

STATE OF VERMONT
ADDISON COUNTY, SS.

STEWART CULVER,)
LOIS CULVER, LEE CULVER)
and SARA CULVER PIERCE)
v.)
SAGE TOMLIN BAHRE,)
GINGER TOMLIN BAHRE GALL,)
TIMOTHY TOMLIN BAHRE,)
MELINDA TOMLIN BAHRE MORSE,)
SCOTT ATKINS, RONALD ATKINS,)
and THOMAS E. BAHRE, personally)
and as trustee for the above named)
individuals)

Addison Superior Court
Docket No. 60-3-00 Ancv

MEMORANDUM OF DECISION

This matter is before the court on the Plaintiffs' Motion for Summary Judgment filed March 5, 2001. Oral argument was heard on July 17, 2001. Plaintiffs are represented by Gregg Meyer, Esq. The first six Defendants named above are represented by Stuart M. Bennett, Esq. Defendant Thomas E. Bahre is represented by Christopher D. Roy, Esq.

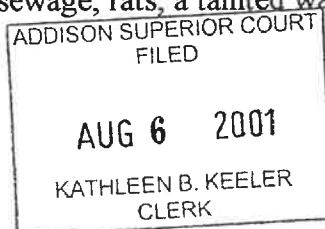
There are numerous legal claims in this case, all of which arise from a landlord tenant relationship between the Plaintiffs as tenants and the Defendants as owners and/or persons responsible for the property. Plaintiffs rented the premises as a residence over a period of twelve years. The first six Defendants are the owners of the real estate. Defendant Thomas Bahre is their father or stepfather and the person who managed the property on their behalf and had the most contact with the Plaintiffs.

The court has reviewed the Statements of Uncontested Facts, Affidavits, Deposition Transcripts, and Memoranda of Law submitted by all parties. Plaintiffs seek judgment as a matter of law on all claims. To prevail, the Plaintiffs must show that there are no genuine issues of material fact, and that on the basis of uncontested facts, they are entitled to judgment as a matter of law. V.R.C.P. 56, *Wesco, Inc. v. Hay-Now, Inc.*, 159 Vt. 23, 613 A.2d 207 (1992). Each of the claims are addressed below.

1. Violation of Residential Rental Agreement Act.

A. *Warranty of Habitability.* Plaintiffs claim numerous violations of the Defendants' warranty of habitability, specifically the presence of raw sewage, rats, a tainted water supply, lack

1



of heating facilities, holes in the walls and floors, hazardous wiring, and fire hazards. Defendants claim that any such conditions either did not exist as a violation of the warranty in the first place, or else they were conditions that were either remedied appropriately when brought to the landlord's attention, never brought to the landlord's attention, or created by the conduct of the tenants in possession. Defendant Thomas Bahre further denies liability on the grounds that he is not an owner of the premises. The court concludes that the affidavits and deposition transcripts show numerous disputes of material fact as to each of the above conditions: whether each constituted a violation of the landlord's warranty or whether it was a condition created by the tenants' conduct; whether notice of the condition was given to the landlord; and whether the landlord responded appropriately so as to satisfy obligations under the statute. 9 V.S.A. §§ 4457-4458. Although Defendant Thomas Bahre was not an owner of the property, he had a high level of involvement. A hearing on the disputed factual allegations will enable the court to determine whether or not he falls under the category of a "lessor" and thus is a "landlord" subject to the Residential Rental Agreement Act, 9 V.S.A. §4451(4). The Motion is denied as to this claim.

B. *Illegal retaliation through an illegal raising of rent.* In the spring of 1998, the landlord raised the rent without the proper statutory notice. Plaintiffs claim that they were told that they would have to leave if they complained. There are disputes of fact concerning whether the raising of rent was for a retaliatory purpose, or whether it was a periodic rent increase necessitated, in part, by expenses resulting from the installation of a new septic system that spring. There is a dispute of fact concerning whether the Plaintiffs were told they would have to leave if they complained. Because there are disputes as to material facts, the Motion is denied as to this claim.

2. Breach of Contract.

Plaintiffs claim that the same conduct that constitutes a violation of the Residential Rental Agreement Act constitutes a breach of contract. As stated above, there are numerous factual disputes as to the conduct itself, and therefore the Motion is denied as to this claim.

3. Breach of Implied Covenant of Good Faith and Fair Dealing.

Plaintiffs claim that the violations of the Residential Rental Agreement Act show violation of the covenant of good faith and fair dealing, which is an implied covenant in the rental agreement. Because the court cannot rule as a matter of law that the Defendants' conduct constituted a violation of the Act, it cannot find liability on this claim as a matter of law. There are disputes of material fact. The Motion is denied as to this claim.

4. Violation of the Vermont Consumer Fraud Act.

Plaintiffs rely on *Bisson v. Ward*, 160 Vt. 343 (1993) for the proposition that the landlord's breach of the implied warranty of habitability constitutes violation of the Consumer Fraud Act as a matter of law. Because there are disputes of material fact precluding a ruling as a matter of law that there has been a breach of any warranty of habitability, there is no basis at this time for a judgment as a matter of law that Defendants have violated the Consumer Fraud Act. The Motion is denied as to this claim.

5. Intentional Infliction of Emotional Distress.

To establish such a claim, the Plaintiffs must show extreme and outrageous conduct done intentionally or with reckless disregard of the probability of causing emotional distress, resulting in suffering of extreme emotional distress actually caused or proximately caused by the outrageous conduct. *Birkenhead v. Coombs*, 143 Vt. 167 (1983). Because there are numerous disputes of fact as to the conduct of the parties, there is no basis for a ruling as a matter of law. The Motion is denied as to this claim.

6. Negligent Maintenance and Management of the Rental Property.

Plaintiffs claim that Defendants failed to take the initiative to undertake routine maintenance checks and repairs of the property over the period of the tenancy. There are many disputes of fact concerning the conditions of the premises, and the reasons for such conditions, extending over a considerable number of years. Therefore, there is no basis for judgment as a matter of law. The Motion is denied as to this claim.

7. Battery of Sarah Culver Pierce by Thomas E. Bahre.

Sarah Culver Pierce claims that Thomas E. Bahre intentionally touched her on an unconsented basis in an offensive manner. Defendant Thomas Bahre claims that the touching occurred after asking her permission, and during the course of a discussion in the presence of a police officer. The issues of Mr. Bahre's intent and whether or not there was consent to the specific act of turning over Ms. Pierce's hands are in dispute, and require a hearing. Therefore, there is no basis for judgment as a matter of law at this time. The Motion is denied as to this claim.

ORDER

For the foregoing reasons,

Plaintiffs' Motion for Summary Judgment is *denied*.

A status conference will be scheduled preliminary to a contested hearing on the merits.

Dated at Middlebury, Vermont this 6th day of August, 2001.

Mary Miles Teachout
Hon. Mary Miles Teachout
Superior Judge, presiding