STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
Docket # 161-3-17 Wncv

SUPERIOR COURT
WASHINGTON UNIT
CIVIL DIVISION

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FILED

JENNIFER GOCHEY and TIMOTHY GOCHEY,
Plaintiffs

v.

BRUCE MULLEN and HEATHER CARPENTER,
Defendants

JUDGMENT

Based on the Findings of Law and Conclusions of Fact issued this day, Defendants are entitled to a judgment of $251.00 and Plaintiffs are entitled to net costs in the amount of $279.21, with the net due to Plaintiffs of $28.21.

Therefore, Plaintiffs shall recover the sum of $28.21 for costs. This results in satisfaction of Defendants' judgment against Plaintiffs.

Dated this 14th day of August, 2017.

Mary Miles Teachout

Mary Miles Teachout
Superior Judge

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FINDINGS OF FACT and CONCLUSIONS OF LAW

This matter came before the Court for final hearing on the merits on June 20, 2017. Plaintiffs are represented by Attorney Stephen L. Cusick. Defendants represented themselves.

Plaintiffs rented a residence to Defendants, and filed this case seeking ejectment, damages, and costs and attorneys' fees. Defendants counterclaimed for damages due to contamination of water supply.

Findings of Fact

Plaintiffs are a husband and wife who own property at 1169 VT Route 232 in Cabot. The property consists of a mobile home and auto repair shop. Plaintiffs purchased the mobile home in 1989 and lived in it themselves until 2001 when they moved to a different residence. The auto repair shop has been operated on the property for many years. The water source for the property is a spring. After the Plaintiffs moved out, they rented the mobile home to tenants and have done so continuously since 2001. They claim that they never had any problem with water quality while they lived there, and until the events of this case, they never had any complaints from tenants about the water.

Defendants first began renting the mobile home in 2012, and entered into a written lease in September of 2013. Rent was $800 per month. Defendants had previously paid a security deposit of $800 and last month's rent of $800 when they first began renting in October of 2012. They were regular in their rental payments.

In March of 2015, the water from the tap included a significant amount of sediment. Mr. Mullen took a glass of the cloudy water to Mr. Gochey to show him and asked if he would drink it. Mr. Gochey declined to drink it, and said he would check the filter. He did, and the water cleared up for a short time, but then sediment returned to the water. Mr. Gochey was again notified and he put in another filter but through May, the water was brown all the time.

Sediment deposits accumulated on surfaces such as the bathtub, shower, and toilet. The ice in the icemaker was dark. Exhibits F, G, and H are samples taken during the period from March to July of 2015 from the hot and cold taps and the icemaker. When the sediment is settled at the bottom of the containers, it forms a layer of dirt and the water appears clear, but with any agitation, the sediment spreads throughout the water and it becomes murky and brown. The Defendants stopped drinking the water or using it for ice, and bought bottled water.

Paragraph 10 (2) of the Lease provides in part: "Tenant will . . . immediately notify Landlord of any defects or dangerous conditions in and about the premises of which the Tenant becomes aware . . . ." The Defendants gave the Plaintiffs timely notice of the ongoing problems with the water, including what happened after Defendants' attempts to clear the water with filters. In a conversation in May of 2015, Mr. Gochey told Mr. Mullen that he had changed the filter several times and said he did not know what the dirty water meant.

On June 2, 2015, the Defendants' dog, who had been drinking the water from the tap, became very sick and was taken to the vet. The dog was seriously ill and required blood transfusions and has hemolytic anemia and needs prescription medication for life. Defendants learned of three possible causes from their veterinarian. They ruled out two as inapplicable (eating copper pennies, drinking toilet water with a blue additive). Another possible cause is drinking water with copper in it. The Defendants believe that the cause of their dog's illness is copper in the water supply. While this is a possible cause, it was not sufficiently proved at trial.

Finally, in July, Mr. Gochey had a plumber come and do something. (There was a lot of confusion in the evidence about what was actually done. The court is unable to make a specific finding about the structure of the water supply, including the relationship between the mobile home water and the auto body shop water, either before or after the plumber came.) Although it is not clear what the plumber did, the water became clearer. The Defendants did not trust the water, and continued to buy bottled water for drinking and ice. At no time, either before, during, or after the period of murky water from March to July of 2015, was the water quality ever tested. Mr. Gochey claims that there are no tests indicating that the water is not potable. Plaintiffs appear to believe that there are no quality problems with the water.

In November of 2015, Defendants began paying only half the rent. (Ms. Carpenter generally paid $400 and Mr. Mullen did not pay the other half which was otherwise his share as agreed between them.) Although the reason was the water quality situation, the Defendants did not notify the Plaintiffs in writing that they were withholding rent because of the continued uncertainty about the water. Relations between the parties had become poor.

In January of 2017, after half the rent had been unpaid for a substantial period of time, Plaintiffs sent Defendants a notice of termination as of February 6, 2017 for nonpayment of rent. Defendants did not leave, and on March 10, 2017, this suit was filed. There was a hostile incident between Mr. Gochey and Mr. Mullen on March 14, 2017 when, after a heavy snowstorm, Mr. Gochey was plowing the driveway and was annoyed at Mr. Mullen for not moving his car and Mr. Mullen believes Mr. Gochey deliberately pushed heavy snow up against his car. Defendants vacated the premises on April 13, 2017, and the parties stipulated to judgment for possession to the Plaintiffs as of April 17, 2017.

The Defendants had continued to buy ice and bottled water throughout their occupancy. For 103 weeks from March 2015 to April 2017, they had purchased 6-10 bottles of water per week. If purchased at WalMart, they cost .99; otherwise they cost $2.29. The cost of 8 bottles per week for that period at an average price of $1.64 is $1,351.36, or rounded to $1,350.

Plaintiffs reentered the property on May 2, 2017. They are claiming unpaid rent not only for April but for half of May. They also claim that the walls and ceiling were yellow and the wallpaper was faded and there was a cigarette odor. They paid a painter $2,350 to repaint and paid $568.58 for paint. They claim damages in these amounts on the grounds that the Defendants left the property in poor condition and they could not re-rent it without doing the work. Defendants' testimony is that they scrubbed the premises clean, and that even Plaintiffs' photos show that they had successfully removed accumulated sediment from the bath fixtures. The court finds that Plaintiffs have not proved that Defendants are responsible for damages to the property beyond normal wear and tear. Defendants had lived there 4 ½ years, and the home had been lived in and rented for 27 years. There is no proof about the last time it had been painted or papered. The Lease did not prohibit smoking.

Defendants paid only $400 per month for 15 of the months of their occupancy (15 x $400 = $6,000), and for two months they paid nothing (2 x $800 = $1,600). Thus, they underpaid rent by $7,600. They had a credit of $800 for the last month's rent and they are entitled to a return of the $800 security deposit. Therefore, the net amount due the Plaintiffs on their claim, pursuant to the Lease, is $6,000.

For the four months from March to July of 2015, Defendants had given notice of bad water and the water quality did not improve despite the changes of filter. This severely affected the habitability of the premises. Defendants remained there and took advantage of the shelter, but because water is such a fundamental aspect of habitability, the court finds that the rental value of the property was only $100 per month, meaning they are entitled to a reduction in rent of 4 x $700 = $2,800.

For the 21 months Defendants occupied the premises after July of 2015, it was entirely reasonable for them not to trust the water supply. It had been significantly polluted with sediment for four months. It was spring-fed and an auto body shop, where cars had been painted, had been operated on the premises for many years. Their dog had become violently ill, and it was reasonable to suspect that the water was a cause. While they were able to use the property more fully than during the previous four months (they could use it for non-drinking purposes), the lack of reliability of the potability of the water decreased the reasonable value of the property for residential use by at least $100 per month ($2,100 total), and cost them $1,350 in increased cost to purchase bottled water. Overall, Defendants have proved their counterclaim in the amount of $2,800 + $2,100 + $1,350 = $6,251.

The Lease at Paragraph 19 provides as follows: "In any action or legal proceeding to enforce any part of this Agreement, the prevailing party shall recover reasonable attorney fees and court costs." Plaintiffs claim $2,394 in attorneys' fees. Plaintiffs' costs were $295 for the

filing fee and $74.21 for sheriff service for a total of $369.21. Defendants costs were $90 for the filing fee for the counterclaim.

Conclusions of Law

Plaintiffs proved their claim for unpaid rent in the amount of $6,000. Defendants proved their counterclaim in the amount of $6,251. Defendants are entitled to a net recovery in the amount of $251.

Though Plaintiffs succeeded on their ejectment claim (by stipulation), they did not prevail on the litigated claims for a money judgment. Thus, they are not the "prevailing party" and are not entitled to attorneys' fees under the terms of the Lease.

Because Plaintiffs obtained a judgment for possession in the case, they are entitled to their costs, but offset by Defendants' cost for the counterclaim: $369.21 – $90 = $279.21.

The Defendants' entitlement to judgment is offset in part by costs due from Defendant to the Plaintiff: $279.21 – $251 = $28.21. Plaintiff is entitled to a judgment for costs in the amount of $28.21.

A separate judgment is issued this day.

Dated this 14th day of August, 2017.

Mary Miles Teachout

Mary Miles Teachout
Superior Judge