Vermont Superior Court
Filed 04/04/22
Bennington Unit

VERMONT SUPERIOR COURT
Bennington Unit
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CIVIL DIVISION
Case No. 21-CV-02156

Janice Fiorello v. Jennifer Latzko

DECISION ON MOTION

This is a civil ejectment action. Defendant filed a motion to dismiss.

Defendant contends the landlord cannot terminate her lease for "no cause" prior to the end of the written rental agreement term when no provision in the agreement allows for early "no cause" termination. Defendant also alleges the landlord's termination notice is defective because it purportedly terminated the lease before the end of its term.

Plaintiff opposes the motion, contending that its notice of termination complied with 9 V.S.A. § 4467(e).

The motion to dismiss is granted for the reasons below.

Background

Plaintiff is the landlord and Defendant is the tenant at 6258 Vt Route 7A, Sunderland, Vermont.

The lease is for a period of twelve months beginning October 1, 2020 and ending on October 1, 2021.

Plaintiff sent Defendant a certified and first-class letter on May 7, 2021, with a termination for no cause. The date the tenancy was terminated was June 9, 2021. The notice gave defendant thirty-three days to vacate the premises. Plaintiff filed this ejectment action on July 30, 2021, alleging Defendant continued to occupy the premises contrary to Plaintiff's rights, title and interest.

Analysis

This is an ejectment pursuant to the Vermont Residential Rental Agreements Act, 9 V.S.A. § 4451, et seq. "[T]he Legislature enacted the Residential Rental Agreements Act (RRAA) . . . in which it expressed its desire to protect the state's tenant population from unscrupulous and recalcitrant landlords, while striking a fair balance between the rights of landlords and tenants." *Willard v. Parsons Hill Partnership,* 2005 VT 69, ¶ 16, 178 Vt. 300.

A landlord may not forcibly evict a tenant from a home unless fundamental statutory prerequisites are met. The requirements include proper termination of the tenancy. *Andrus v. Dunbar*, 2005 VT 48, ¶ 15, 178 Vt. 554.

Defendant, who is pro se, moves to dismiss "for failure to properly terminate the existing tenancy on a no cause basis." Defendant contends Plaintiff cannot terminate a lease for "no cause" prior to the end of the term stated in the rental agreement when no provision exists for a "no cause" eviction.

The Vermont Supreme Court has not reached the issue of whether a landlord can evict a tenant without cause during the initial period of the lease. See *Memphremagog Rentals v. Kelley*, No. 2013-464, 2014 WL 3714919, at *3 (Vt. May 9, 2014) (mem.).

Section 4467(e) states:

> **Termination for no cause under terms of written rental agreement**. *If there is a written rental agreement, the notice to terminate for no cause shall be at least 30 days before the end or expiration of the stated term of the rental agreement if the tenancy has continued for two years or less.* The notice to terminate for no cause shall be at least 60 days before the end or expiration of the term of the rental agreement if the tenancy has continued for more than two years. If there is a written week-to-week rental agreement, the notice to terminate for no cause shall be at least seven days; however, a notice to terminate for nonpayment of rent shall be as provided in subsection (a) of this section.

9 V.S.A. § 4467(e) (emphasis added).[1]

"When interpreting statutes, the bedrock rule of statutory construction is to determine and give effect to the intent of the Legislature." *Delta Psi Fraternity v. City of Burlington*, 2008 VT 129, ¶ 7, 185 Vt. 129 (internal quotation marks and alteration omitted). "[Courts] effectuate this intent by first examining the plain meaning of the language used in light of the statute's legislative purpose.... If that plain language resolves the conflict without doing violence to the legislative scheme, there is no need to go further." *Id.* (internal quotation marks and alteration omitted). "Where the plain meaning of the words of the statute is insufficient guidance to ascertain legislative intent, [courts] look beyond the language of a particular section standing alone to the whole statute, the subject matter, its effects and consequences, and the reason and spirit of the law." *State v. Thompson*, 174 Vt. 172, 175 (2002).

Giving the statutory language its plain and ordinary meaning, § 4467(e) is ambiguous as to whether a landlord may terminate a written rental agreement for no cause prior to its expiration when no provision in the agreement contemplates that occurrence.[2]

The key consideration is the structure of the statute itself.

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[1] There is not an issue regarding the timing of the *service* of the notice. Here, the written rental agreement and tenancy continued for two years or less. The statute requires the notice to terminate for no cause shall be at least 30 days before the end or expiration of the stated term of the rental agreement. 9 V.S.A. § 4467(e). The service of the termination notice complies with statutory provisions of 9 V.S.A. § 4467(e) because it was served at least thirty days before the termination date in the lease. The question here is whether 9 V.S.A. § 4467(e) allows a "no cause" eviction to shorten the agreed-to lease term.

[2] The statute is not ambiguous as to the date service must occur. Service must occur at least 30 days before the end or expiration of the stated term of the rental agreement if the tenancy has continued for two years or less.

The operative provision of 9 V.S.A. § 4467(e) is, "If there is a written rental agreement, the notice to terminate for no cause shall be at least 30 days before the end or expiration of the stated term of the rental agreement if the tenancy has continued for two years or less."

The statute as structured does not specifically prohibit or allow the termination of a written rental contract prior to its agreed termination date for no cause.[3] The statute is ambiguous.

When interpreting the language of an ambiguous statute a variety of sources may be used to ascertain legislative intent.

First, the statute itself gives an indication of its intent. It references that the termination for no cause shall be at least 30 days before *the end or expiration of the stated term of the rental agreement*. That language implies the legislative intent that the tenancy is contemplated to last until the end of the agreement.

Second, "intent is most truly derived from a consideration of not only the particular statutory language, but from the entire enactment, its reason, purpose and consequences." *Lubinsky v. Fair Haven Zoning Bd.,* 148 Vt. 47, 50 (1986).

The other provisions of 9 V.S.A. § 4467 are instructive to indicate the reason, purpose and consequences of the law.

For example, "the landlord may terminate a tenancy":

1) "for nonpayment of rent by providing actual notice to the tenant of the date on which the tenancy will terminate, which shall be at least 14 days after the date of the actual notice." *Id*. § 4467(a).
2) "for failure of the tenant to comply with a material term of the rental agreement or with obligations imposed under this chapter by actual notice given to the tenant at least 30 days prior to the termination date specified in the notice." *Id*. § 4467(b)(1).
3) for "criminal activity, illegal drug activity, or acts of violence, any of which threaten the health or safety of other residents, the landlord may terminate the tenancy by providing actual notice to the tenant of the date on which the tenancy will terminate, which shall be at least 14 days from the date of the actual notice." *Id*. § 4467(b)(2).

Those sections of the statute allow the termination to occur a certain number of days after the tenant receives notice of termination. This gives the tenant a specific number of days to vacate the premises before the landlord is entitled to possession.

9 V.S.A. 4467(e) is drafted to provide the tenant notice "at least 30 days before the end or expiration of the stated term of the rental agreement." That language presumably allows the tenant at least thirty days prior to the end or expiration of the stated term of the rental agreement to vacate the premises before the landlord is entitled to possession.

[3] Another trial court stated 9 V.S.A. § 4467 is, "confusingly drafted." *Walton v. Howard,* No. 20-CV-00626 Rdcv, at 2 (Nov. 10, 2020) (Toor, J.).

A third consideration is other statutory provisions.

Although the legal relationship between landlords and tenants is governed by the Residential Rental Agreements Act, 9 V.S.A. §§ 4451–4469, the action for possession must be brought pursuant to the ejectment statute in chapter 169 of Title 12, normally 12 V.S.A. § 4851. See 9 V.S.A. § 4468 (granting landlords an action for possession under Title 12 if tenant remains in possession after termination of the lease). The ejectment statute allows an action for possession where a former lessee "holds possession of the demised premises without right, after the termination of the lease by its own limitation or after breach of a stipulation contained in the lease by the lessee." 12 V.S.A. § 4851.

In other words, Title 12 allows a landlord to file for possession if the tenant has no right to remain on the premises. The tenant's right in this case is defined by the contract with the landlord.

The essential requirements for a contract are "a bargain in which there is a manifestation of mutual assent to the exchange and a consideration." Restatement (Second) of Contracts § 17(1) (1981).

An enforceable contract "must demonstrate a meeting of the minds of the parties: an offer by one of them and an acceptance of such offer by the other." *Starr Farm Beach Campowners Ass'n, Inc. v. Boylan*, 174 Vt. 503, 505 (2002). A "meeting of the minds" exists where contracting parties "agree to the same thing in the same sense for all essential particulars." *EverBank v. Marini*, 2015 VT 131, ¶ 17, 200 Vt. 490 (quoting *Evarts v. Forte*, 135 Vt. 306, 309 (1977) (internal quotations omitted)).

As the offeror, the selling party "has a right to prescribe in his offer any conditions as to time, place, quantity, [or] mode of acceptance . . . and the acceptance, to conclude the agreement, must in every respect meet and correspond with the offer." *Starr Farm Beach Campowners Ass'n, Inc.*, 174 Vt. at 505 (quoting *Kline v. Matcalfe Constr. Co.,* 148 Neb. 357 (1947)). Contractual formation requires that parties express their "subjective intent in a manner that is capable of understanding." *Evarts v. Forte*, 135 Vt. 306, 310 (1977). Courts consider this intent objectively, such that intent to be bound must be "established by some unequivocal act or acts." *Miller v. Flegenheimer*, 2016 VT 125, ¶ 15, 203 Vt. 620.

Finally, contractual formation must be supported by sufficient consideration, the existence of which presents "a question of law and is evaluated at the time the contract was formed." *Bergeron v. Boyle*, 2003 VT 89, ¶ 19, 176 Vt. 78 (citing *Lloyd's Credit Corp. v. Marlin Mgmt. Servs., Inc*., 158 Vt. 594, 598–99 (1992)). Consideration sufficient for contract formation can include a broad range of benefits: the "definition of a benefit is extremely broad, and requires simply that the promisor receive something desired for his or her own advantage." *Kneebinding, Inc. v. Howell*, 2014 VT 51, ¶ 17, 196 Vt. 477 (citation omitted). Consideration involving either a "benefit to the promisor or a detriment to the promisee is sufficient consideration for the contract." *Bergeron*, 2003 VT 89, ¶ 19 (citation omitted).

The contract in this case states, "The lease shall be for a period of 12 calendar months and 0 days beginning on 10/1/20 and ending at midnight on 10/1/21."

At the time the contract was formed Janice Fiorello rented 6258 Vt Route 7A, Sunderland, Vermont, to Jennifer Latzko for twelve months in exchange for payment of $850.00 a month. The contract has no early termination for no cause provision.

The parties entered an enforceable contract. The Plaintiff rented the apartment to the Defendant for twelve months in exchange for $850.00 a month. The agreement manifest's the parties' intention to be bound and its terms are sufficiently definite. See *J & K Title Co. v. Wright & Morrissey, Inc.,* 2019 VT 78, ¶ 12, 211 Vt. 179.

The court concludes a landlord may not terminate a written rental agreement for no cause prior to its expiration when no provision in the agreement contemplates that occurrence. Accordingly, Plaintiff improperly filed this ejection action, and it was subject to dismissal.

At oral argument, Plaintiff contended that Defendant's motion to dismiss is, in any case, now moot because the contractual period has passed and no written extension pursuant to the contract was issued. Therefore, the Defendant has no legal right to remain on the premises, and Plaintiff is entitled to a writ of possession.

The motion to dismiss is not moot for three reasons.

First, Plaintiff cannot rely on its May 7, 2021 notice as the prerequisite notice for this action because the termination date was defective and a nullity. The Legislature requires that "[i]n all cases the termination date shall be specifically stated in the notice." 9 V.S.A. § 4467(f). The Legislature intended that the required date be an accurate one. The notice fails to satisfy the requirements of 9 V.S.A. § 4467.

Second, the May 7 notice is insufficient to satisfy the process requirements of the ejectment statute:

> The process may issue as a summons or writ of attachment, requiring the defendant to appear and answer to the complaint of the plaintiff which shall state that the defendant is in the possession of the lands or tenements in question (describing them), which the tenant holds unlawfully and against the right of the plaintiff. A copy of the rental agreement, if any, and any notice to terminate the defendant's tenancy shall be attached to the complaint.

12 V.S.A. § 4852. The notice to terminate Defendant's tenancy set a termination date that pre-dated the contractually obligated date. Yet the law provides that a landlord has no authority to bring an action for ejectment before the tenancy has been terminated. *Andrus*, 2005 VT 48, ¶ 15.

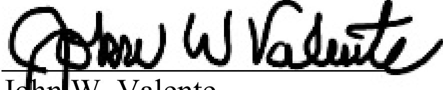
In *Andrus*, landlord served a June 12 notice terminating a tenancy on July 5. On June 17, landlord filed the eviction pursuant to 12 V.S.A. § 4851. The court ruled tenant was entitled to judgment because the tenancy had not been terminated on the date the landlord filed the ejectment action, which is precisely what Plaintiff did in this case. The underlying defect in *Andrus* was slightly different, because landlord sued before its termination notice had expired, as opposed to issuing a premature and defective termination notice and suing before the lease had expired, but in both cases the premature action must be dismissed.

Third, the court has no subject matter jurisdiction when a plaintiff has failed to satisfy a prerequisite for suit, and the claim is not ripe for review. *Merriam v. AIG Claims Servs., Inc.*, 2008 VT 8, ¶ 13, 183 Vt. 568. A defective termination notice cannot serve as the prerequisite for suit.

Order

The Defendant's motion to dismiss is granted. The matter is dismissed without prejudice.

Electronically Signed 3/31/2022 2:10 PM pursuant to V.R.E.F. 9(d)



John W. Valente
Superior Court Judge