

STATE OF VERMONT
WINDSOR COUNTY

Valley Land Corp.,
Plaintiff

v.

Nicholas Couture,
Defendant

SUPERIOR COURT

Docket No. 519-7-09 Wrcv

OPINION AND ORDER

This landlord-tenant dispute is before the court on Plaintiff's motion for summary judgment. Plaintiff, Valley Land Corporation (Landlord), is represented by Attorney William Donahue. Defendant, Nicholas Couture (Tenant), is representing himself.

FACTS

The undisputed facts in this case show that Landlord is the owner of certain residential property in Hartford, Vermont. Tenant has occupied the property at will, without a written lease, for more than 50 years. On April 9, 2009, Landlord sent Tenant a letter notifying him that his tenancy was being terminated without cause. The notice gave Tenant 90 days to vacate the property. Tenant received a copy of this notice on April 10. Tenant continues to reside on Landlord's property, and Landlord seeks eviction.

Tenant counterclaims and alleges that Landlord is retaliating against him after Landlord was cited and ordered to make repairs to the property. Furthermore, Tenant alleges that the property is not habitable because it is contaminated with lead. Finally, Tenant alleges that Landlord engaged in unfair trade practices because it knew about the lead contamination and failed to remedy it.

Landlord filed a motion for summary judgment and submitted a copy of Tenant's deposition, which undermines the allegations made in the counterclaim. Tenant has not responded to Landlord's motion and has proffered no evidence to support his contentions. At the deposition, Tenant admitted his counterclaim was drafted by someone else, and Tenant testified to the following facts.

Tenant lives alone on Landlord's property. (Couture Dep. at 6.) He had his blood tested for lead recently, and the results indicated that he has a very low level of lead in his blood. *Id.* at 18. Tenant does not believe there is much, if any, lead paint in the house, and the paint has not caused any serious problem for him. *Id.* at 28-29.

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FEB 12 2010

Q: [Y]ou haven't suffered any damages because of the lead paint; is that right?

A: That's right. As far as I know.

Id. at 31.

Tenant did not complain to the State, the Landlord, or anyone else about the lead paint in the house because he was unaware of the lead paint until after he received his eviction letter. *Id.* at 24.

Q: [T]here wasn't any retaliation by Valley Land against you, was there?

A: No. I said they've been great people.

Id. at 25.

With regard to Tenant's claim that Landlord engaged in unfair business practices, Tenant admitted that Landlord had not engaged in any.

Q: [T]here would not have been any unfair or deceptive business practice that Valley Land engaged in?

A: Right. This here is, a lot of this don't even look familiar at all so I don't know. I've got all the paperwork, but I never read this before.

Id. at 27. Tenant stated that Landlord had not defrauded him, *id.* at 33, or acted out of ill will. *Id.* at 38-39.

Finally, Tenant conceded that he was not claiming that the property was unfit for human habitation. *Id.* at 37. He could not identify any rights of his that he believes Landlord violated. *Id.* at 37, 39.

Q: So you don't—you're not really asking for Valley Land to pay you any money damages at all?

A: Right.

Q: You just want to stay there until you can find a new place to live; is that right?

A: Right.

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FEB 12 2010

Id. at 40-41.

STANDARD OF REVIEW

WINDSOR COUNTY CLERK

Landlord moves for summary judgment. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits . . . referred to in the statements required by Rule 56(c)(2), show that there is no

genuine issue as to any material fact and that any party is entitled to judgment as a matter of law.” V.R.C.P. 56(c)(3). The party moving for summary judgment “has the burden of proof, and the opposing party must be given the benefit of all reasonable doubts and inferences in determining whether a genuine issue of material fact exists.” *Price v. Leland*, 149 Vt. 518, 521 (1988). However, “[s]ummary judgment is mandated . . . where, after an adequate time for discovery, a party ‘fails to make a showing sufficient to establish the existence of an element’ essential to his case and on which he has the burden of proof at trial.” *Poplaski v. Lamphere*, 152 Vt. 251, 254-55 (1989) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)).

The court derives the undisputed facts from the parties’ statements of fact under V.R.C.P. 56(c)(2). Facts in the moving party’s statement are deemed undisputed when supported by the record and not controverted by facts in the nonmoving party’s statement which are also supported by evidence in the record. See *Boulton v. CLD Consulting Eng’rs, Inc.*, 2003 VT 72, ¶ 29, 175 Vt. 413 (citing *Richart v. Jackson*, 171 Vt. 94, 97 (2000)).

DISCUSSION

Landlord seeks summary judgment on its complaint and Tenant’s counterclaim. Each claim is addressed below.

A. Eviction

Landlord seeks a writ of possession from the court, evicting Tenant from the property. Landlord asserts that it is entitled to the writ because Tenant remains on the property after the lease was terminated.

In the absence of a written rental agreement, the landlord may terminate a tenancy for no cause as follows:

(1) if rent is payable on a monthly basis, by providing actual notice to the tenant of the date on which the tenancy will terminate which shall be:

(B) For tenants who have resided continuously in the same premises for more than two years, at least 90 days after the date of the actual notice.

9 V.S.A. § 4467(c).

In this case, Landlord followed the notice requirement for eviction. There was no written rental agreement, and Landlord sought to terminate the lease without cause. Because Tenant has resided on the property for more than two years, he was entitled to 90 days notice to vacate. Tenant was given actual notice that his tenancy would terminate in 90 days. Tenant’s failure to vacate at that time allowed Landlord to bring an action for possession pursuant to 12 V.S.A. §§ 4851-4856. See 9 V.S.A. § 4468.

When the lessee of lands or tenements, either by parole or written lease, . . . holds possession of the demised premises without right, after the termination of the

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FEB 12 2010

lease . . . , the person entitled to the possession of the premises may have from the presiding judge of the superior court a writ to restore him or her to the possession thereof.

12 V.S.A. § 4851. A prerequisite to bringing an action under this statute is the existence of a landlord and tenant relationship. See *Strengowski v. Gomes*, 128 Vt. 555, 557 (1970). Section 4851 provides a summary remedy for a landlord whose tenant holds over without right after the termination of a lease, and it lies where common-law ejectment would lie. See *Canfield v. Hall* 121 Vt. 479, 481-82 (1960).

It is clear in this case that the parties have a landlord-tenant relationship, and it is undisputed that Tenant holds possession of the property without right after the lease was lawfully terminated pursuant to 9 V.S.A. § 4467(c). Therefore, Landlord is entitled to summary judgment on its ejectment complaint.

B. Retaliation

Tenant's counterclaim that Landlord is retaliating against him is governed by statute.

A landlord of a residential dwelling unit may not retaliate by establishing or changing terms of a rental agreement or by bringing or threatening to bring an action against a tenant who:

(1) has complained to a governmental agency charged with responsibility for enforcement of a building, housing or health regulation of a violation applicable to the premises materially affecting health and safety;

(2) has complained to the landlord of a violation of this chapter; or

(3) has organized or become a member of a tenant's union or similar organization.

9 V.S.A. § 4465(a).

In this case, there is no evidence that Tenant complained to a governmental agency, or anyone else, about lead paint or any other hazard at the house. Likewise, Tenant's relationship with his Landlord was good before the eviction notice was sent, and there is no indication that he complained to Landlord about violations of the housing statutes. The last subsection of section 4465(a) is inapplicable because there is no allegation of unionizing activities. After reading Tenant's deposition transcript, it is clear that Landlord did not retaliate against Tenant by terminating the lease because Tenant was unaware of any problem with the house until after he received his lease-termination notice. Therefore, Tenant's retaliation claim must fail, and Landlord is entitled to summary judgment on this count of Tenant's counterclaim.

C. Habitability

Tenant's counterclaim also indicates that Landlord breached the warranty of habitability. "In any residential rental agreement, the landlord shall be deemed to covenant and warrant to

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deliver over and maintain, throughout the period of the tenancy, premises that are safe, clean and fit for human habitation and which comply with the requirements of applicable building, housing and health regulations.” 9 V.S.A. § 4457(a).

If the landlord fails to comply with the landlord’s obligations for habitability and, after receiving actual notice of the noncompliance from . . . a governmental entity . . . , the landlord fails to make repairs within a reasonable time and the noncompliance materially affects health and safety, the tenant may:

- (1) withhold the payment of rent for the period of the noncompliance;
- (2) obtain injunctive relief;
- (3) recover damages, costs and reasonable attorney’s fees; and
- (4) terminate the rental agreement on reasonable notice.

Id. § 4458(a).

It can be reasonably inferred from the evidence presented that Landlord received notice from the State that the property in this case did not comply with health statutes governing lead paint. See 18 V.S.A. §§ 1751-1765. However, this alone does not entitle Tenant to prevail on his breach of warranty counterclaim. Although there is no indication that Landlord made repairs within a reasonable time, Tenant cannot recover for breach of warranty because he has failed to show that Landlord’s noncompliance with the lead paint statutes materially affected Tenant’s health and safety. At the deposition, Tenant made clear that he was tested for lead poisoning and that the test found low levels of lead in his blood. Furthermore, Tenant indicated that he was not concerned with lead paint because no children visited him who might eat it. Tenant appears content to stay in the house indefinitely regardless of the lead paint, which he believes is not a problem. Based on this undisputed evidence, Tenant cannot prevail on his breach of habitability counterclaim, and Landlord is entitled to summary judgment on this count.

D. Consumer Fraud

Finally, Tenant claims Landlord acted unfairly or deceptively, in violation of Vermont’s Consumer Fraud Act. Under the Act, “[u]nfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful.” 9 V.S.A. § 2453(a). The Act provides for a private right of action against those alleged to have violated section 2453(a). See *id.* § 2461(b). The Act applies to real estate leases, which include residential rental agreements. See *id.* § 2451a; *Bisson v. Ward*, 160 Vt. 343, 349 (1993).

The statute prohibits deceptive acts and practices in commerce, which a complainant must establish with proof of three elements: (1) the representation or omission at issue was likely to mislead consumers; (2) the consumer’s interpretation of the representation was reasonable under the circumstances; and (3) the misleading representation was material in that it affected the consumer’s purchasing decision.

Jordan v. Nissan N. Am., Inc., 2004 VT 27, ¶ 5, 176 Vt. 465.

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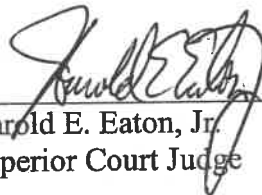
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In this case, after an adequate time for discovery, Tenant has failed to specify what representation or omission made by Landlord, regarding lead paint or anything else, misled him. Even if Landlord had made some kind of representation regarding lead paint, there is no indication that it affected Tenant's decision to rent the house. Tenant has lived in the house for more than fifty years, long before the dangers associated with lead paint were widely known. Furthermore, Tenant's testimony at deposition undermines any fraud claim alleged against Landlord. Tenant indicated explicitly that he had not been defrauded and that Landlord had not engaged in any unfair or deceptive business practices. Therefore, Tenant's consumer fraud claim must fail, and Landlord is entitled to summary judgment on this count of Tenant's counterclaim.

ORDER

For the reasons stated above, Landlord's motion for summary judgment is GRANTED. Plaintiff is to submit a proposed judgment order, consistent with the terms of this decision within five (5) days.

Dated at Woodstock, Vermont this 12 day of February 2010.



Harold E. Eaton, Jr.
Superior Court Judge

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