Vermont Superior Court
Filed 03/31/22
Bennington Unit

VERMONT SUPERIOR COURT
Bennington Unit
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CIVIL DIVISION
Case No. 22-CV-00147

George Sleeman v. Shirley Roberts

DECISION ON MOTION

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

Defendant contends the landlord did not properly terminate the lease. Defendant contends a landlord cannot terminate a 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.

Plaintiff opposes the motion. Plaintiff contends notice was valid and the tenancy was properly terminated. Plaintiff contention is 9 V.S.A. § 4467 does not prohibit termination of a lease for "no cause" prior to the end of the lease term.

The motion to dismiss is granted for the reasons below.

Background

Plaintiff is the landlord, Defendant is the tenant pursuant to a written lease agreement for the premises at 606-608 Main Apt 2, Bennington, Vermont.

The term of lease as stated in section 1 is as follows, "The initial term of the least (Enter first and last date of the initial term. The initial term must be for at least one year.) The initial term begins on 7/1/21. The initial term ends of 7/1/22."

The landlord's termination of the lease is addressed on page 5. The lease states six reasons the owner may terminate the tenancy during the initial term of the lease. "No cause" is not listed as a reason for termination during the initial term of the lease. The lease specifically provides that "After the initial term, the Owner may terminate the lease for no cause upon a minimum of (30) days and a maximum of (60) days written notice to the Tenant."

The landlord sent the tenant a notice to terminate which states, "This letter is a notice of termination for 'no cause' as described in 9 V.S.A. § 4467(e). You are therefore required to vacate the premises on or before January 5, 2022."

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 moved 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]

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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.

The key consideration is the structure of the statute itself.

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.

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[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.

[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.).

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.

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 initial term of the least (Enter first and last date of the initial term. The initial term must be for at least one year.) The initial term begins on 7/1/21. The initial term ends

of 7/1/22." The contract additionally states, "After the initial term, the Owner may terminate the lease for no cause upon a minimum of (30) days and a maximum of (60) days written notice to the Tenant."

The contract has no early termination for no cause provision.

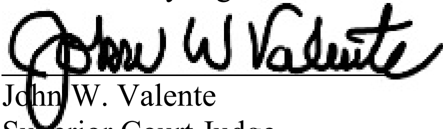
The parties entered an enforceable contract. The Plaintiff rented the apartment to the Defendant for a one year term ending 7/1/22. The agreement manifest's the parties' intention to be bound and its terms are sufficiently definite. See *J & K Title Co. v. Wright & Morrissey, Inc.,* 2019 VT 78, ¶ 12, 211 Vt. 179.

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 is subject to dismissal.

Order

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

Electronically Signed 3/31/2022 3:12 PM pursuant to V.R.E.F. 9(d)



John W. Valente
Superior Court Judge