STATE OF VERMONT
WINDSOR COUNTY, SS.

KALPANA CHATTOPADHYAY	)	
	)	WINDSOR SUPERIOR COURT
v.	)	
	)	DOCKET NO. 225-5-96
JAMES ROBINSON AND LISA ROBINSON	)	

FINDINGS AND CONCLUSIONS

This matter came before the court for final hearing on August 13, 1997. The Plaintiff was not present but was represented by Attorney William K. Koppenheffer. The Defendant James Robinson was present and represented himself. Defendant Lisa Robinson was not present. Based on the evidence admitted, the Court makes the following findings of fact:

Plaintiff owns property in Quechee consisting of a residence that was built approximately 20 years ago and has been used by her for rental purposes since it was built. Defendants Lisa and James Robinson have rented the property since July 1, 1996, and have used it as a residence for themselves and their seven children.

The Plaintiff's prior tenant, acting on behalf of the Plaintiff, placed an ad in the paper in the spring of 1996 to advertise the property as available for rent. It was represented as a three-bedroom residence with a loft. The Robinsons were shown the property by the former tenant and by the Plaintiff and her son, Kajal, who manages the property for her. At the time they were shown the property, the loft had a bed in it and was apparently used for sleeping purposes. There was also a bedroom, one of the

other bedrooms advertised, in the downstairs basement.

At the time the property was shown, all parties recognized that the supports for the deck were not entirely secure. Defendant James Robinson represented himself as a handyman and indicated that he would try to do something about it before winter. The lease was signed for a one-year term only starting July 1, 1996. It provided that if the Lessee continued to occupy the premises after the end of the term, all the provisions of the lease would apply except that the period of occupancy would be at the will of the Lessor. It specifically stated that any rental arrangement after one year would be negotiable. The terms of the lease required rental payments of $900.00 per month in advance. In addition the Defendants were to pay a security deposit of $900.00 and the last month's rent of $900.00 in installments of $300.00 due July 1st, $500.00 due August 1st, $500.00 due September 1st, and $500.00 due October 1st. The lease specifies the use of the property as a primary residence. It is clear that it was to be residential property for the use of the Defendants and their seven children.

Plaintiffs' Exhibit 2, entitled "James and Lisa Robinson Rental", accurately shows the amounts due, the amounts paid, and the amounts owed by the Defendants under the lease, without adjustments for any other obligations that arose during the lease term.

In August of 1996, the Defendants' sixteen-month-old child was diagnosed with a serious illness and the family spent a month and a half in temporary quarters in Boston. They did not make the

September 1st rental payment on time. In October of 1996, the Plaintiff and her son were concerned about whether or not the Defendants were still occupying the property as they had attempted to contact the Defendants and had not reached them. The Plaintiff's son visited the premises unexpectedly on October 13, 1996, but the Defendants did not object. By this time, the Defendants had not paid the additional $500.00 due on October 1st, plus the $1,400.00 due on September 1st, and were $1,900.00 in arrears. Plaintiff's son asked Defendants if they were able to afford the rent, and they assured him that they were. They also mentioned that they were having problems with both the refrigerator and the dishwasher, but not in specific detail.

On November 1st, the Defendants paid the $900.00 monthly rental, plus $100.00 towards the back amount due, making them in arrears in the amount of $1,800.00. They made $900.00 rent payments on December 1st, January 1st, and February 1st and have not made any additional rent payments since. They have also not paid any more money on the arrearage of $1,800.00, representing the last month's rent (June 1997) and the security deposit.

On November 16, 1996, James Robinson wrote the Plaintiff a long letter about various financial matters, particularly the late rent payments. He also stated how pleased they were with the house. He mentioned nothing about the refrigerator or the dishwasher. He stated that "as long as anyone stays off the deck and snow is removed immediately, we have been told that it is fine until spring, (the person hopes) although he won't guarantee this,

but we will do what he said to do.". The Defendants appeared satisfied with the plan to keep the snow removed from the deck and not use it until spring.

On November 19, 1996, the Plaintiff's son wrote the Defendants a long letter in response to Defendants' letter concerning rental payments, and pointing out provisions of law entitling the Lessor to give notice of eviction if the payment provisions of a lease are not kept. He further stated that it was not the Plaintiff's desire to evict, but that rental payments needed to be made. He also represented that he would call a carpenter to repair the sagging portion of the deck, and instruct him to make the repairs before winter. He also stated that he would look into replacing the refrigerator and dishwasher, but would assume that they were still working unless he heard otherwise from the Defendants. He further asked the Defendants to contact him with any questions not addressed in the letter, and he gave his telephone number and address. The Defendant has claimed that he has never formally been notified that the Plaintiff's son is acting as her property manager. However, this letter makes clear that he was acting in that capacity and he provided contact information and clear notification that he was the person who would be assuming responsibility for the lease. As of the end of November, the Defendants were still pleased with the house and willing to accommodate the problem with the deck. They did not provide the Plaintiff or his son with any more information about any problems with the refrigerator or the dishwasher. The parties' relationship

had deteriorated somewhat due to the Defendants' non-payment of rent and the Plaintiff's insistence upon timely payment of rent.

On February 5, 1997, the heating system failed. The Defendants telephoned Plaintiff's son, and did not receive a call back for a few hours. Therefore, in the meantime, they called a plumber on their own. The cost of the plumber was $131.55. Plaintiff acknowledges that this amount should be deducted from the rent owed by the Defendants. Once Plaintiff's son learned of the problem, he immediately contacted heating contractors and arranged for a new system to be installed. This took place on February 7th. Thus, for two days, the Defendants' family was without heat in the middle of February. This made the property quite unusable, although the Defendants' family did stay in the house. The approximate daily rental value of the property is $30.00. There is no evidence that the Defendants incurred any additional out-of-pocket expenses during this period, such as motel accommodations, or any other expenses.

On February 5th, the Defendants contacted the Town Fire Inspector to come and make an inspection of the premises. The Fire Inspector found six safety problems with the premises. First was the unusable oil furnace. Compliance was required by February 7th, and this occurred. Second was that a fire extinguisher was to be provided in the kitchen. This problem was also immediately remedied. The third was that the Fire Inspector determined that the loft area could not be used as a sleeping area unless and until the stair ladder could be replaced with stairs, windows, or a

spiral staircase, and the window must open onto an exterior balcony. It has not been possible for the Plaintiffs to make changes sufficient to make the loft usable for a bedroom during the remainder of the rental. The lease provides that in the case of unavoidable damage by fire or other elements, not the fault of the Lessee, and the premises are untenable because of the damage, the Lessee shall receive a pro-rated share of rent for the time the premises are untenable. The premises had been advertised and were shown as if the loft could be used as a sleeping area. Therefore, the Court will calculate a deduction from the monthly rental to reflect the fact that the Defendants' family no longer had a bedroom available for use by themselves and their seven children.

The fourth problem identified was that the window in the downstairs bedroom, used by the children, was not sufficiently large to provide a safe emergency exit. The Inspector required that changes be made with compliance complete by May 1, 1997. The Plaintiff has made reasonable and diligent efforts to comply with the requirements, but has been unable to do so due to a combination of miscommunication about what would constitute compliance, and the significant structural changes necessary to bring about compliance. Nonetheless, the room has been unavailable as a bedroom for children since February 5, 1997. Again, the Court will make a pro-rated deduction for the loss of the use of a bedroom that was advertised and represented at the time of showing that it would be usable. The Court finds that $150.00 per month represents the reasonable value of the loss of two bedrooms

beginning in February of 1997.

The fifth problem identified as unsafe by the Fire Inspector was the lack of structural soundness of the deck and its leaning supports. Compliance was required by April 1, 1997. The Plaintiff immediately had a carpenter come and put in temporary supports for the deck. It was not possible to put in permanent supports because of the need to wait until the ground was soft enough. The compliance date was extended by the Fire Inspector and permanent supports were later put in. The landlord's actions in remedying the problem of the deck were timely and responsible.

The last safety item identified by the Fire Inspector was that smoke detectors were required for each bedroom. Although there was a little miscommunication, smoke detectors were installed in the bedrooms.

On February 14, 1997, Defendants wrote to Plaintiff complaining about lack of notice that the property management issues would be handled by Plaintiff's son rather than herself. This was an unreasonable complaint as it is clear that Plaintiff provided at all times access to her son who was responsive in addressing rental problems. The fact that the Defendants had never been notified in writing that he would be managing the property on her behalf is immaterial, as Plaintiff's son represented that he was acting on his mother's behalf and assumed full responsibility. In the February 14th letter, Defendants also stated that they had "other complaints" including the refrigerator, the dishwater, a rodent problem and an electrical problem in the dryer. No

specifics were given. In that letter, Defendants also complained about the lack of responsiveness in making repairs, and claimed a deduction of $225.00 per month for the loss of the bedrooms, and stated that they would be withholding monthly rent until repairs were made. At this point, the heating system had already been fully repaired. Repairs were needed to the deck. There was no specific information about the problems with the refrigerator, dishwasher, rodent problem, or dryer. Defendants stated they would be putting the withheld monthly rent in a separate account.

Defendants did not enclose a copy of the fire safety report with their letter. Plaintiff's son later received a copy of the fire safety report.

The Plaintiff's son responded to the Defendants with a letter dated March 7, 1997. He informed the Defendants that he had made arrangements for temporary supports for the deck to be installed immediately, with additional work done when the ground thawed in the spring. He objected to any deduction for rent due to an inability to use the loft as a bedroom on the grounds that neither he nor his mother had ever represented that the loft could be used as a bedroom. He stated that if the Defendants deducted rent for the lost of the loft as a bedroom that Plaintiff would be pursing legal action. He also described efforts to respond to the problem of the small window in the downstairs bedroom. He also asked for a specific description of problems with the refrigerator so he could take appropriate action. He objected to the withholding of rent and demanded that rent be paid, or Plaintiff would be pursuing

legal remedies. Defendants did continue to withhold rent and deposit the money in separate accounts. As of the date of hearing, unadjusted rent due under the lease agreement was $6,300.00, including a $900.00 security deposit. The amounts set aside into separate accounts were $6,689.90.

In March of 1997, the temporary deck supports were completed. As of that time, Defendants no longer had a basis for withholding rent, as there were no further repairs that could be made to the premises. Problems with the refrigerator and dishwasher fall in the category of so-called "minor repairs", which the tenants are authorized to make on their own and deduct from the rent rather than withhold the entire amount of rent due. There is no evidence that the refrigerator or dishwasher were not working, or that the Defendants ever incurred any expense in repairing them. In April of 1997, Defendants sent both Plaintiff and her son a letter by certified mail, return receipt requested. Neither of them received the letters. On April 23, 1997, Plaintiff's attorney had a Notice to Quit Premises, or a notice to evict based upon the non-payment of rent, served upon the Defendants by the Town Constable. Defendants have not vacated the premises. The lease expired on June 30, 1997. It is the Defendants' desire to remain on the premises, and they believe that they are entitled to do so. The lease agreement is explicit that the lease expired June 30, 1997, and the parties have not negotiated any new lease or extension of the lease agreement.

Defendants owe Plaintiffs $125.88 for a sewer bill which is

their responsibility under the lease, and which they were not previously notified about by Plaintiff prior to trial.

Plaintiff has incurred $1,435.00 in legal fees from February 4, 1997 through August 13, 1997 in connection with this matter. She has also incurred $259.20 in filing and service fees. She seeks to have the Defendants pay these two sums, totalling $1,694.20, on the basis of the lease provision ¶9 which provides that in the event of default, and/or if Lessor sues Lessee for ejectment, Lessee agrees to reimburse Lessor for reasonable attorney fees incurred by the Lessor in enforcing the provisions of the lease.

Both parties are in agreement that if the Court determines that the Plaintiff is entitled to possession of the premises, the date upon which the Defendants shall vacate is September 30, 1997.

CONCLUSIONS OF LAW

Based on the foregoing findings and the applicable law, the Court makes the following conclusions:

1. Plaintiff is entitled to a credit in the amount of $6,300.00 for rental payments due through August 31, 1997 including a $900.00 security deposit. An additional $900.00 for rental for the month of September 1997 will be due on or before August 29, 1997. September rent is to be paid into Court pursuant to the Court's Order of August 13, 1997. The $900.00 in security deposit funds shall be distributed in accordance with 9 VSA § 4461 after

the Defendants have vacated the premises.

2. Pursuant to 9 VSA § 4457(a), the Plaintiff had an obligation to the Defendants under the warranty of habitability to provide premises "that are safe, clean and fit for human habitation and which comply with the requirements of applicable building, housing and health regulations." As of February 5, 1997, the Plaintiff breached the warranty of habitability by failure of the furnace resulting in a loss of heat in the premises for two days. This was through no fault of the tenants. Notice was given to the Plaintiff and repairs were completed within a reasonable time. Nonetheless, the Defendants lost two days of use of the property. Pursuant to the warranty of habitability and the provision in the lease agreement in ¶4 that if the premises are untenable because of unavoidable damage, the Lessee shall receive a pro-rated share of rent for the time the premises are untenable, Defendants are entitled to a credit of $30.00 per day for the two days the premises were untenable.

3. On February 14, 1997, the Defendants gave notice to the Plaintiff of non-compliance with the landlord's obligation for habitability on five matters in addition to the failure of the heating system. Plaintiff made repairs within a reasonable period of time with respect to the fire extinguisher in the kitchen, support of the deck, and smoke detectors in each bedroom. Plaintiff did not correct the safety problems connected with using the loft as a sleeping area, or for using the downstairs bedroom as a bedroom. Plaintiff did make reasonable efforts to try to correct

these problems, but could not do so immediately or without significant expense. If a landlord fails to make repairs within a reasonable period of time "and the non-compliance material affects health and safety," the tenant may withhold payment of rent for the period of non-compliance. The Court concludes that the inability to use the loft as a bedroom and the inability to use the downstairs bedroom as a bedroom did not materially affect health and safety. These conditions reduced the number of bedrooms available, and thereby eliminated a portion of the premises that the Defendants were renting from the Plaintiff. However, the remainder of the home could be fully occupied without problems affecting health and safety, and those rooms could be utilized, but just not as bedrooms. Therefore, the Court concludes that the Defendants were not entitled to withhold rent due to the Plaintiff's non-repair of these items. Nonetheless, the Defendants lost use of two of the bedrooms they had rented. Under ¶4 of the lease, the Defendants are entitled to a reduction in rent for the portion of the house for which they agreed to pay and that was no longer available to them as sleeping rooms. Therefore the Defendants are entitled to a deduction in the rent due of $150.00 per month for the seven months from February through August, or a total of $1,050.00.

5. Under 9 VSA § 4459, if there are minor defects which a landlord fails to repair within 30 days, the tenant may repair and deduct from the rent the reasonable cost of the work, not to exceed one-half of one month's rent. In that event, the tenant shall

provide the landlord with actual notice of the cost of the repair. The parties are in agreement that under this provision the Defendant is entitled to deduct the sum of $131.55 representing the expense incurred by the Defendant to call a plumber when heating system failed. Defendants claim entitlement to a deduction for defects in the operation of the refrigerator and dishwasher. Although they made general complaints about the refrigerator and dishwasher, when the landlord asked for more specific information, they provided none. Therefore, the notice of the defect was not sufficient to trigger the landlord's obligation to make the repair. In addition, the Defendants have not presented any evidence of having made any repairs on their own or incurred any expense, and have presented no evidence of the cost of repair. Therefore, the Defendants are not entitled to any deduction for defects or repairs to either the refrigerator or the dishwasher.

The Court has already concluded that the Defendants were not entitled to withhold rent due to any alleged failure on the part of the Plaintiff to comply with the warranty of habitability. Therefore, when the Plaintiff served Defendants with a Notice to Quit in April of 1997 due to non-payment of rent, they were entitled to do so and were further entitled to pursue an eviction action when they filed the case in May of 1997 pursuant to 9 VSA § 4467. In addition, the lease expired by its own terms on June 30, 1997, and had not been extended or renegotiated by agreement of the parties. Therefore, as of the date of hearing, August 13, 1997, Plaintiff had shown entitlement to regain possession of the

premises on two grounds: the Defendants' non-payment of rent, and the expiration of the lease term. Therefore, the Plaintiff is entitled to possession of the premises. The parties have agreed that Defendants' tenancy shall continue to September 30, 1997. Therefore, Plaintiff is entitled to possession of the property as of October 1, 1997.

6. Plaintiffs claim attorney's fees in connection with this action. Under ¶9 of the lease, in the event of the tenant's default in an ejectment action brought by the Plaintiff, Plaintiff is entitled to reimbursement from the Defendants for "reasonable attorney's fee incurred by the Lessor in enforcing the provisions of this lease agreement." The Plaintiff was entitled to pursue this eviction action as of May 9th for non-payment of rent, as well as to pursue the eviction action due to termination beyond the lease term. Therefore, Plaintiff is entitled to reasonable attorney's fees in enforcing these provisions of the lease. Plaintiff is not entitled to attorney's fees with respect to representation in connection with violations of the warranty of habitability, or Defendants' counterclaim. The Court has reviewed the itemized bill for attorney's fees admitted into evidence as Exhibit 3. The Court concludes that the Plaintiff incurred attorney's fees for 6.75 hours related to the eviction proceeding for non-payment of rent and expiration of the lease term. The remainder of the attorney's fees were incurred in relation to issues of the warranty of habitability. Plaintiff is entitled to attorney's fees in the amount of 6.75 hours x 140.00 per hour or

$945.00 in fees plus $259.20 in costs for a total of $1,204.20.

The credits and debits of the respective parties may be summarized as follows:

Defendants owe Plaintiff:

Rent and security deposit	$ 6,300.00
Sewer bill	125.88
Attorney's fees and costs	1,204.20
TOTAL	$ 7,630.08

Plaintiff owes Defendants:

Pro-Rated rent to for 2 bedrooms	$ 1,050.00
Plumber's bill	131.55
Pro-Rated rent for 2 days without heat	60.00
TOTAL	$ 1,241.55

Therefore, Defendants owe Plaintiff $7,630.08 - $1,241.55 or a net of $6,388.53.

ORDER

Based on the foregoing findings and conclusions, of the funds held by the Court or by the Defendant in either of the accounts represented in Defendants' Exhibit J, the Defendants shall pay Plaintiff $6,388.53. In addition, the Defendants shall pay

Plaintiff $750.00 on or before August 29, 1997 for rent for September 1997. Any balance may be paid to Defendants. Of the above sum, Plaintiff shall hold $900.00 as a security deposit, to be distributed following termination of the tenancy in accordance with 9 VSA § 4461.

DATED AT WOODSTOCK in the County of Windsor and State of Vermont this 25th day of August, 1997.

Mary Miles Teachout

MARY MILES TEACHOUT
PRESIDING JUDGE

FILED

AUG 25 1997

GAIL P. BRADY
WINDSOR COUNTY CLERK