VERMONT SUPERIOR COURT
Washington Unit
65 State Street
Montpelier VT 05602
802-828-2091
www.vermontjudiciary.org

CIVIL DIVISION
Case No. 24-CV-01179

Jenny Evjen, Trustee of the 1994 Jenny V. Van Esen Irrevocable Trust v. Theresa Commo

FINDINGS, CONCLUSIONS, AND JUDGMENT

This is an ejectment action involving land. Plaintiff landlord Jenny Evjen in her capacity as the Trustee for the 1994 Jenny V. Van Esen Irrevocable Trust seeks to eject Defendant Tenant Theresa Commo from property that Ms. Commo has leased since 2002.

Unlike proceedings that fall under the Vermont Residential Rental Act, which define the vast majority of ejectment actions in Vermont, the present dispute does not involve a dwelling unit or the lease of premises as those terms are defined or understood under 9 V.S.A. § 4451. As such, the present lease agreement does not, by definition, qualify as a rental agreement under the Vermont Residential Rental Act, and the Act is not applicable to the present matter. 9 V.S.A. §§ 4451–4468a. Similarly, the property is not a mobile home park as that term is defined in 10 V.S.A. § 6201, and it does not fall under the provisions of the mobile home park laws. 10 V.S.A. §§ 6201–6266.

As a result, the present lease agreement and ejectment action must be understood under the terms of a common law tenancy for which Landlord has the right to terminate the rental relationship by an any act or declaration inconsistent with the voluntary nature of the parties' voluntary landlord/tenant relationship. *Toussaint v. Stone*, 116 Vt. 425, 428 (1951).

In reviewing the law of tenancy under the common law as opposed to the Vermont Residential Rental Act, the Court will note two important distinctions in the areas of notice and removal. Under the Residential Rental Act, the emphasis is on clarity of notice and time between notice and termination of the tenancy. 9 V.S.A. § 4467; see also 9 V.S.A. § 4451 (defining the term "actual notice"). Once the tenancy is terminated, however, the process becomes one of ejectment under 9 V.S.A. § 4468. And once ejectment is granted, the time for

removal is uniformly short. 12 V.S.A. § 4854 (authorizing execution of a writ of possession after 14 days from initial service).

In contrast, a common law tenancy may "be terminated by any act or declaration inconsistent with the voluntary relationship of landlord and tenant, as notice to quit, threat of legal means to recover possession, anything that amounts to demand of possession, the bringing of an action to recovery possession which fails." *Toussaint*, 116 Vt. at 428. In other words, any notice or action to terminate is sufficient to constitute notice of termination. Removal, however, is governed by more flexible terms as *Toussaint* instructs that a common law tenant is "entitled to a reasonable time after termination of the tenancy in which to procure other accommodations and remove his property." Id. at 429. In this respect removal is intended to give the tenant a reasonable amount of time to remove his or her property and make other accommodations.

With this legal framework in place, the Court will analyze and make findings of the facts behind the present dispute as brought forward at the December 11, 2025 bench trial.

Factual Findings

Plaintiff Evjen's father subdivided the land at issue in 1993 and created 10 lots along a common right-of-way off Route 100 in Duxbury, Vermont. Plaintiff's father numbered the lots of the subdivision 1 through 10. The subdivision was and remains subject to an Act 250 land use permit and an Agency of Natural Resources subdivision permit. It is also governed by a declaration of covenants, conditions and restrictions adopted pursuant to the land use and subdivision permits. Under these provisions, the lots are limited to being used as single-family residences and only for residential purposes.

In 2002, Plaintiff's father, and predecessor in title, entered into a lease agreement with Defendant Theresa Commo and her then-husband to lease lot #4 of the subdivision.[1] This lease permitted Defendant to place a mobile home on the property. Under the terms of the lease, Landlord is responsible for installing and maintaining septic and a drinking water well for the lot.

[1] Ms. Commo and her husband, Matthew Commo, divorced shortly after the lease was executed. Ms. Commo received the mobile home and all rights to occupy the property. Mr. Commo left and has not lived at or had an interest in the property since that time. Mr. Commo is not named as a party in the present litigation, and there is no dispute that he has been discharged and released from the lease and from any rights or obligations under it since the divorce.

Defendant is responsible for installing the home on the property and for all other utilities. Defendant's rent began at $254.48 per month and increased at a rate of 2.5% each year. Currently, it has risen to $569 per month. Defendant is also responsible under the lease for all property taxes associated with the lot and improvements. Defendant also agreed to use the property as a single-family residence and abide by all land use conditions and covenants applicable to the property. The term of the lease runs for 60 years, until 2062, but it has termination provisions based on Tenant's compliance with the lease and general maintenance of the property under Sections 9, 16, and 19. Pltf. Ex. 7.

In 2021, Ms. Evjen took over as Trustee of the 1994 Jenny V. Van Esen Irrevocable Trust, which at the time included management and ownership of Lot #4. At that time, Ms. Commo was 5 years in arrears for her property tax obligations. Mr. Van Esen had advanced those payments to the town on Ms. Commo's behalf, but under the terms of the lease, he was entitled to repayment by Ms. Commo and was entitled to treat the amounts as unpaid rent. See Pltf. Ex. 7, at Section 4. The evidence indicates that Mr. Van Esen and his office regularly notified Ms. Commo of these payments, of his expectation of repayment and of the on-going balance that Ms. Commo was accumulating.

Ms. Evjen sought to work with Ms. Commo on the delinquent taxes as well as rent payments that had begun to fall behind. At the time, the amount owed by Ms. Commo in unpaid property taxes was $9,338.50.

The undisputed testimony is that Ms. Commo has never been able to pay Ms. Evjen these back taxes, and since 2021, Ms. Commo has not made any new property tax payments either to the Town of Duxbury or to Ms. Evjen. Collectively, these unpaid property tax amounts total to $17,285.28. In December of 2023, Ms. Commo also failed to make rental payments on her property.

On January 4, 2024, Ms. Evjen, through her attorney, sent Ms. Commo a notice of termination that became effective in 30 days. The basis for this termination was non-payment of rent and non-payment of the property taxes. Ms. Commo, at that time, did not make any payments, and she did not vacate the property. In March of 2024, Ms. Evjen filed the present action.

On August 24, 2024, Ms. Evjen, through her attorney, sent a second notice of termination for non-payment of her property taxes. The notice terminated Ms. Commo's tenancy effective September 23, 2024. Ms. Commo did not pay her taxes and did not vacate the property by September 23d. On October 2, 2024, Plaintiff filed an amended complaint to reflect the second notice of termination and the updates amounts claimed for non-payment.

On January 1, 2025, Ms. Commo filed a counterclaim alleging that Ms. Evjen had violated the lease by failing to repair the property's water systems and that there was no running water at the property. On this issue, the Court took testimony at the December 11th trial. Ms. Commo did not offer any exhibits or evidence to support her contention that the property did not have water or that the amount was insufficient.

There was testimony that Ms. Commo has had as many as 8 people living in her house and that some members of the house would take long showers. Ms. Evjen and Beverly Young, the former administrative assistant for Mr. Van Esen and Ms. Evjen testified that they had never received a complaint about the property's well until 2022. At that time, Ms. Evjen hired independent inspectors. Based on their examination and report, Ms. Evjen understood that the well was working and delivering sufficient water to the property. Ms. Evjen repeated this process again in 2025 and received the same response. In both cases, Ms. Evjen communicated the results to Ms. Commo.

Ms. Commo testified that the water could run short at times, but her testimony was clouded by three factors that render it less than credible.

First, there was testimony that Ms. Commo moved away from the property from March 2020 until August 2023. During this time, there was no one occupying the property and using the systems.

Second, both before and after this vacancy, the house had between 6 and 8 residents at any given time as Ms. Commo had multiple family members and individuals, for whom she provided care, living at the house and using the water and wastewater systems. The testimony about these systems, while limited, indicates that this use was beyond its original design and intent as a single-family residence. Thus, any strain on the system was as likely to be attributable to the overuse of the systems as to any defects in the system. This factor is also

consistent with Ms. Evjen's testimony that she hired independent contractors who found no problems or issues with the system.

Third, Ms. Commo's testimony regarding the water and wastewater system was inconsistent. While she claims to have experienced water shortages and lack of water at various times, her communications with Ms. Evjen do not begin until Ms. Evjen has begun threatening eviction. Some of Ms. Commo's complaints appear inconsistent with her history of occupancy, which she testified were related to health issues that she was experiencing. At trial, Ms. Commo also sought to use the water issues as a reason not to pay the property tax and argued that the entire lease should be struck because the septic system was designed for a family of four, but Mr. Van Esen knew she had a family of five when the lease began. There was no evidence, contrary to her counterclaim, that the water had ever stopped at her property, or that she was without water for any period of time.

Legal Analysis

Defendant's Counterclaims

Taking Ms. Commo's counterclaims first, the Court finds the evidence does not support any counterclaim for breach based on the water supply at the property. In an action for breach of contract, the party asserting the claim has the burden of proving the breach by a preponderance of the evidence. *Hallsmith v. City of Montpelier*, 2015 VT 83, ¶ 19. In this case, the credible testimony shows that there was never a break in the water supply, and that Plaintiff acted in a timely manner to address any issues or concerns that Ms. Commo raised about water flow to her mobile home from the well. Plaintiff hired independent contractors who reported to her that the well was in good working order in 2023 and again in 2025. This information was shared with Ms. Commo.

While Ms. Commo has claimed that the water system was defective, her claims are not supported by credible testimony, and she has not produced any other evidence to support her claims. While it is possible that Ms. Commo has experienced water issues, this possibility appears to be due to a number of factors under Ms. Commo's control including the large number of people she has had residing at the property using the water and wastewater systems on a daily basis. She has also not identified any failure in the system or even any repairs that were done or needed to be done to the system that Plaintiff failed to do or completed on a delayed basis.

The Court finds that Ms. Commo has not established by a preponderance of the evidence that any issues with the water were the result of a failure of the well or the result of any failure by Ms. Evjen to perform timely repairs following written notice from Ms. Commo. For these reasons, the Court grants judgment on Defendant's counterclaim to Ms. Evjen.

Plaintiff's Claims

In contrast to the counterclaims, Plaintiff has established its burden to show that Defendant has breached the parties' lease. Although this long-term lease was, at 60 years, something just short of a life estate, it was still a long-term lease subject to the provisions of default and termination contained in the plain language of the agreement. See *Mongeon Bay Properties, LLC v. Mallets Bay Homeowner's Ass'n*, 2016 VT 64, at ¶¶ 24–29 (upholding long-term lease provisions and default provisions against defaulting party).

Plaintiff has demonstrated that Ms. Commo has not paid her property taxes in nearly ten years in contravention to the terms of the parties' lease. In this respect, the evidence is straightforward and largely uncontested. Ms. Commo stopped paying her property tax after 2016. Despite numerous notices from Plaintiff and her predecessor in title, she has not made any progress at becoming current on her taxes and has, effectively, forced Plaintiff to subsidize her arrearages. The non-payment is in direct violation of Section 4 of the parties' lease and under Section 19, Plaintiff is entitled to terminate the lease and seek Ms. Commo's removal from the property.

As noted above, this is a common law lease because it is primarily for the lease of land and limited utilities, not a dwelling unit. 9 V.S.A. § 4451. As such, the Court finds that Plaintiff's notice of termination was effective under the standards for termination of common law tenancies. *Toussaint*, 116 Vt. at 428.[2] As such, Plaintiff has established Defendant's default of the lease, and Plaintiff is entitled to judgment on her claim of breach of contract and ejectment. *Hallsmith*, 2015 VT 83, at ¶ 19; 12 V.S.A. § 4854.

[2] Given that this action is premised on unpaid rent, the Court will note that the evidence of notice and termination would also be sufficient for the 15-days for notice required under 9 V.S.A. § 4467(a).

Remedies

While Plaintiff's right to judgment has been established as a matter of law based on the findings of an uncured breach and default, her remedies are slightly more complicated. There are three sets of remedies at issue. The first is the removal of Ms. Commo and her possessions from the property. The second is the amount of money owed as damages. The third is the issue of attorney's fees.

Under *Toussaint*, the window of time for removal is not fixed but is a function of what is reasonable. 116 Vt. at 482. In this case, the primary issue is that Ms. Commo has a mobile home on the property that she will either have to re-locate or sell to remove from the property. When Plaintiff's predecessor originally leased the property with Ms. Commo, it was the parties' intent from the term of the lease, to create a long-term relationship. The term of 60 years represented a long-term relationship. The Court finds that there needs to be a reasonable amount of time for Ms. Commo to remove her mobile home from the property either by moving the home to a new location or by sale. The Court finds that a period of several months will give Ms. Commo sufficient time to remove the mobile home from the property in an orderly fashion that will take into account her investment in the mobile home, the reality of arranging a moving company or selling the home to a third-party. In reviewing the evidence, however, the Court finds that neither Plaintiff nor Defendant have offered a realistic timeframe for such a removal. The Court finds that it needs additional evidence from the parties as to what timeframe for removal would be reasonable. To that end, the Court will set this matter for an evidentiary hearing in which the parties are free to present any testimony or evidence regarding the necessary timeframe to effectuate removal or sale.[3] In making such findings, the Court acknowledges that Plaintiff is entitled to receive on-going rental payments until the removal deadline.

As to the issue of damages, the Court finds that not all of the unpaid property taxes may be claimed. Under 12 V.S.A. § 511, a party seeking damages is limited to a 6-years statute of limitations. In this case, the matter was filed in 2024, which means that the earliest date of unpaid damages that Plaintiff could claim would begin in 2018. While the undisputed evidence is that Plaintiff has advanced $17,285.28 in tax payments, $1,661.82 of that amount is

[3] In doing so, the Court invites Defendant Commo to indicate which method of removal she intends to pursue and invites the parties to negotiate on this issue.

attributable to taxes paid in 2016 and 2017, and it must be excluded from the final amount of damages, which reduces the total amount of damages to Plaintiff to **$15,623.46**.

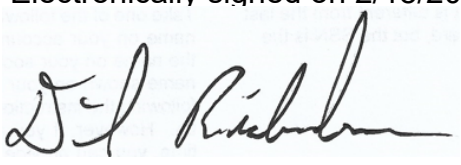
Finally, there is the issue of attorney's fees. Under 12 V.S.A. § 4854, a landlord may be awarded attorney's fees if the lease permits such an award. In this case, Section 19 allows Plaintiff to collect her attorney's fees from Defendant. As the prevailing party, Landlord is entitled to these amounts. At trial, Landlord reserved the right to put on evidence of these attorney's fees pending the judgment of the Court. Along with the timeline for removal, the Court will use the hearing in this matter for Plaintiff to put on evidence of her attorney's fees and testimony in support of their reasonableness under the lodestar method of calculating reasonable attorney's fees. *L'Esperance v. Benware*, 2003 VT 43, ¶¶ 22, 28.

ORDER

Based on the evidence and testimony, the Court finds that Plaintiff has proven her claims for breach of contract and ejectment. Therefore, it is Ordered and Adjudged that Plaintiff Evjen shall have judgment against Defendant Commo on these claims. The Court awards Plaintiff Evjen damages in the amount of **$15,632.46.** The Court further finds that Defendant Commo has not established her counterclaims concerning habitability claims with the well and water supply on the property.

Consistent with this decision, the Court will schedule a 90-minute hearing to take testimony on the issue of what date and terms for Defendant's removal is reasonable under the provisions of *Toussaint*. The Court will also give the parties a chance to present evidence and testimony regarding Plaintiff's attorney's fees. From this hearing, the Court will issue a final judgment reflecting the total amounts awarded in damages and attorney's fees as well as a date for the writ of possession against Defendant in favor of Plaintiff for possession and under what terms Defendant may remain on the property to effectuate the removal of her property, including the mobile home.

Electronically signed on 2/18/2026 2:01 AM pursuant to V.R.E.F. 9(d)



Daniel Richardson
Superior Court Judge