

STATE OF VERMONT
WINDSOR COUNTY, SS

Joseph Wood
Plaintiff

v.

Michael J. Belanger
Defendant

SUPERIOR COURT
Docket No. 849-12-09 Wrcv

DECISION ON MOTION FOR PRELIMINARY INJUNCTION

This case involves a landlord-tenant relationship run completely amok.

Plaintiff is a tenant who rents a cottage in Chester, Vermont. Defendant is the landlord, and the cottage is located a few feet from defendant's home. The cottage has previously been occupied by defendant's family members, and plaintiff and his wife are the first tenants to have rented the cottage during defendant's ownership. Defendant has owned the property for about six years.

Plaintiff alleges that there is insufficient water pressure in the cabin, and that there have been interpersonal conflicts with defendant. His claims in the present lawsuit are for breach of the warranty of habitability, breach of quiet enjoyment, and intentional infliction of emotional distress. He also alleges illegal eviction on the grounds that the landlord has given him notices to quit that are supposedly retaliatory in nature.

After the filing of the complaint, this court issued an ex parte order requiring defendant to restore water to the cottage. The ex parte order was issued on December 24, 2009. Water has not yet been restored.

Defendant filed a separate action for eviction in early January, in Docket No. 5-1-10 Wrcv. There has not yet been proof of service in either action, and neither party has answered either complaint.

The credible evidence presented at the preliminary injunction hearing held on January 15, 2010, established the following. Plaintiff and his wife moved into the cottage in July 2009. Plaintiff contends that there were water problems almost immediately, and that defendant was notified about the water problem at that time. Plaintiff contends that defendant agreed to have it fixed as soon as possible. For his part, defendant denies being notified of any water problem until late October or November 2009.

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Both houses are supplied by a common water system. It appears to be a shallow well with gravity feed. The rental cottage has a pump to increase water pressure. The pump has burned out and has been in that condition since at least November.

A number of witnesses testified that there is insufficient water or water pressure in the cottage. Plaintiff and his family have had to wash their dishes and shower at other houses for several weeks. They have also had to buy or borrow water to bring to the cottage. Adequate water to the cottage has not been restored.

It is undisputed that defendant has known about the problem since November. It is also undisputed that the broken pump results in insufficient water supply to service the cottage. There may be additional problems with the water, but those have not been established.

Defendant claims that he has not had the pump fixed because he does not have enough money to do so, since plaintiff has not paid rent. Another source of conflict is that there is a lease provision making it the landlord's responsibility to pay for heat. Defendant claims that plaintiff is deliberately running up the heating bill by setting the thermostat to a high temperature and then leaving the windows open. Defendant claims that his bill for the electricity to the cottage was more than \$500 last month.

The water system was inspected by the Chester health officer, but the officer did not testify at the hearing. It is not clear what findings he or she made. Other officials have also apparently visited the premises, but the purpose of their visits, and any findings resulting from those visits, are similarly unclear.

Plaintiff admits that he has not paid rent for December 2009 and January 2010. He claims to be withholding rent in light of the breach of the warranty of habitability, and placing the money in escrow. He has made no arrangements to have the water system inspected by his own plumber, or to have the system fixed with the withheld rent. It should be noted that there is a motion to pay rent into court in the other docket, which is presently pending. The allegation there is that plaintiff owes two months of rent at \$1,050 per month.

Yet another complicating factor is that plaintiff has filled out a notice against trespass even though defendant is the landlord, and even though the cottage and the house are about six feet apart. Plaintiff claims that the no-trespass order is necessary because he and his family are in fear of defendant.

Defendant claims that the no-trespass order has kept him from making further inspection of the premises. Defendant also claims that he has been assaulted by plaintiff, including having a tooth broken in some sort of altercation.

Most of the rancorous incidents are not material to the present question before the court, which is whether a preliminary injunction should be granted requiring the landlord to restore water service to the cottage. The applicable rule is that although injunctive

relief is an extraordinary remedy, it may be granted when the right to relief is clear and irreparable injury would otherwise occur during the pendency of the action. *Committee to Save the Bishop's House v. Med. Ctr. Hosp. of Vermont, Inc.*, 136 Vt. 213, 218 (1978). The purpose of the preliminary injunction is to preserve the status quo during the court proceedings themselves. 11A Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 2948.

In Vermont, it is well established that a landlord must provide "an adequate amount of water to each dwelling unit." 9 V.S.A. § 4457(c). A landlord's failure to comply with this obligation within a reasonable amount of time authorizes the tenant to seek injunctive relief from the court. *Id.* § 4458(a)(2). It makes sense that a tenant would be able to obtain a preliminary injunction restoring water service to a residential rental. The tenant should not have to wait for the conclusion of the legal proceedings in order to have access to water.

It is not a defense to the restoration of water that the tenant has not paid rent, or that the tenant has been running up the electricity bills. The obligation of the landlord to provide adequate water to the premises is an independent and unconditional obligation. Any questions involving unpaid rent or damages to the property caused by the tenant must remain separate and distinct from the landlord's obligation to provide access to heat and water. Even if such questions are appropriate for consideration in connection with the merits of the case, they are neither a justification for failing to provide adequate water, nor a defense to issuance of a preliminary injunction.

It is also immaterial that the tenant prevented the landlord from inspecting the property by obtaining a no-trespass order. Defendant suggests that this made it impossible for him to perform the repair. Yet there was no evidence that the landlord made efforts to hire someone else, such as a plumber or contractor, to visit the property and replace the water pump. The most important concern right now is restoring water service to the cottage.

In short, the cottage does not have an adequate supply of water. It is the landlord's obligation to fix the water supply problem, and the problem has been allowed to linger since at least November without any resolution. The court will accordingly grant the request for the preliminary injunction. **Defendant must restore an adequate water supply to the property no later than February 15, 2010.**

The court will not require plaintiff to post security in return for obtaining the injunction. The purpose of security is to ensure that compensation will be available to defendant in the event that the preliminary injunction turns out to have been wrongly granted. 12 V.S.A. § 4447; 11A Federal Practice and Procedure, *supra*, at § 2954. Here, however, defendant has agreed that the water pump has been broken since at least November, and that there is insufficient water pressure in the cottage. Since these are the only facts material to the granting of the preliminary injunction, and since it is clearly established that it is the landlord's responsibility to maintain the water system, there is no

need to hedge against the possibility that the injunction has been wrongly granted. It is undisputed that the water problems at the cottage require repair.

To the extent that there are questions about unpaid rent and other expenses, these questions are better addressed in the context of the pending rent escrow hearing, and on the merits. Rule 65(c) does not require the posting of a bond merely because there are other claims and counterclaims in the case.

The court next turns to the no-trespass order. Title 9, V.S.A. § 4460 sets forth a series of rules that govern a landlord's right to access a rental property. In pertinent part, the rules are that a landlord may enter the dwelling unit with the tenant's consent, which shall not be unreasonably withheld. The landlord may also enter the dwelling unit for specified purposes between the hours of 9:00 AM and 9:00 PM so long as 48 hours advance notice is given. One of those purposes is performing necessary repairs. Since the court has found the water system to be a necessary repair, these rules (and not the no-trespass order) govern the landlord's right to access the property for the purpose of repairing the water system.

Another option is that the plaintiff can choose to repair the water problem himself and deduct the actual and reasonable cost of the work from the rent. The limitation of choosing this route is that the reimbursable cost of the work cannot exceed one half of one month's rent, which means about \$525.

Finally, this case and Docket No. 5-1-10 Wrcv involve the same facts and issues. The cases will therefore be consolidated for trial under V.R.C.P. 42. In the event that these cases progress to final hearing and is not resolved by a settlement agreement before then, the cases will be heard together on the merits.

This brings up one final note. The court is aware from the testimony that plaintiff wishes to move from the cottage, and that defendant also wishes for plaintiff to move. The granting of the preliminary injunction does not prevent resolution of this controversy through agreement, which is encouraged.

ORDER

Plaintiff's Motion for a Preliminary Injunction (MPR #3) is **granted**. Defendant shall restore an adequate water supply to the property no later than February 15, 2010. This docket and Docket No. 5-1-10 Wrcv shall be consolidated for trial.

Dated at Woodstock, Vermont this 21 day of January, 2010.



Hon. Harold E. Eaton, Jr.
Presiding Judge

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