

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 23-CV-01513

Melinda Melendy v. Britney Ruley et al

ENTRY REGARDING MOTION

Title: Motion to Amend Complaint (Motion: 9)
Filer: Peter S. Kazakis, Esq.
Filed Date: July 20, 2023

This is an eviction action filed pursuant to 12 V.S.A. § 4761. Plaintiff Landlord Melinda Melendy seeks to evict Defendant Tenants Britney Ruley and Patrick Fowler from her rental property in Wells, Vermont based on the failure to pay rent. Ms. Melendy is represented by Peter S. Kazakis, Esq. and Tenants represent themselves. Landlord has moved to amend the Complaint to add a count for no-cause eviction, based on a Notice of Termination issued on February 14, 2023 which gave a termination date of April 21, 2023. Defendant Ruley opposes the motion, arguing that the notice is insufficient to support a judgment of eviction under 9 V.S.A. § 4467(k) because leave to amend the complaint was sought more than 60 days after the termination date. For the reasons discussed below, Landlord’s motion to amend is DENIED.

It is well established that under Rule 15(a) of the Vermont Rules of Civil Procedure, leave to amend “shall be freely given when justice so requires.” V.R.C.P. 15(a). However, a court may deny a motion to amend when the “amendment would be futile,” meaning that the “amended complaint cannot withstand a motion to dismiss.” *Vasseur v. State*, 2021 VT 53, ¶ 7. “The purpose of a motion to dismiss for failure to state a claim upon which relief can be granted is to test the law of the claim, not the facts that support it.” *Samis v. Samis*, 2011 VT 21, ¶ 9.

The Vermont Residential Rental Agreements Act provides that “A notice to terminate a tenancy shall be insufficient to support a judgment of eviction unless the proceeding is commenced not later than 60 days from the termination date set forth in the notice.” 9 V.S.A. § 4467(k). Landlord maintains the amendment should be permitted because this action was commenced within 60 days of one of the termination dates in the Notice (March 7, 2023 – for non-payment of rent), *see* Pl.’s Compl., Ex. 1, and Vermont law allows a landlord to “maintain an ejectment action and rely on as many grounds for ejectment as are allowed by law at any time during the eviction process.” 9 V.S.A. § 4467(i). Tenant contends that because the proceeding for a no-cause eviction was not commenced until Landlord’s motion to amend the complaint, which was filed more than 60 days after that termination date, the Notice of Termination is insufficient to support an eviction judgment on that ground under § 4467(k).

This issue appears to be a matter of first impression. The parties have cited no case law construing § 4467(k), nor has the Court found any. The Court concludes the meaning of § 4467(k) is ambiguous, and therefore, the Court must look beyond the plain language to ascertain the Legislature’s intent. *Harris v. Sherman*, 167 Vt. 613, 614, 708 A.2d 1348, 1349 (1998) (mem.) (if a statute is ambiguous, courts “ascertain legislative intent through consideration of the entire statute, including its subject matter, effects and consequences, as well as the reason and spirit of the law”). “To determine that intent, we must examine and consider fairly, not just isolated sentences or phrases, but the whole and every part of the statute, together with other statutes standing in pari materia with it, as parts of a unified statutory system.” *Brown v. W.T. Martin Plumbing & Heating, Inc.*, 2013 VT 38, ¶ 20 (quotation omitted).

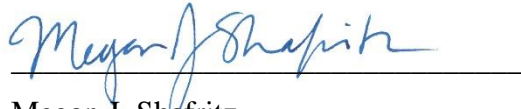
As the Vermont Supreme Court has made clear, “[w]ith respect to the termination of residential leases, we have followed the trend in other jurisdictions to require punctilious compliance with all statutory eviction procedures, including notice provisions.” *Vt. Small Bus. Dev. Corp. v. Fifth Son Corp.*, 2013 VT 7, ¶ 15 (quotation omitted). Section 4467(k)’s purpose appears to be to require landlords to act promptly to bring eviction actions where they have issued a valid termination notice, and to protect tenants from confusion or surprise arising from delays in filing a lawsuit after the tenant would reasonably believe the issue has been resolved or the notice is stale. *Cf. In re Soon Kwon*, 2011 VT 26, ¶ 15 (noting that “the security deposit section of the Landlord and Tenant Act is clearly a consumer protection provision regulating contractual security deposit procedures”). This concern is implicated regardless of whether the eviction action is initially commenced based on a different ground raised in the same or a separate termination notice. Here, the action for no-cause termination was not ripe when Landlord originally commenced this action for non-payment of rent, and Tenants may have believed the no-cause claim had been abandoned when it was not timely raised in this action. Indeed, it is possible Tenants would have decided to proceed differently in defending the action had they been aware that Landlord also intended to assert the claim for no-cause termination. Thus, the Court concludes that, consistent with the Legislature’s intent, § 4467(k) logically requires that a landlord must *assert the count for ejectment based on the specific ground stated in the termination notice* (thereby “commencing the proceeding” based on that ground) within the 60-day period in order for the notice to be sufficient to support a judgment for eviction on that ground.

The language in § 4467(i) cited by Landlord does not compel a contrary result. That section makes clear that a landlord may issue multiple valid termination notices with different grounds and termination dates, even while an ejectment action is pending, and may bring an ejectment action with “as many grounds for ejectment *as are allowed by law* at any time during the eviction process.” *See* 9 V.S.A. § 4467(i) (emphasis added). However, Landlord’s proposed interpretation would render § 4467(k)’s 60-day requirement superfluous once an ejectment action is filed. This is inconsistent with the construction of the statute as a whole, and contrary to established principles of statutory interpretation. *Baldauf v. Vermont State Treasurer*, 2021 VT 29, ¶ 19 (“We consider the whole and every part of the statute and avoid a construction that would render part of the statutory language superfluous.” (quotation omitted)).

Accordingly, because Landlord did not seek to amend her Complaint to assert a ground for no-cause eviction within 60 days of the April 21, 2023 termination date stated in the February

14, 2023 Notice of Termination, the Court agrees that the notice is insufficient to support a judgment of eviction on that ground. Therefore, Landlord's motion to amend is DENIED as futile.

Electronically signed on August 29, 2023 at 10:37 AM pursuant to V.R.E.F. 9(d).

A handwritten signature in blue ink, reading "Megan J. Shafritz", is written over a solid horizontal line.

Megan J. Shafritz
Superior Court Judge