problem.

DISCUSSION

As provided in 25 *Del.C.* §7002(c), Chapter 70 of Delaware's Landlord-Tenant Code (Code) governs the relationship between landlords and tenants in manufactured home communities; however, in the absence of a relevant provision in this Chapter, the Residential Landlord-Tenant Code governs.

As provided in section 5717(b) of the Code, an appeal such as one taken by the defendants in this case may include claims and counterclaims not raised in the initial proceedings; provided, that within five days of filing the appeal the claimant also files a bill of particulars identifying any such new issues. The Court finds that the letter filed by Mr. Andrews concurrently with the appeal of the judgment of the Court below satisfied this requirement and these claims shall be considered by the Court.

When dealing with Landlord-Tenant cases, this Court has the authority to grant equitable relief. *Continental v. Fitzwater, et al.*, Del.Super., 415 A.2d 785 (1980). Section 5308 of the Code provides relief for a tenant who has been deprived of a substantial part of the benefit of the tenant's bargain in violation of a provision of the Code. Section 7006(a)(13)(f) of the Code requires a landlord in a manufactured home community to include in its leases a provision requiring the landlord to maintain all sewer and septic services provided by the landlord in good working order and repair such services within 48 hours or as soon thereafter as practicable after written notice of a problem.

The Court finds that not only is such a provision missing from the parties lease signed in June 2011 but the plaintiff is in violation of this requirement since it has not made any efforts to fix the defendants' very serious sewer problem since it was notified about it by at least January 2010.

Section 5308 (b)(3) of the Code provides a guideline for relief when a landlord has failed to remedy such a problem after written notice and the tenant remains at the rental unit. The remedy is that the tenant may withhold two-thirds per diem rent during any period when the service problem has not been remedied. Since the defendants' monthly rent is \$440.00 that means that the defendants were entitled to withhold \$293.48 from their rent beginning in January 2010. Twenty six months have elapsed since then, so their total allowed withholding is \$7,630.48.

In addition, the defendants have provided credible evidence that they expended \$1,860.00 to repair their home because of the sewer overflows and so the Court will award this amount as actual damages. The defendants also provided an estimate of \$12,280.00 for more extensive repairs of their home. The Court finds that there was insufficient evidence of the need for these repairs and so none of this estimate will be awarded.

ORDER

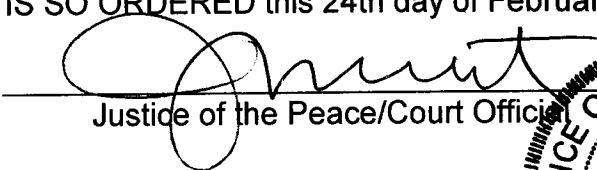
By a majority vote, the Court finds that the defendants have established their claims by a preponderance of the evidence. So, after considering all the evidence presented, the Court enters judgment on behalf of the defendants and against the plaintiff.

The plaintiff provided credible evidence concerning its claim for unpaid rent, late fees and Relocation Trust Fund fees that totaled \$6,040.08. Since the defendants are entitled to a rent credit of \$7,630.48 through the end of February 2012, the balance now due to them in the form of a rent credit is \$1,590.40. Since the defendants' sewer/septic problem has not been repaired, the Court finds that they are entitled to a reduced rent of \$146.52 per month until proper repairs are made that eliminate the backflow of sewage into their home. At that time, their rent will return to their contract rate of \$440.00.

In addition, a monetary judgment is entered on behalf of the defendants and against the plaintiff in the amount of \$1,860.00 plus post judgment interest at the legal rate of 5.75% per annum. Possession of the rented lot remains with the defendants.

The Clerk of the Court is ordered to return Mr. Andrews' appeal bond to him.

IT IS SO ORDERED this 24th day of February, 2012


Justice of the Peace/Court Officer



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.

**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: JP17-11-005535

**CROSSINGS AT OAK ORCHARD LLC TA RIVERWINDS, PLAINTIFF
VS
SHAKIYA STURGIS, DARNELL ANDREWS, DEFENDANT**

Plaintiff Parties:

ATTORNEY FOR PLAINTIFF
SYSTEM ID: 002977
JOHN F BRADY
JOHN F. BRADY, P.A.
18388 COASTAL HIGHWAY
UNIT 9
LEWES, DE 19958

PLAINTIFF

SYSTEM ID: @2424729
THE CROSSINGS AT OAK ORCHARD
LLC TA RIVERWINDS
CO LAW OFFICE OF JOHN BRADY
18388 COASTAL HIGHWAY
#9
LEWES, DE 19958

Defendant Parties:

DEFENDANT
SYSTEM ID: @2424730
SHAKIZE STURGIS
27832 CHRIS DRIVE
MILLSBORO, DE 19966

DEFENDANT

SYSTEM ID: @2424731
DARNELL ANDREWS
27832 CHRIS DRIVE
MILLSBORO, DE 19966

Other Case Parties:

JUSTICE OF THE PEACE COURT CIVIL POST-JUDGMENT PROCEDURES

[This information is not legal advice and not a substitute for seeking legal advice from an attorney. This information is not binding on the court if incorrect or misunderstood. It relates to frequently asked questions concerning post-judgment procedures but does not address all of the possible procedures and may not apply in your particular case. Forms for these procedures may be obtained from any Justice of the Peace Civil Court. All motions must include the name of the court, the names of the parties, the case number, the date the motion is filed with the Justice of the Peace Court and a title indicating the reason for the motion. Court costs or fees must accompany the motion, unless the person has requested, and the court determined, that the person may proceed in forma pauperis (without paying costs or fees because they have no money to pay).]

FOR CIVIL ACTIONS IN DEBT, TRESPASS OR REPLEVIN:

DEFAULT JUDGMENTS

Default judgments are normally entered against a defendant who fails to appear in court on the scheduled trial date or to provide a written answer to a complaint as required by the summons. If a default judgment has been entered, the defendant has 15 calendar days, starting the day after the judgment is ordered by the court, to enter a motion asking that the judgment be vacated and the case be reopened so the defendant may present evidence on the case. If service was made by certified mail, return receipt requested, and the certified mail was returned unclaimed, the defendant has 30 calendar days to file a motion to vacate a default judgment. This motion must be in writing and should briefly state the reason for the request to vacate the judgment as provided by 10 Del. C. § 9538. (Copies of the complete Delaware Code, which include this Code section, are available in public libraries throughout the State.) The time allowed to appeal a judgment continues to run even after a motion to vacate the default judgement is filed (see below for additional information on appeal procedures). **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

NON-SUIT JUDGMENTS

Non-suit judgments are entered against a plaintiff who fails to appear in court on the scheduled trial date. Non-suit judgments against the plaintiff are similar to default judgments against the defendant. (See above section.) If a non-suit judgment has been entered, the plaintiff has 15 calendar days, starting the day after the judgment is ordered by the court, to enter a motion requesting that the judgment be vacated and the case reopened so the plaintiff may present evidence on the case. This motion must be in writing and should briefly state the reasons for the request, as provided by 10 Del. C. § 9539. (Copies of the complete Delaware Code, which include this Code section, are available in public libraries throughout the State.) **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

APPEALS - Either party has 15 calendar days, starting the day after the judgment is ordered by the court, to appeal the judgment to the Court of Common Pleas for a trial de novo (new trial). 10 Del. C. § 9571. To file an appeal, the appellant (party seeking the appeal) must go to the Court of Common Pleas, fill out the appeal form and comply with other Court of Common Pleas requirements, within 15 days after the judgment is entered. A certified transcript of the Justice of the Peace Court record and the filing fee of \$125.00 must be filed by the appellant with the Court of Common Pleas within 10 days after the appeal was filed (within 25 days after the Justice of the Peace Court judgment). A certified transcript of Justice of the Peace Court record may be obtained from the Justice of the Peace Court which ordered the judgment at least five (5) days prior to the final date of filing the transcript with the Court of Common Pleas. **A FEE OF \$10.00 MUST ACCOMPANY A CERTIFIED TRANSCRIPT REQUEST.** To prevent execution on the judgment during the time of the appeal, an appellant must apply to the Court of Common Pleas for a bond to stay the execution.

MOTION FOR A NEW TRIAL - Either party has 10 days, starting the day after the judgment is signed by the judge, to file a motion for a new trial as provided under Justice of the Peace Court Civil Rule 59. This motion shall be in writing and shall briefly state the reasons for the request. A motion for a new trial will be heard by the Justice of the Peace who originally heard the case. The ability of the Justice of the Peace to grant a motion for a new trial is limited. For example, the reason given for requesting a new trial may be newly discovered evidence. However, for a judge to grant a motion for a new trial based upon newly discovered evidence, the party requesting the new trial must show all of the following: (1) the newly discovered evidence is important enough to change the result in the case; (2) the evidence could not have been discovered prior to the original trial with reasonable investigation; and (3) the evidence does not merely repeat or dispute evidence presented in the original trial. **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

In civil cases, if a motion for a new trial is filed after 10 days from the date of judgment, the time for filing the appeal continues to run and the 15 days allowed for the appeal may pass before any action is taken by the Court. If that happens, the party may be unable to file an appeal. If the motion is filed within 10 days from the date of judgment, the 15-day time for appeal does not include the days between the filing of the motion for a new trial and the judge's decision on the motion.

FOR LANDLORD/TENANT POSSESSION ACTIONS:

APPEALS

FOR POSSESSION OF RENTAL UNIT - Either party has five (5) business days, starting the day after the judgment is signed by the judge, to appeal the judgment of a Justice of the Peace which relates to the possession of a rental unit and other rental matters (including back rent due) to a special Justice of the Peace court. The special court trial will be a completely new trial before three other Justices of the Peace, unless the original trial was a jury trial. The appellant (seeking to appeal to the three-judge special court) must appear in the originating Justice of the Peace Court and make the appeal in writing. **A FEE OF \$50.00 MUST ACCOMPANY THIS MOTION.** To prevent execution on the judgment during the time of the appeal, the appellant must provide a bond or other assurances, as required by the court, to demonstrate the ability to pay all court costs, money damages, and other payments ordered by the court.

FOR DEBT (Rent Only) - The procedures for appealing or filing a motion for a new trial in a civil debt action explained above apply to an appeal of a landlord/tenant action involving rent or money damages only (and not possession of the rental unit).

DEFAULT OR NON-SUIT JUDGMENTS - If the possession of the rental unit was obtained by default judgment or nonsuit in a landlord/tenant possession action, the motion to vacate the default judgment or nonsuit must be filed within 10 days from the date the judgment was entered. **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.** (This applies only to cases filed after July 17, 1996. Motions to vacate a default judgment or nonsuit in cases filed before July 17, 1996 must comply with the same time periods as for default and nonsuit judgments in civil actions in debt, trespass or replevin (see front page).)

**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: JP17-11-005535

CROSSINGS AT OAK TA RIVER VS SHAKIZE STURGIS ET AL

**SYSTEM ID: @2424731
DARNELL ANDREWS
27832 CHRIS DRIVE
MILLSBORO DE 19966**

Appearances: John F. Brady, Esquire, represented the plaintiff.
Both defendants appeared *pro se*.

Before: Sheila G. Blakely, Deputy Chief Magistrate; John C. Martin and Stephani
A. Adams, Justices of the Peace

Martin for the Court

NOTICE OF JUDGMENT/ORDER

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

On October 2, 2011 the plaintiff filed this action seeking to recover possession of the rented lot located at 27832 Chris Drive, Millsboro, Delaware. Trial was held on November 4, 2011 and on December 1, 2011 judgment was entered on behalf of the plaintiff. On December 1, 2011 Mr. Andrews filed a timely appeal of this judgment in accordance with 25 Del.C. §5717. At the same time, he asserted a claim for damages because of sewage overflows into his home. He also posted an appeal bond of \$500.00. This is the decision of the three Judge Panel hearing this appeal as a trial *de novo*.

HISTORY

Ms. Sturgis testified that on June 1, 2011 the parties entered into a new lease for the subject property, which is lot 26 at the Crossings at Oak Orchard, a manufactured home community. Ms. Sturgis had lived at this same location for the past fifteen years. The last payment that the defendants made for the lot rent was in September 2011.

The Park Manager testified that the monthly rent for the defendants' lot is \$440.00 and no rent has been paid since September 2011. Up to the date of trial, the defendants owed \$6,040.08 in lot rent, Relocation Trust Fees and late fees, which included accumulating unpaid rent and fees as far back as December 2009. On September 13, 2011 a "7 Day Non

Payment Letter" was sent to Mr. Andrews. When the amount due went unpaid, this action was filed. The Manager was aware that Sussex County had installed sewer pipes in the area of the Park but to date, there has not been a connection made between these pipes and a treatment plant

Mr. Andrews testified that there has been a problem with the septic system at his home since 2009. Since then, he has had numerous conversations with the Park managers and he has sent them emails and certified mail about the damage being done to his home by sewage that backs up through the disposal system and runs through the interior of his home. He provided copies of these communications, the first of which was sent in January 2010.

Mr. Andrews stated that the owner of the Park has personally visited his home and has seen the problem. Mr. Andrews introduced a series of photographs taken over the last eight months of his yard and the interior of his home. The interior photos show sewage in the areas near his bathrooms. He stated that the sewage backups happen about every thirty to forty-five days and the only action that has been taken by Park Management is to have his septic system pumped out. No work has been done to fix the problem causing the backups. Mr. Andrews provided a work order for repairs to his home dated April 2010 in the amount of \$1,860.00. He said this work was related to damage from the sewer problem and the work had been completed and paid for. He also provided an estimate in the amount of \$12,280.00 for additional repairs to his home that he said were also related to this problem.

DISCUSSION

As provided in 25 Del.C. §7002(c), Chapter 70 of Delaware's Landlord-Tenant Code (Code) governs the relationship between landlords and tenants in manufactured home communities; however, in the absence of a relevant provision in this Chapter, the Residential Landlord-Tenant Code governs.

As provided in section 5717(b) of the Code, an appeal such as one taken by the defendants in this case may include claims and counterclaims not raised in the initial proceedings; provided, that within five days of filing the appeal the claimant also files a bill of particulars identifying any such new issues. The Court finds that the letter filed by Mr. Andrews concurrently with the appeal of the judgment of the Court below satisfied this requirement and these claims shall be considered by the Court.

When dealing with Landlord-Tenant cases, this Court has the authority to grant equitable relief. *Continental v. Fitzwater, et al.*, Del.Super., 415 A.2d 785 (1980). Section 5308 of the Code provides relief for a tenant who has been deprived of a substantial part of the benefit of the tenant's bargain in violation of a provision of the Code. Section 7006(a)(13)(f) of the Code requires a landlord in a manufactured home community to include in its leases a provision requiring the landlord to maintain all sewer and septic services provided by the landlord in good working order and repair such services within 48 hours or as soon thereafter as practicable after written notice of a problem.

The Court finds that not only is such a provision missing from the parties lease signed in June 2011 but the plaintiff is in violation of this requirement since it has not made any efforts to fix the defendants' very serious sewer problem since it was notified about it by at least January 2010.

Section 5308 (b)(3) of the Code provides a guideline for relief when a landlord has failed to remedy such a problem after written notice and the tenant remains at the rental unit. The remedy is that the tenant may withhold two-thirds per diem rent during any period when the service problem has not been remedied. Since the defendants' monthly rent is \$440.00 that means that the defendants were entitled to withhold \$293.48 from their rent beginning in January 2010. Twenty six months have elapsed since then, so their total allowed withholding is \$7,630.48.

In addition, the defendants have provided credible evidence that they expended \$1,860.00 to repair their home because of the sewer overflows and so the Court will award this amount as actual damages. The defendants also provided an estimate of \$12,280.00 for more extensive repairs of their home. The Court finds that there was insufficient evidence of the need for these repairs and so none of this estimate will be awarded.

ORDER

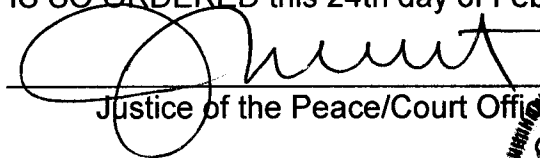
By a majority vote, the Court finds that the defendants have established their claims by a preponderance of the evidence. So, after considering all the evidence presented, the Court enters judgment on behalf of the defendants and against the plaintiff.

The plaintiff provided credible evidence concerning its claim for unpaid rent, late fees and Relocation Trust Fund fees that totaled \$6,040.08. Since the defendants are entitled to a rent credit of \$7,630.48 through the end of February 2012, the balance now due to them in the form of a rent credit is \$1,590.40. Since the defendants' sewer/septic problem has not been repaired, the Court finds that they are entitled to a reduced rent of \$146.52 per month until proper repairs are made that eliminate the backflow of sewage into their home. At that time, their rent will return to their contract rate of \$440.00.

In addition, a monetary judgment is entered on behalf of the defendants and against the plaintiff in the amount of \$1,860.00 plus post judgment interest at the legal rate of 5.75% per annum. Possession of the rented lot remains with the defendants.

The Clerk of the Court is ordered to return Mr. Andrews' appeal bond to him.

IT IS SO ORDERED this 24th day of February, 2012


Justice of the Peace/Court Officer



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.

**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: JP17-11-005535

**CROSSINGS AT OAK ORCHARD LLC TA RIVERWINDS, PLAINTIFF
VS
SHAKIYA STURGIS, DARNELL ANDREWS, DEFENDANT**

Plaintiff Parties:

ATTORNEY FOR PLAINTIFF
SYSTEM ID: 002977
JOHN F BRADY
JOHN F. BRADY, P.A.
18388 COASTAL HIGHWAY
UNIT 9
LEWES, DE 19958

PLAINTIFF

SYSTEM ID: @2424729
THE CROSSINGS AT OAK ORCHARD
LLC TA RIVERWINDS
CO LAW OFFICE OF JOHN BRADY
18388 COASTAL HIGHWAY
#9
LEWES, DE 19958

Defendant Parties:

DEFENDANT
SYSTEM ID: @2424730
SHAKIZE STURGIS
27832 CHRIS DRIVE
MILLSBORO, DE 19966

DEFENDANT

SYSTEM ID: @2424731
DARNELL ANDREWS
27832 CHRIS DRIVE
MILLSBORO, DE 19966

Other Case Parties:

JUSTICE OF THE PEACE COURT CIVIL POST-JUDGMENT PROCEDURES

[This information is not legal advice and not a substitute for seeking legal advice from an attorney. This information is not binding on the court if incorrect or misunderstood. It relates to frequently asked questions concerning post-judgment procedures but does not address all of the possible procedures and may not apply in your particular case. Forms for these procedures may be obtained from any Justice of the Peace Civil Court. All motions must include the name of the court, the names of the parties, the case number, the date the motion is filed with the Justice of the Peace Court and a title indicating the reason for the motion. Court costs or fees must accompany the motion, unless the person has requested, and the court determined, that the person may proceed in forma pauperis (without paying costs or fees because they have no money to pay).]

FOR CIVIL ACTIONS IN DEBT, TRESPASS OR REPLEVIN:

DEFAULT JUDGMENTS

Default judgments are normally entered against a defendant who fails to appear in court on the scheduled trial date or to provide a written answer to a complaint as required by the summons. If a default judgment has been entered, the defendant has 15 calendar days, starting the day after the judgment is ordered by the court, to enter a motion asking that the judgment be vacated and the case be reopened so the defendant may present evidence on the case. If service was made by certified mail, return receipt requested, and the certified mail was returned unclaimed, the defendant has 30 calendar days to file a motion to vacate a default judgment. This motion must be in writing and should briefly state the reason for the request to vacate the judgment as provided by 10 Del. C. § 9538. (Copies of the complete Delaware Code, which include this Code section, are available in public libraries throughout the State.) The time allowed to appeal a judgment continues to run even after a motion to vacate the default judgement is filed (see below for additional information on appeal procedures). **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

NON-SUIT JUDGMENTS

Non-suit judgments are entered against a plaintiff who fails to appear in court on the scheduled trial date. Non-suit judgments against the plaintiff are similar to default judgments against the defendant. (See above section.) If a non-suit judgment has been entered, the plaintiff has 15 calendar days, starting the day after the judgment is ordered by the court, to enter a motion requesting that the judgment be vacated and the case reopened so the plaintiff may present evidence on the case. This motion must be in writing and should briefly state the reasons for the request, as provided by 10 Del. C. § 9539. (Copies of the complete Delaware Code, which include this Code section, are available in public libraries throughout the State.) **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

APPEALS - Either party has 15 calendar days, starting the day after the judgment is ordered by the court, to appeal the judgment to the Court of Common Pleas for a trial de novo (new trial). 10 Del. C. § 9571. To file an appeal, the appellant (party seeking the appeal) must go to the Court of Common Pleas, fill out the appeal form and comply with other Court of Common Pleas requirements, within 15 days after the judgment is entered. A certified transcript of the Justice of the Peace Court record and the filing fee of \$125.00 must be filed by the appellant with the Court of Common Pleas within 10 days after the appeal was filed (within 25 days after the Justice of the Peace Court judgment). A certified transcript of Justice of the Peace Court record may be obtained from the Justice of the Peace Court which ordered the judgment at least five (5) days prior to the final date of filing the transcript with the Court of Common Pleas. **A FEE OF \$10.00 MUST ACCOMPANY A CERTIFIED TRANSCRIPT REQUEST.** To prevent execution on the judgment during the time of the appeal, an appellant must apply to the Court of Common Pleas for a bond to stay the execution.

MOTION FOR A NEW TRIAL - Either party has 10 days, starting the day after the judgment is signed by the judge, to file a motion for a new trial as provided under Justice of the Peace Court Civil Rule 59. This motion shall be in writing and shall briefly state the reasons for the request. A motion for a new trial will be heard by the Justice of the Peace who originally heard the case. The ability of the Justice of the Peace to grant a motion for a new trial is limited. For example, the reason given for requesting a new trial may be newly discovered evidence. However, for a judge to grant a motion for a new trial based upon newly discovered evidence, the party requesting the new trial must show all of the following: (1) the newly discovered evidence is important enough to change the result in the case; (2) the evidence could not have been discovered prior to the original trial with reasonable investigation; and (3) the evidence does not merely repeat or dispute evidence presented in the original trial. **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

In civil cases, if a motion for a new trial is filed after 10 days from the date of judgment, the time for filing the appeal continues to run and the 15 days allowed for the appeal may pass before any action is taken by the Court. If that happens, the party may be unable to file an appeal. If the motion is filed within 10 days from the date of judgment, the 15-day time for appeal does not include the days between the filing of the motion for a new trial and the judge's decision on the motion.

FOR LANDLORD/TENANT POSSESSION ACTIONS:

APPEALS

FOR POSSESSION OF RENTAL UNIT - Either party has five (5) business days, starting the day after the judgment is signed by the judge, to appeal the judgment of a Justice of the Peace which relates to the possession of a rental unit and other rental matters (including back rent due) to a special Justice of the Peace court. The special court trial will be a completely new trial before three other Justices of the Peace, unless the original trial was a jury trial. The appellant (seeking to appeal to the three-judge special court) must appear in the originating Justice of the Peace Court and make the appeal in writing. **A FEE OF \$50.00 MUST ACCOMPANY THIS MOTION.** To prevent execution on the judgment during the time of the appeal, the appellant must provide a bond or other assurances, as required by the court, to demonstrate the ability to pay all court costs, money damages, and other payments ordered by the court.

FOR DEBT (Rent Only) - The procedures for appealing or filing a motion for a new trial in a civil debt action explained above apply to an appeal of a landlord/tenant action involving rent or money damages only (and not possession of the rental unit).

DEFAULT OR NON-SUIT JUDGMENTS - If the possession of the rental unit was obtained by default judgment or nonsuit in a landlord/tenant possession action, the motion to vacate the default judgment or nonsuit must be filed within 10 days from the date the judgment was entered. **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.** (This applies only to cases filed after July 17, 1996. Motions to vacate a default judgment or nonsuit in cases filed before July 17, 1996 must comply with the same time periods as for default and nonsuit judgments in civil actions in debt, trespass or replevin (see front page).)

**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: JP17-11-005535

CROSSINGS AT OAK TA RIVER VS SHAKIZE STURGIS ET AL

**SYSTEM ID: @2424730
SHAKIZE STURGIS
27832 CHRIS DRIVE
MILLSBORO DE 19966**

Appearances: John F. Brady, Esquire, represented the plaintiff.
Both defendants appeared *pro se*.

Before: Sheila G. Blakely, Deputy Chief Magistrate; John C. Martin and Stephani
A. Adams, Justices of the Peace

Martin for the Court

NOTICE OF JUDGMENT/ORDER

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

On October 2, 2011 the plaintiff filed this action seeking to recover possession of the rented lot located at 27832 Chris Drive, Millsboro, Delaware. Trial was held on November 4, 2011 and on December 1, 2011 judgment was entered on behalf of the plaintiff. On December 1, 2011 Mr. Andrews filed a timely appeal of this judgment in accordance with 25 Del.C. §5717. At the same time, he asserted a claim for damages because of sewage overflows into his home. He also posted an appeal bond of \$500.00. This is the decision of the three Judge Panel hearing this appeal as a trial *de novo*.

HISTORY

Ms. Sturgis testified that on June 1, 2011 the parties entered into a new lease for the subject property, which is lot 26 at the Crossings at Oak Orchard, a manufactured home community. Ms. Sturgis had lived at this same location for the past fifteen years. The last payment that the defendants made for the lot rent was in September 2011.

The Park Manager testified that the monthly rent for the defendants' lot is \$440.00 and no rent has been paid since September 2011. Up to the date of trial, the defendants owed \$6,040.08 in lot rent, Relocation Trust Fees and late fees, which included accumulating unpaid rent and fees as far back as December 2009. On September 13, 2011 a "7 Day Non

Payment Letter" was sent to Mr. Andrews. When the amount due went unpaid, this action was filed. The Manager was aware that Sussex County had installed sewer pipes in the area of the Park but to date, there has not been a connection made between these pipes and a treatment plant

Mr. Andrews testified that there has been a problem with the septic system at his home since 2009. Since then, he has had numerous conversations with the Park managers and he has sent them emails and certified mail about the damage being done to his home by sewage that backs up through the disposal system and runs through the interior of his home. He provided copies of these communications, the first of which was sent in January 2010.

Mr. Andrews stated that the owner of the Park has personally visited his home and has seen the problem. Mr. Andrews introduced a series of photographs taken over the last eight months of his yard and the interior of his home. The interior photos show sewage in the areas near his bathrooms. He stated that the sewage backups happen about every thirty to forty-five days and the only action that has been taken by Park Management is to have his septic system pumped out. No work has been done to fix the problem causing the backups. Mr. Andrews provided a work order for repairs to his home dated April 2010 in the amount of \$1,860.00. He said this work was related to damage from the sewer problem and the work had been completed and paid for. He also provided an estimate in the amount of \$12,280.00 for additional repairs to his home that he said were also related to this problem.

DISCUSSION

As provided in 25 *Del.C.* §7002(c), Chapter 70 of Delaware's Landlord-Tenant Code (Code) governs the relationship between landlords and tenants in manufactured home communities; however, in the absence of a relevant provision in this Chapter, the Residential Landlord-Tenant Code governs.

As provided in section 5717(b) of the Code, an appeal such as one taken by the defendants in this case may include claims and counterclaims not raised in the initial proceedings; provided, that within five days of filing the appeal the claimant also files a bill of particulars identifying any such new issues. The Court finds that the letter filed by Mr. Andrews concurrently with the appeal of the judgment of the Court below satisfied this requirement and these claims shall be considered by the Court.

When dealing with Landlord-Tenant cases, this Court has the authority to grant equitable relief. *Continental v. Fitzwater, et al.*, Del.Super., 415 A.2d 785 (1980). Section 5308 of the Code provides relief for a tenant who has been deprived of a substantial part of the benefit of the tenant's bargain in violation of a provision of the Code. Section 7006(a)(13)(f) of the Code requires a landlord in a manufactured home community to include in its leases a provision requiring the landlord to maintain all sewer and septic services provided by the landlord in good working order and repair such services within 48 hours or as soon thereafter as practicable after written notice of a problem.

The Court finds that not only is such a provision missing from the parties lease signed in June 2011 but the plaintiff is in violation of this requirement since it has not made any efforts to fix the defendants' very serious sewer problem since it was notified about it by at least January 2010.

Section 5308 (b)(3) of the Code provides a guideline for relief when a landlord has failed to remedy such a problem after written notice and the tenant remains at the rental unit. The remedy is that the tenant may withhold two-thirds per diem rent during any period when the service problem has not been remedied. Since the defendants' monthly rent is \$440.00 that means that the defendants were entitled to withhold \$293.48 from their rent beginning in January 2010. Twenty six months have elapsed since then, so their total allowed withholding is \$7,630.48.

In addition, the defendants have provided credible evidence that they expended \$1,860.00 to repair their home because of the sewer overflows and so the Court will award this amount as actual damages. The defendants also provided an estimate of \$12,280.00 for more extensive repairs of their home. The Court finds that there was insufficient evidence of the need for these repairs and so none of this estimate will be awarded.

ORDER

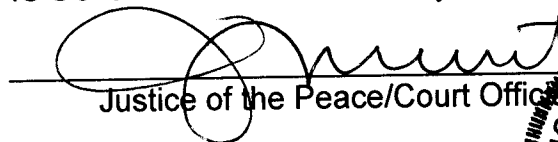
By a majority vote, the Court finds that the defendants have established their claims by a preponderance of the evidence. So, after considering all the evidence presented, the Court enters judgment on behalf of the defendants and against the plaintiff.

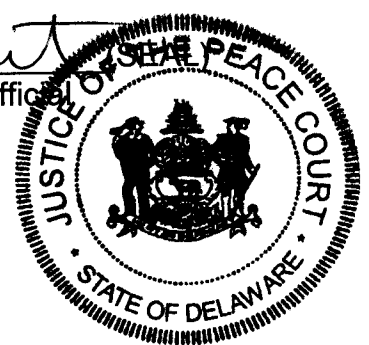
The plaintiff provided credible evidence concerning its claim for unpaid rent, late fees and Relocation Trust Fund fees that totaled \$6,040.08. Since the defendants are entitled to a rent credit of \$7,630.48 through the end of February 2012, the balance now due to them in the form of a rent credit is \$1,590.40. Since the defendants' sewer/septic problem has not been repaired, the Court finds that they are entitled to a reduced rent of \$146.52 per month until proper repairs are made that eliminate the backflow of sewage into their home. At that time, their rent will return to their contract rate of \$440.00.

In addition, a monetary judgment is entered on behalf of the defendants and against the plaintiff in the amount of \$1,860.00 plus post judgment interest at the legal rate of 5.75% per annum. Possession of the rented lot remains with the defendants.

The Clerk of the Court is ordered to return Mr. Andrews' appeal bond to him.

IT IS SO ORDERED this 24th day of February, 2012


Justice of the Peace/Court Officer



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.

**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: JP17-11-005535

**CROSSINGS AT OAK ORCHARD LLC TA RIVERWINDS, PLAINTIFF
VS
SHAKIYA STURGIS, DARNELL ANDREWS, DEFENDANT**

Plaintiff Parties:

ATTORNEY FOR PLAINTIFF
SYSTEM ID: 002977
JOHN F BRADY
JOHN F. BRADY, P.A.
18388 COASTAL HIGHWAY
UNIT 9
LEWES, DE 19958

PLAINTIFF

SYSTEM ID: @2424729
THE CROSSINGS AT OAK ORCHARD
LLC TA RIVERWINDS
CO LAW OFFICE OF JOHN BRADY
18388 COASTAL HIGHWAY
#9
LEWES, DE 19958

Defendant Parties:

DEFENDANT
SYSTEM ID: @2424730
SHAKIZE STURGIS
27832 CHRIS DRIVE
MILLSBORO, DE 19966

DEFENDANT

SYSTEM ID: @2424731
DARNELL ANDREWS
27832 CHRIS DRIVE
MILLSBORO, DE 19966

Other Case Parties:

JUSTICE OF THE PEACE COURT CIVIL POST-JUDGMENT PROCEDURES

[This information is not legal advice and not a substitute for seeking legal advice from an attorney. This information is not binding on the court if incorrect or misunderstood. It relates to frequently asked questions concerning post-judgment procedures but does not address all of the possible procedures and may not apply in your particular case. Forms for these procedures may be obtained from any Justice of the Peace Civil Court. All motions must include the name of the court, the names of the parties, the case number, the date the motion is filed with the Justice of the Peace Court and a title indicating the reason for the motion. Court costs or fees must accompany the motion, unless the person has requested, and the court determined, that the person may proceed in forma pauperis (without paying costs or fees because they have no money to pay).]

FOR CIVIL ACTIONS IN DEBT, TRESPASS OR REPLEVIN:

DEFAULT JUDGMENTS

Default judgments are normally entered against a defendant who fails to appear in court on the scheduled trial date or to provide a written answer to a complaint as required by the summons. If a default judgment has been entered, the defendant has 15 calendar days, starting the day after the judgment is ordered by the court, to enter a motion asking that the judgment be vacated and the case be reopened so the defendant may present evidence on the case. If service was made by certified mail, return receipt requested, and the certified mail was returned unclaimed, the defendant has 30 calendar days to file a motion to vacate a default judgment. This motion must be in writing and should briefly state the reason for the request to vacate the judgment as provided by 10 Del. C. § 9538. (Copies of the complete Delaware Code, which include this Code section, are available in public libraries throughout the State.) The time allowed to appeal a judgment continues to run even after a motion to vacate the default judgement is filed (see below for additional information on appeal procedures). **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

NON-SUIT JUDGMENTS

Non-suit judgments are entered against a plaintiff who fails to appear in court on the scheduled trial date. Non-suit judgments against the plaintiff are similar to default judgments against the defendant. (See above section.) If a non-suit judgment has been entered, the plaintiff has 15 calendar days, starting the day after the judgment is ordered by the court, to enter a motion requesting that the judgment be vacated and the case reopened so the plaintiff may present evidence on the case. This motion must be in writing and should briefly state the reasons for the request, as provided by 10 Del. C. § 9539. (Copies of the complete Delaware Code, which include this Code section, are available in public libraries throughout the State.) **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

APPEALS - Either party has 15 calendar days, starting the day after the judgment is ordered by the court, to appeal the judgment to the Court of Common Pleas for a trial de novo (new trial). 10 Del. C. § 9571. To file an appeal, the appellant (party seeking the appeal) must go to the Court of Common Pleas, fill out the appeal form and comply with other Court of Common Pleas requirements, within 15 days after the judgment is entered. A certified transcript of the Justice of the Peace Court record and the filing fee of \$125.00 must be filed by the appellant with the Court of Common Pleas within 10 days after the appeal was filed (within 25 days after the Justice of the Peace Court judgment). A certified transcript of Justice of the Peace Court record may be obtained from the Justice of the Peace Court which ordered the judgment at least five (5) days prior to the final date of filing the transcript with the Court of Common Pleas. **A FEE OF \$10.00 MUST ACCOMPANY A CERTIFIED TRANSCRIPT REQUEST.** To prevent execution on the judgment during the time of the appeal, an appellant must apply to the Court of Common Pleas for a bond to stay the execution.

MOTION FOR A NEW TRIAL - Either party has 10 days, starting the day after the judgment is signed by the judge, to file a motion for a new trial as provided under Justice of the Peace Court Civil Rule 59. This motion shall be in writing and shall briefly state the reasons for the request. A motion for a new trial will be heard by the Justice of the Peace who originally heard the case. The ability of the Justice of the Peace to grant a motion for a new trial is limited. For example, the reason given for requesting a new trial may be newly discovered evidence. However, for a judge to grant a motion for a new trial based upon newly discovered evidence, the party requesting the new trial must show all of the following: (1) the newly discovered evidence is important enough to change the result in the case; (2) the evidence could not have been discovered prior to the original trial with reasonable investigation; and (3) the evidence does not merely repeat or dispute evidence presented in the original trial. **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

In civil cases, if a motion for a new trial is filed after 10 days from the date of judgment, the time for filing the appeal continues to run and the 15 days allowed for the appeal may pass before any action is taken by the Court. If that happens, the party may be unable to file an appeal. If the motion is filed within 10 days from the date of judgment, the 15-day time for appeal does not include the days between the filing of the motion for a new trial and the judge's decision on the motion.

FOR LANDLORD/TENANT POSSESSION ACTIONS:

APPEALS

FOR POSSESSION OF RENTAL UNIT - Either party has five (5) business days, starting the day after the judgment is signed by the judge, to appeal the judgment of a Justice of the Peace which relates to the possession of a rental unit and other rental matters (including back rent due) to a special Justice of the Peace court. The special court trial will be a completely new trial before three other Justices of the Peace, unless the original trial was a jury trial. The appellant (seeking to appeal to the three-judge special court) must appear in the originating Justice of the Peace Court and make the appeal in writing. **A FEE OF \$50.00 MUST ACCOMPANY THIS MOTION.** To prevent execution on the judgment during the time of the appeal, the appellant must provide a bond or other assurances, as required by the court, to demonstrate the ability to pay all court costs, money damages, and other payments ordered by the court.

FOR DEBT (Rent Only) - The procedures for appealing or filing a motion for a new trial in a civil debt action explained above apply to an appeal of a landlord/tenant action involving rent or money damages only (and not possession of the rental unit).

DEFAULT OR NON-SUIT JUDGMENTS - If the possession of the rental unit was obtained by default judgment or nonsuit in a landlord/tenant possession action, the motion to vacate the default judgment or nonsuit must be filed within 10 days from the date the judgment was entered. **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.** (This applies only to cases filed after July 17, 1996. Motions to vacate a default judgment or nonsuit in cases filed before July 17, 1996 must comply with the same time periods as for default and nonsuit judgments in civil actions in debt, trespass or replevin (see front page).)

**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: JP17-11-005535

CROSSINGS AT OAK TA RIVER VS SHAKIZE STURGIS ET AL

**SYSTEM ID: 002977
JOHN F BRADY
JOHN F. BRADY, P.A.
18388 COASTAL HIGHWAY UNIT 9
LEWES DE 19958**

Appearances: John F. Brady, Esquire, represented the plaintiff.
Both defendants appeared *pro se*.

Before: Sheila G. Blakely, Deputy Chief Magistrate; John C. Martin and Stephani
A. Adams, Justices of the Peace

Martin for the Court

NOTICE OF JUDGMENT/ORDER

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

On October 2, 2011 the plaintiff filed this action seeking to recover possession of the rented lot located at 27832 Chris Drive, Millsboro, Delaware. Trial was held on November 4, 2011 and on December 1, 2011 judgment was entered on behalf of the plaintiff. On December 1, 2011 Mr. Andrews filed a timely appeal of this judgment in accordance with 25 Del.C. §5717. At the same time, he asserted a claim for damages because of sewage overflows into his home. He also posted an appeal bond of \$500.00. This is the decision of the three Judge Panel hearing this appeal as a trial *de novo*.

HISTORY

Ms. Sturgis testified that on June 1, 2011 the parties entered into a new lease for the subject property, which is lot 26 at the Crossings at Oak Orchard, a manufactured home community. Ms. Sturgis had lived at this same location for the past fifteen years. The last payment that the defendants made for the lot rent was in September 2011.

The Park Manager testified that the monthly rent for the defendants' lot is \$440.00 and no rent has been paid since September 2011. Up to the date of trial, the defendants owed \$6,040.08 in lot rent, Relocation Trust Fees and late fees, which included accumulating unpaid rent and fees as far back as December 2009. On September 13, 2011 a "7 Day Non

Payment Letter" was sent to Mr. Andrews. When the amount due went unpaid, this action was filed. The Manager was aware that Sussex County had installed sewer pipes in the area of the Park but to date, there has not been a connection made between these pipes and a treatment plant

Mr. Andrews testified that there has been a problem with the septic system at his home since 2009. Since then, he has had numerous conversations with the Park managers and he has sent them emails and certified mail about the damage being done to his home by sewage that backs up through the disposal system and runs through the interior of his home. He provided copies of these communications, the first of which was sent in January 2010.

Mr. Andrews stated that the owner of the Park has personally visited his home and has seen the problem. Mr. Andrews introduced a series of photographs taken over the last eight months of his yard and the interior of his home. The interior photos show sewage in the areas near his bathrooms. He stated that the sewage backups happen about every thirty to forty-five days and the only action that has been taken by Park Management is to have his septic system pumped out. No work has been done to fix the problem causing the backups. Mr. Andrews provided a work order for repairs to his home dated April 2010 in the amount of \$1,860.00. He said this work was related to damage from the sewer problem and the work had been completed and paid for. He also provided an estimate in the amount of \$12,280.00 for additional repairs to his home that he said were also related to this problem.

DISCUSSION

As provided in 25 *Del.C.* §7002(c), Chapter 70 of Delaware's Landlord-Tenant Code (Code) governs the relationship between landlords and tenants in manufactured home communities; however, in the absence of a relevant provision in this Chapter, the Residential Landlord-Tenant Code governs.

As provided in section 5717(b) of the Code, an appeal such as one taken by the defendants in this case may include claims and counterclaims not raised in the initial proceedings; provided, that within five days of filing the appeal the claimant also files a bill of particulars identifying any such new issues. The Court finds that the letter filed by Mr. Andrews concurrently with the appeal of the judgment of the Court below satisfied this requirement and these claims shall be considered by the Court.

When dealing with Landlord-Tenant cases, this Court has the authority to grant equitable relief. *Continental v. Fitzwater, et al.*, Del.Super., 415 A.2d 785 (1980). Section 5308 of the Code provides relief for a tenant who has been deprived of a substantial part of the benefit of the tenant's bargain in violation of a provision of the Code. Section 7006(a)(13)(f) of the Code requires a landlord in a manufactured home community to include in its leases a provision requiring the landlord to maintain all sewer and septic services provided by the landlord in good working order and repair such services within 48 hours or as soon thereafter as practicable after written notice of a problem.

The Court finds that not only is such a provision missing from the parties lease signed in June 2011 but the plaintiff is in violation of this requirement since it has not made any efforts to fix the defendants' very serious sewer problem since it was notified about it by at least January 2010.

Section 5308 (b)(3) of the Code provides a guideline for relief when a landlord has failed to remedy such a problem after written notice and the tenant remains at the rental unit. The remedy is that the tenant may withhold two-thirds per diem rent during any period when the service problem has not been remedied. Since the defendants' monthly rent is \$440.00 that means that the defendants were entitled to withhold \$293.48 from their rent beginning in January 2010. Twenty six months have elapsed since then, so their total allowed withholding is \$7,630.48.

In addition, the defendants have provided credible evidence that they expended \$1,860.00 to repair their home because of the sewer overflows and so the Court will award this amount as actual damages. The defendants also provided an estimate of \$12,280.00 for more extensive repairs of their home. The Court finds that there was insufficient evidence of the need for these repairs and so none of this estimate will be awarded.

ORDER

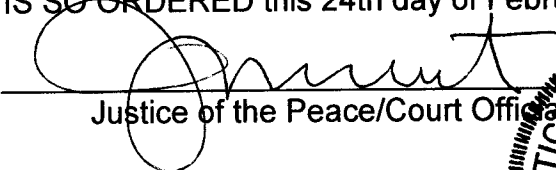
By a majority vote, the Court finds that the defendants have established their claims by a preponderance of the evidence. So, after considering all the evidence presented, the Court enters judgment on behalf of the defendants and against the plaintiff.

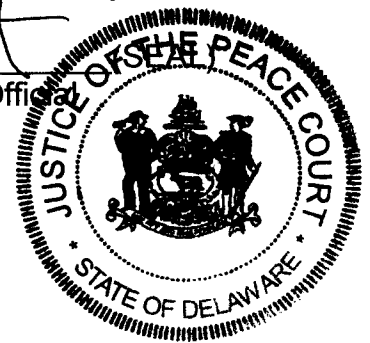
The plaintiff provided credible evidence concerning its claim for unpaid rent, late fees and Relocation Trust Fund fees that totaled \$6,040.08. Since the defendants are entitled to a rent credit of \$7,630.48 through the end of February 2012, the balance now due to them in the form of a rent credit is \$1,590.40. Since the defendants' sewer/septic problem has not been repaired, the Court finds that they are entitled to a reduced rent of \$146.52 per month until proper repairs are made that eliminate the backflow of sewage into their home. At that time, their rent will return to their contract rate of \$440.00.

In addition, a monetary judgment is entered on behalf of the defendants and against the plaintiff in the amount of \$1,860.00 plus post judgment interest at the legal rate of 5.75% per annum. Possession of the rented lot remains with the defendants.

The Clerk of the Court is ordered to return Mr. Andrews' appeal bond to him.

IT IS SO ORDERED this 24th day of February, 2012


Justice of the Peace/Court Officer



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.

**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: JP17-11-005535

**CROSSINGS AT OAK ORCHARD LLC TA RIVERWINDS, PLAINTIFF
VS
SHAKIYA STURGIS, DARNELL ANDREWS, DEFENDANT**

Plaintiff Parties:

ATTORNEY FOR PLAINTIFF
SYSTEM ID: 002977
JOHN F BRADY
JOHN F. BRADY, P.A.
18388 COASTAL HIGHWAY
UNIT 9
LEWES, DE 19958

PLAINTIFF
SYSTEM ID: @2424729
THE CROSSINGS AT OAK ORCHARD
LLC TA RIVERWINDS
CO LAW OFFICE OF JOHN BRADY
18388 COASTAL HIGHWAY
#9
LEWES, DE 19958

Defendant Parties:

DEFENDANT
SYSTEM ID: @2424730
SHAKIZE STURGIS
27832 CHRIS DRIVE
MILLSBORO, DE 19966

DEFENDANT
SYSTEM ID: @2424731
DARNELL ANDREWS
27832 CHRIS DRIVE
MILLSBORO, DE 19966

Other Case Parties:

JUSTICE OF THE PEACE COURT CIVIL POST-JUDGMENT PROCEDURES

[This information is not legal advice and not a substitute for seeking legal advice from an attorney. This information is not binding on the court if incorrect or misunderstood. It relates to frequently asked questions concerning post-judgment procedures but does not address all of the possible procedures and may not apply in your particular case. Forms for these procedures may be obtained from any Justice of the Peace Civil Court. All motions must include the name of the court, the names of the parties, the case number, the date the motion is filed with the Justice of the Peace Court and a title indicating the reason for the motion. Court costs or fees must accompany the motion, unless the person has requested, and the court determined, that the person may proceed in forma pauperis (without paying costs or fees because they have no money to pay).]

FOR CIVIL ACTIONS IN DEBT, TRESPASS OR REPLEVIN:

DEFAULT JUDGMENTS

Default judgments are normally entered against a defendant who fails to appear in court on the scheduled trial date or to provide a written answer to a complaint as required by the summons. If a default judgment has been entered, the defendant has 15 calendar days, starting the day after the judgment is ordered by the court, to enter a motion asking that the judgment be vacated and the case be reopened so the defendant may present evidence on the case. If service was made by certified mail, return receipt requested, and the certified mail was returned unclaimed, the defendant has 30 calendar days to file a motion to vacate a default judgment. This motion must be in writing and should briefly state the reason for the request to vacate the judgment as provided by 10 Del. C. § 9538. (Copies of the complete Delaware Code, which include this Code section, are available in public libraries throughout the State.) The time allowed to appeal a judgment continues to run even after a motion to vacate the default judgement is filed (see below for additional information on appeal procedures). **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

NON-SUIT JUDGMENTS

Non-suit judgments are entered against a plaintiff who fails to appear in court on the scheduled trial date. Non-suit judgments against the plaintiff are similar to default judgments against the defendant. (See above section.) If a non-suit judgment has been entered, the plaintiff has 15 calendar days, starting the day after the judgment is ordered by the court, to enter a motion requesting that the judgment be vacated and the case reopened so the plaintiff may present evidence on the case. This motion must be in writing and should briefly state the reasons for the request, as provided by 10 Del. C. § 9539. (Copies of the complete Delaware Code, which include this Code section, are available in public libraries throughout the State.) **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

APPEALS - Either party has 15 calendar days, starting the day after the judgment is ordered by the court, to appeal the judgment to the Court of Common Pleas for a trial de novo (new trial). 10 Del. C. § 9571. To file an appeal, the appellant (party seeking the appeal) must go to the Court of Common Pleas, fill out the appeal form and comply with other Court of Common Pleas requirements, within 15 days after the judgment is entered. A certified transcript of the Justice of the Peace Court record and the filing fee of \$125.00 must be filed by the appellant with the Court of Common Pleas within 10 days after the appeal was filed (within 25 days after the Justice of the Peace Court judgment). A certified transcript of Justice of the Peace Court record may be obtained from the Justice of the Peace Court which ordered the judgment at least five (5) days prior to the final date of filing the transcript with the Court of Common Pleas. **A FEE OF \$10.00 MUST ACCOMPANY A CERTIFIED TRANSCRIPT REQUEST.** To prevent execution on the judgment during the time of the appeal, an appellant must apply to the Court of Common Pleas for a bond to stay the execution.

MOTION FOR A NEW TRIAL - Either party has 10 days, starting the day after the judgment is signed by the judge, to file a motion for a new trial as provided under Justice of the Peace Court Civil Rule 59. This motion shall be in writing and shall briefly state the reasons for the request. A motion for a new trial will be heard by the Justice of the Peace who originally heard the case. The ability of the Justice of the Peace to grant a motion for a new trial is limited. For example, the reason given for requesting a new trial may be newly discovered evidence. However, for a judge to grant a motion for a new trial based upon newly discovered evidence, the party requesting the new trial must show all of the following: (1) the newly discovered evidence is important enough to change the result in the case; (2) the evidence could not have been discovered prior to the original trial with reasonable investigation; and (3) the evidence does not merely repeat or dispute evidence presented in the original trial. **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

In civil cases, if a motion for a new trial is filed after 10 days from the date of judgment, the time for filing the appeal continues to run and the 15 days allowed for the appeal may pass before any action is taken by the Court. If that happens, the party may be unable to file an appeal. If the motion is filed within 10 days from the date of judgment, the 15-day time for appeal does not include the days between the filing of the motion for a new trial and the judge's decision on the motion.

FOR LANDLORD/TENANT POSSESSION ACTIONS:

APPEALS

FOR POSSESSION OF RENTAL UNIT - Either party has five (5) business days, starting the day after the judgment is signed by the judge, to appeal the judgment of a Justice of the Peace which relates to the possession of a rental unit and other rental matters (including back rent due) to a special Justice of the Peace court. The special court trial will be a completely new trial before three other Justices of the Peace, unless the original trial was a jury trial. The appellant (seeking to appeal to the three-judge special court) must appear in the originating Justice of the Peace Court and make the appeal in writing. **A FEE OF \$50.00 MUST ACCOMPANY THIS MOTION.** To prevent execution on the judgment during the time of the appeal, the appellant must provide a bond or other assurances, as required by the court, to demonstrate the ability to pay all court costs, money damages, and other payments ordered by the court.

FOR DEBT (Rent Only) - The procedures for appealing or filing a motion for a new trial in a civil debt action explained above apply to an appeal of a landlord/tenant action involving rent or money damages only (and not possession of the rental unit).

DEFAULT OR NON-SUIT JUDGMENTS - If the possession of the rental unit was obtained by default judgment or nonsuit in a landlord/tenant possession action, the motion to vacate the default judgment or nonsuit must be filed within 10 days from the date the judgment was entered. **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.** (This applies only to cases filed after July 17, 1996. Motions to vacate a default judgment or nonsuit in cases filed before July 17, 1996 must comply with the same time periods as for default and nonsuit judgments in civil actions in debt, trespass or replevin (see front page).)