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CIVIL DIVISION  
Case No. 26-SC-01037

Vivan Bose-Pyne v. Farrell Vermont, LLC

## TRIAL DECISION

This decision supplements the findings and rulings issued at trial on Aug. 14, 2026. The court cites exhibits for convenience and has considered all of the trial evidence focusing on the facts most relevant to the questions under advisement.

### **I. Supplemental Findings of Fact**

Daniel Hogan works for defendant Farrell Vermont, LLC as general manager and part owner. He has worked in property management for 10 years.

Plaintiff Vivian Bose-Pyne provided notice to Farrell on Dec. 29, 2025 of her intention to terminate her tenancy and vacate by Feb. 28, 2026, providing 60-days' notice. Ex.'s 1, 8. Bose-Pyne vacated on Feb. 28. Farrell knew no later than Mar. 4 that she had done so. Ex. 7.

When he sent the Apr. 13, 2026 security deposit itemization (Ex. 6), Hogan believed he was complying with the law. He had no bad faith. He made a mistake. He thought he would and did send the security deposit statement within 14 days of when Farrell located a new tenant. Hogan's confusion came from the lease obligation that Bose-Pyne had to pay rent until Farrell found a new tenant. Ex. A § 18, at 12. Farrell found a new tenant for April 1 and sent Bose-Pyne's security deposit statement on Apr. 13, even though Bose-Pyne had sent multiple inquiries about her security deposit before then. Although Hogan admits he got the timing wrong, his actions match his mindset and the court found him and his testimony otherwise credible.

Section 8(c) of the lease provides:

The Owner must give the Tenant a list of all items charged against the security deposit, and the amount of each item. After deducting the amount, if any, used to reimburse the Owner, the Owner must promptly refund the full amount of the unused balance to the Tenant within fourteen (14) days from the date on which the Tenant is known or is reasonably believed to have vacated or abandoned the unit.

Ex. A, at 10. Hogan signed the lease copyrighted by his attorney of record in this case. *Id.* at 14. Hogan knew of this obligation from his work experience.

Section 5(a)(4) of the lease provides: “If Tenant terminates or breaks lease before the lease term ends, they will be responsible for costs of re-leasing the unit \$1000.” *Id.* at 6. Hogan testified that this fee is intended to cover marketing and re-leasing fees. If Bose-Pyne’s lease had terminated naturally under the lease, Farrell would have had to pay the same costs as it incurred following Bose-Pyne’s early termination. Hogan does not know Farrell’s actual costs to relet Bose-Pyne’s apartment. Hogan provided no estimate of marketing and re-leasing fees. Nor did he testify that Farrell would have difficulty calculating or estimating these amounts.

That lease break provision applies even when “[t]he Tenant terminates the lease with a minimum sixty (60) days (two full rental periods) notice . . . after the initial term.” *Id.* § 5(a)(3). Bose-Pyne termination in this case took place after her initial term. Ex. A, at 1-2.

## **II. Conclusions of Law**

The court took under advisement two legal questions: (1) whether the circumstances of this case demonstrate willful behavior by Farrell in violation of 9 V.S.A. § 4461 and (2) whether § 5(a)(4) of the lease constituted an enforceable liquidated damages provision.

### **A. Willful Conduct**

Title 9, V.S.A. § 4461 makes Farrell “liable for double the amount wrongfully withheld” for a “willful” “failure” “to return the security deposit with a statement within 14 days” “from the date on which the landlord discovers that the tenant vacated.” 9 V.S.A. § 4461(c), (e). The parties agree Farrell knew Bose-Pyne vacated on Feb. 28, 2026, making § 4461’s 14-day deadline Mar. 14, 2026. Farrell provided the security deposit statement on Apr. 13. Farrell agrees it must return Bose-Pyne’s \$1,200 security deposit. It has also agreed to refund \$60 of prejudgment interest on the deposit, \$6 of interest for the Mar. 14-Apr. 13 delay, filing fees of \$90 and service costs of \$85. A willful failure by Farrell means it will owe an additional \$1,200 to Bose-Pyne.

This court has found only limited instances where the Vermont Supreme Court has discussed willfulness in the context of civil liability.

A wilful or intentional injury implies positive and aggressive conduct, and not the mere negligent omission of duty. Wilful means intentional and is used in contradistinction to ‘accidental’ or ‘unavoidable.’ A wilful act implies an intention to cause injury. In its customary usage intentionally means an act done with intention of purpose, designed, and voluntary.

*Wendell v. Union Mut. Fire Ins. Co.*, 123 Vt. 294, 297 (1963) (citations omitted). The Court followed that definition in only one § 4461 case this court has found where “the evidence show[ed] that landlords fully understood their obligation under the statute and simply failed to follow through.” *Tepper v. Garcia*, No. 2015-150, 2015 WL 5793116, at \*4 (Vt. Sept. 30, 2015) (unpub. mem.). See also *Washburn v. Fowlkes*, Docket No. 2015-089, 2015 WL 4771613, at \*3 (Vt. Aug. 2015) (citing V.R.A.P. 33.1(d), which provides that an “unpublished decision by a

three-justice panel may be cited as persuasive authority but is not controlling precedent,” except under limited circumstances). The *Tepper* court “found that landlords were well aware that tenant had vacated the unit on August 18, 2014, but failed to send the required withholding notice until September 18, 2014.” *Tepper*, 2015 WL 5793116, at \*2.

The superior court has addressed willfulness more frequently and consistently under § 4461. Most recently, the court wrote:

The Court agrees that § 4461(e) does not apply to mere accidents or excusable neglect. However, “willful” involves intentional conduct but does not necessarily implicate the level of malice that [landlord] wants it to require. *See, e.g., Tepper v. Garcia*, No. 2015-150, 2015 WL 5793116, at \*4 (Vt. Sept. 2015) (unpub. mem.) (affirming trial court’s double-recovery remedy where landlord understood statutory obligation “and simply failed to follow through”);<sup>1</sup> *Black’s Law Dictionary*, willful (12th ed. 2024) (“Willful” is defined as “[d]one wittingly or on purpose, as opposed to accidentally or casually; voluntary or intentional, but not necessarily malicious.”); cf. V.R.F.P. 16, Reporter’s Notes - 2015 Amdt. (citing *In re Chase*, 2009 VT 94, and explaining that “‘willfully’ should be understood to mean intentionally rather than accidentally, but not to import a further requirement of maliciousness”).

*Burdo v. Handy’s Hotels & Rentals, LLC*, No. 26-CV-02223, 2026 WL 2019524, at \*2 (Vt. Super. June 29, 2026) (Shafritz, J.). Applying that definition, *Burdo* affirmed the small claims court.

The small claims court found that [landlord] intended to send the letter and refund at a later date based on the date that [landlord] considered the tenant to have vacated the unit, not based on the date when the tenant had actually vacated. Based on that incorrect view of the date of vacation, [landlord] then withheld an entire half month’s rent intentionally because the professional cleaner accessed the apartment to clean the carpet seven days after the date the tenant said she would vacate. There was nothing accidental or excusably neglectful about [landlord’s] sending the letter and refund more than 14 days after [tenant] vacated the apartment, nor was it an accident that [landlord] withheld the equivalent of a half month’s rent. The small claims court reasonably concluded that [landlord] willfully sent the letter and refund after the 14-day period had expired. Based on the evidence, it was reasonable to conclude that the withholding stemmed from [landlord’s] incorrect view of the vacation date.

*Id.* at \*3. The civil division remanded only because the small claims court made a calculation error in the amount landlord owed tenant. *Id.*

*Burdo* follows earlier superior court decisions. In *George’s Way LLC v. Harrington*, No. 25-CV-02569, 2025 WL 2899379 (Vt. Super. Ct. Aug. 21, 2025) (Richardson, J.), the court wrote:

The word “willful ” is not defined in Section 4461 or within the Vermont Residential Rental Act. The Vermont Supreme Court stated, “[t]he term ‘wilful’ though given different definitions under different circumstances cannot well mean less than intentional and by design.” *In re Chase*, 2009 VT 94, ¶ 26 (quoting *State v. Burlington Drug Co.*, 84 Vt. 243, 252 (1911)). In this respect, “willful” means intentional and by design as opposed to accidental.

*George’s Way LLC*, 2025 WL 2899379, at \*3. Using that definition, the *George’s Way LLC* court found landlord’s conduct willful.

Landlord on appeal contends that it did not intend or design to return the security deposit and notice of withholding late but rather blames the time that it took to finish the estimates. This argument misperceives what both the small claims court found as well as what the implication of a willful withholding constitutes. The legislature in drafting Section 4461 chose not to include provisions for extensions of the timeline for returning a security deposit. Instead, it created a hard and fast rule. A party must return a deposit or give notice of withholding within 14 days after a tenant vacates. Landlord’s defense is effectively a claim of ignorance as to the strict compliance requirement. This defense, however, has long been held to be no defense or excuse.

*Id.* See also *id.* at \*1 (“The agent indicated that the Landlord did not intend to return the deposit within the 14-day window but would be following the parties’ lease.”).

*Atwood v. Hill*, No. 24-CV-01091, 2024 WL 4583268 (Vt. Super. Ct. Sep. 05, 2024) (Burke, J.), applied a similar definition with a similar outcome.

However, the Vermont Supreme Court has stated, “[t]he term ‘wilful’ though given different definitions under different circumstances cannot well mean less than intentional and by design.” *In re Chase*, 2009 VT 94, ¶ 26 (quoting *State v. Burlington Drug Co.*, 84 Vt. 243, 252 (1911)). In other words, willful “means an act done with intention of purpose, designed and voluntary.” *Id.* at ¶ 26 (quoting *Wendell v. Union Mut. Fire Ins. Co.*, 123 Vt. 294, 297 (1963)).

*Atwood*, 2024 WL 4583268, at \*5. The *Atwood* court found a willful violation where “defendants did not receive a written statement itemizing any deductions to the security deposit within 14 days of the termination.” *Id.*

Older superior court decisions applied similar definitions and reached similar outcomes.

A showing of malice is not required under § 4461. The standard legal definition of “willful” is an act that is “voluntary and intentional, but not necessarily malicious.” Black’s Law Dictionary 1630 (8th ed. 2004). The dictionary

definition is consistent with the term's common legal usage. See, e.g., *State v. Penn*, 2003 VT 110, ¶ 9, 176 Vt. 565 (mem.) (defining a willful act as one done "purposefully and intentionally, and not by accident, mistake or inadvertence"); *Russell v. Armitage*, 166 Vt. 392, 399 (1997) (explaining that, in the contempt setting, a defendant willfully violates a child-support order when he fails to make a required payment despite an ability to comply).

*Grande v. JRLJ, LLC*, No. 253-4-08, 2008 WL 11592926, at \*4 (Vt. Super. Ct. Aug. 08, 2008) (Teachout, J.). Applying that definition, the *Grande* court found willful conduct.

The findings of the Court show that Landlord had the ability to return Mr. Grande's deposit by October 15th but did not do so--and indeed did nothing between October 2nd and October 16th--despite repeated inquiries and reminders from Mr. Grande. Under the circumstances, the Landlord's conduct (through its agents) amounted to a choice to take no action instead of mailing the check. This constitutes a voluntary and deliberate failure to return the security deposit within 14 days, and justifies imposition of penalties under § 4461(e) for willful withholding.

*Id.* See also *Jones v. Coughlin*, No. 519-8-04 Rdcv, 2006 WL 4959629 (Vt. Super. Feb. 02, 2006) (Norton, J.) ("Plaintiffs paid a \$70.00 security deposit which was never returned or accounted for. The evidence indicates that this failure was willful, and therefore supports an award of double the deposit amount, or \$140.00, pursuant to 9 V.S.A. § 4461(e).") (citing *State v. Gadreault*, 171 Vt. 534, 537 (2000) for proposition that a willful act is one that is deliberate and voluntary)).

This court has found only one superior court decision that suggests a different interpretation of "willful" in § 4461. In *L'Esperance v. Benware*, No. S0367-98 RcC, 2000 WL 35593197 (Vt. Super. Dec. 19, 2000) (Norton, J.), the court noted:

Thus, wilful can either refer to an intentional act versus an accidental act, or it can be used to mean action taken in bad faith. The issue is what definition the legislature intended to be used in section 4461(e). The statutory scheme indicates that the Legislature most likely intended the later definition to be applied. If the first definition were intended, then the increased damages for failure to comply with section 4461 would be applied in every situation where the landlord failed to return the security deposit - save for those few situations where the failure to do so was the result of some accident or event out of the landlord's control. This would make double damages plus fees and costs "the rule" and single damages "the exception." If the Legislature intended such a result, the statute would have been drafted differently. As drafted; it appears that the Legislature intended single damages for the majority of the violations of section 4461 and in those more egregious situations, one characterized by bad faith, then double damages [as] well as attorney's fees and costs are warranted.

*Id.*

*L'Esperance* offers a common-sense appeal. Yet this court cannot follow it. First, it amounts to dicta where the court denied summary judgment because it found genuine disputes of material fact existed regarding the possibly willful behavior. Second, this court has found no other court adopting its interpretation. Indeed, Judge Norton six years after *L'Esperance* applied instead the consensus view in *Jones*. Third, *L'Esperance*'s interpretation does not square with the Vermont Supreme Court's requirement of "punctilious compliance" with the Residential Rental Agreement Act, given the legislative intent evident from the Act as a whole. See *In re Soon Kwon*, 2011 VT 26, ¶¶ 14-19, 189 Vt. 598.

Finally, § 8(c) of the lease contains the same requirements as § 4461. Because the lease bears the copyright of Farrell's attorney of record, the court infers Farrell drafted it. The court must construe it against Farrell. See *Manchester Marble Co. v. Rutland R. Co.*, 100 Vt. 232, 233 (1927) ("The construction contended for by the defendant would do violence to the rule that a deed or lease will be most strongly construed against the grantor or lessor."); *id.* ("It would likewise be against the rule that a contract should be strictly construed against the party who framed and wrote it."). Farrell did not comply with the plain language of the lease it wrote.

Applying the consensus view persuasive to this court, the court adopts *Burdo*'s definition of willfulness under § 4461. This court finds it aligns with and follows the majority of persuasive precedent. Applying that definition to this case, the court concludes that Farrell's Apr. 13 return of Bose-Pyne's security deposit itemization amounted to a willful failure under 9 V.S.A. § 4461(e), given the evidence in this case. Hogan's decade of property-management experience and Farrell's lease § 8(c)'s plain language paraphrase of § 4461's requirements convince this court that, on this evidence, Hogan's actions did not constitute "mere accidents or excusable neglect." *Burdo*, 2026 WL 2019524, at \*2.

## **B. Lease-Break Fee**

The court finds the lease's § 5(a)(4) lease-break fee unenforceable for two reasons. First, it conflicts with 9 V.S.A. § 4456(d). That statute allows a tenant to terminate a tenancy by actual notice one rental payment period before the termination date "[u]nless inconsistent with a written rental agreement." *Id.* Bose-Pyne's lease required 60 days' or two rental periods' notice. Ex. A § 5(a)(2). The evidence in this case shows Bose-Pyne complied with that 60-day notice requirement. The lease-break fee amounts to an added penalty in conflict with the statute and underlying policy. See *Shriner v. Beaty et al.*, Case No. 25-CV-05519, at 2 (Vt. Super. Apr. 29, 2026) (Spero, J.) ("If the law allows a tenant to terminate with 30- or 60-days' notice, a lease provision adding a penalty on to that is in conflict with the law and the policy it expresses.").

Second, § 5(a)(4) constitutes an unenforceable liquidated damages provision.

The ultimate test for the validity of a liquidated damages clause is whether the clause is reasonable under the totality of the circumstances. We recently articulated three factors that should be considered in determining whether a contract provision is a reasonable liquidated damages clause rather than an unlawful penalty:

[A] liquidated damages clause must meet three criteria to be upheld: (1) because of the nature or subject matter of the agreement, damages arising from a breach would be difficult to calculate accurately; (2) the sum fixed as liquidated damages must reflect a reasonable estimate of likely damages; and (3) the provision must be intended solely to compensate the nonbreaching party and not as a penalty for breach or as an incentive to perform.

These factors are not exclusive or necessarily conclusive. They do, however, provide a framework for the trial court's determination of whether a particular clause is reasonable.

*Highgate Assocs., Ltd. v. Merryfield*, 157 Vt. 313, 316–17 (1991) (citations omitted).

In this case, Farrell offered no evidence to support the reasonableness of its lease-break fee of \$1,000. Hogan testified that the fee was designed to cover marketing and re-leasing fees, but Hogan provided no testimony and Farrell offered no evidence regarding its actual marketing and re-leasing fees. Nor did Farrell suggest that it would have difficulty calculating those fees. Hogan also conceded that Farrell would incur the same costs if Bose-Pyne's tenancy had terminated naturally. This evidence does not establish that the lease-break fee constitutes a reasonable estimate of Farrell's hard-to-estimate damages. Nor does it establish that the fee solely compensates Farrell following Bose-Pyne's termination. On the contrary, the evidence shows Farrell incurred no incremental costs it would not have incurred had Bose-Pyne's tenancy expired at the end of its term.

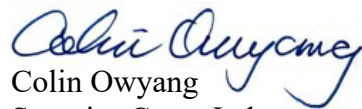
### **III. Order**

Farrell shall pay Bose-Pyne an additional \$1,200 for its willful failure to return Bose-Pyne's security deposit within the required time period pursuant to 9 V.S.A. § 4461 and refund Bose-Pyne's \$1,000 lease-break fee.

These amounts supplement what Farrell has already agreed to pay: \$1,266 for the security deposit plus interest, \$90 in filing fees and \$85 in service costs.

The court will enter a separate judgment for the total amount of \$3,641.00.

Electronically signed pursuant to V.R.E.F. 9(d) on August 19, 2026.

  
Colin Owyang  
Superior Court Judge