

VERMONT SUPERIOR COURT

SUPERIOR COURT
Orange Unit

CIVIL DIVISION
Docket No. 168-8-11 Oecv

Bruce Hoyt & Pamela Hoyt
Plaintiffs

v.

Brian Burke & Rhonda Burke
Defendants

DECISION ON MOTION FOR SUMMARY JUDGMENT

Plaintiffs have moved for summary judgment in a pleading filed May 25, 2012. A brief opposition, not in the form required by V.R.C.P. 56, was filed by Brian Burke on June 8, 2012.

Undisputed Facts

The following facts have not been disputed in the manner required by V.R.C.P. 56:

Plaintiffs leased premises at 1638 Parker Rd. Vershire, Vt. to Defendants under a written lease dated November 27, 2010. The lease provided for monthly rent in the amount of \$900.

Defendants failed to pay the rent in whole or in part from March 2011 until September 2011. The last payment of rent was a partial payment in April 2011 which was applied to an outstanding balance for February's rent and a portion applied to the March rent.

Plaintiffs served Defendants with a notice to quit on July 20, 2011 by mail and in hand on July 22, 2011 by sheriff's service. The attempted service by mail was returned as undeliverable. The notice to quit provided the tenancy would end on August 23, 2011 unless all past due rent was paid in full. The notice also provided Defendant's with information concerning their right to cure past deficiencies in rent. The Defendants did not pay the past due rent by August 23, 2011.

As of August 25, 2011, Defendants remained in possession of the premises and did not pay rent. Defendants vacated the premises thereafter.

As of the time Defendants vacated the premises, they owed past due rent in the amount of \$6200. This amount has not been paid to date.

The lease provided that Defendants would fill the propane tank at the time they vacated the premises. Defendants did not do so. The cost to fill the propane tank was \$986.02, which has been incurred by Plaintiffs.

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The lease provided that the Defendants would keep the premises neat and clean. Upon vacating, the premises were left by Defendants in an untidy condition requiring Plaintiffs to expend \$240 for trash removal.

The lease further provides Plaintiff may collect reasonable attorney's fees incurred in enforcing the lease.

Defendants claim that they can prove Plaintiffs have engaged in "wrong doing" and have "done this before" but provided no specifics as to the wrong doing or what Plaintiffs had done before. These vague allegations do not place a material fact in issue.

Conclusions of Law

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, 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 demonstrating that no genuine issue of material fact exists and that he is entitled to judgment as a matter of law. *Price v. Leland*, 149 Vt. 518, 521 (1988). The non-moving party has the burden of setting forth specific facts showing a genuine dispute for trial. V.R.C.P. 56(e). The purpose of summary judgment is to "pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986) (citation omitted).

The parties had a written lease which required Defendants to pay rent during their occupancy of \$900 per month. They did not do so. As a result of Defendants' failure to pay rent, the Plaintiffs notified them of termination of the tenancy. The notice was timely served and was proper in content. 9 V.S.A. § 4467.

The lease provided that Defendant were to fill the propane tank upon vacating and to leave the premises neat and clean. The Defendants did not do so.

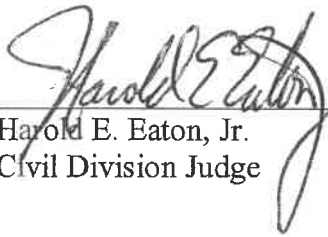
As a result of Defendants' breach of the lease agreement, Plaintiffs have sustained damages in the amount of \$6200 for past due rent, \$986.02 for propane, and \$240 for cleaning expenses. Plaintiffs may submit a motion for attorneys fees under V.R.C.P. 54(d)(2) should they choose to do so. *Murphy v. Stowe Club Highlands*, 171 Vt. 144 (2000).

Plaintiffs would be entitled to a judgment for possession, however possession has already been recovered.

Defendants' vague allegations of wrong doing and that Plaintiffs had done this before do not create triable issues. *Gore v. Green Mountain Lakes, Inc.*, 140 Vt. 262 (1981). As there are no genuine issues of material fact, even resolving all doubts in favor of Defendants, Plaintiffs are entitled to judgment for the sums set forth herein. *State v. Delaney*, 157 Vt. 247 (1991).

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Dated at Chelsea this 28th day of June, 2012.



Harold E. Eaton, Jr.
Civil Division Judge

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Judgment

Based upon the Court's decision of today's date, Plaintiffs, Bruce and Pamela Hoyt, shall have judgment against Defendants Brain and Rhonda Burke as follows:

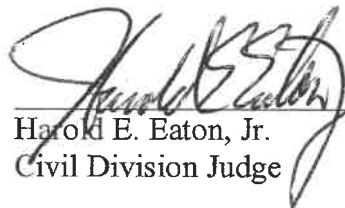
Unpaid rent: \$6200

Propane expense: \$986.02

Clean up expense: \$240

Total judgment: \$7426.02

Dated at Chelsea this 28th day of June, 2012.



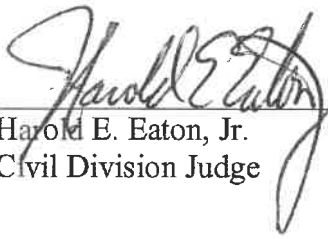
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