

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



CIVIL DIVISION
Case No. 26-CV-02654

George Molla et al v. Patricia Graves

ENTRY REGARDING MOTION

Title: Motion to Dismiss (Motion: 1)
Filer: Megan T. Nelson
Filed Date: June 01, 2026

The motion is DENIED.

Defendant seeks to dismiss the present action on the basis that the alleged non-conforming behavior noticed in Plaintiff's Notice of Termination was not sufficiently specific to put Defendant on notice of what behaviors gave rise to the alleged violations. The notice states:

- 1) *Lease Agreement, Section V "Tenant's Responsibilities" - The tenant will keep its windows, its entrances and stairs, its porches and its building grounds clean.*
 - a. You have not complied with your lease agreement. You have been leaving trash in the hallway and in the stairwell. You were notified of this by your landlord on January 9, 2026 and on March 7, 2026, but you have continued to leave trash in the hallway and in the stairwell. Your landlord requested that you remove the trash, but you have failed to do so. Leaving trash in the hallway and in the stairwell poses a significant, health, safety, and fire risk.
- 2) *Lease Agreement, Section VII "Prohibited - Prohibited are subletting, smoking, pets, painting, air conditioners, automatic clothes washers or dish washers, children in apartments smaller than two bedrooms, parking vehicles on the lawn, unregistered vehicles, unreasonable noise or parties, commercial use, liquid fueled space heaters, the use of charcoal or gas BBQ grills in the building or on the porches (Never store propane gas or gasoline inside.), removal/changing door locks, and the attachment or installation of anything (including satellite dishes) to the building or its ground without the written permission of the landlord. Any exception must be in writing, dated, and signed by landlord. Note: SMOKING ON THE PREMISES IS PROHIBITED however the landlord can not/does not guarantees the premises/building will be smoke free.*
 - a. You have not complied with your lease agreement. You have been smoking on the property, in common areas, and in your unit.

Pltf. Ex. 2.

Defendant claims that this notice statement fails to provide “information regarding dates of, witnesses to, and any other identifying information about the alleged violations.” Without such information, Defendant claims that she cannot defend against the claims, and more importantly, Plaintiff has failed to provide sufficient notice stripping Defendant of the opportunity to defend herself. Defendant contends that this lack of notice constitutes a jurisdictional deficiency. See *In re Soon Kwon*, 2011 VT 26, ¶ 14 (noting that landlords have an obligation to have “punctilious compliance with all statutory eviction procedures, including notice provisions.”); see also *Andrus v. Dunbar*, 2005 VT 48, ¶ 15 (noting that a landlord cannot evict a tenant unless all mandatory statutory procedures are met); *J.M. Rowley Corp. v. Limoge*, Dckt. No. 1181-11-13 Cncv (May 1, 2014) (Pearson, J.) (noting that compliance is what gives legal effect to the notice of termination and creates subject matter jurisdiction and authority for the Court to act).

In the present case, Defendant’s motion rests entirely on how this Court should apply the applicable language from the Federal Regulations from the Department of Housing and Urban Development. See 24 C.F.R. §§ 247.4 (a)(2).¹ These provisions require a landlord to provide, in writing, “the reasons for the landlord’s action with enough specificity so as to enable the tenant to prepare a defense.” *Id.* Defendant relies upon a prior trial court decision that has been wide cited for the standard for termination language under Section 247.2. *Burlington Housing Authority v. Meacham*, Dckt. No. 376-4-15 Cncv (Jul. 13, 2015) (Toor, J.). In this decision, the trial court found that an allegation that a tenant had been smoking in his apartment and had received numerous verbal and written warnings on specific dates and was interrupting the “livability and health” of “other residents in the building” was too vague to meet the Section 247.2 standard. Specifically, the Court wrote:

Here, the termination notice merely states that Meacham has been warned on three occasions to stop smoking in his apartment, and that his actions have “interrupted the livability and health to other residents in the building.” However, the notice contains no dates of when the alleged violations occurred or how many times they are alleged to have occurred. Additionally, the notice fails to name any persons who have seen Meacham smoke in his apartment or who have, at least,

¹ Given that the present lease is subsidized by the federal housing assistance program known as Section 8, Plaintiff is obligated to comply with HUD standards for landlords and for termination procedure. See 42 U.S.C. §§ 1437f (c)(8)(C) and 3535 (d).

smelled smoke coming from the apartment. The notice also fails to explain what “livability and health” issues have been created. Instead, the notice “merely parrots the language of the regulations.”

Id. at 4 (citing *Moon v. Spring Creek Apartments*, 11 S.W.2d 427, 433 (Tex. Ct. App. 2000)).

Looking closer at *Meacham*, this court is not persuaded to apply its reasoning broadly or to the facts of the present case. The reasoning of *Meacham* is based on a series of federal court decisions that tended to have one or more distinguishing features.

The first is that the notice of termination letter often served as the preliminary notice to a due process hearing on an administrative level. So for example, the reasoning *Escalera*, which *Meacham* cites, is based, in large part on the fact that the termination notice is the only notice that tenants would receive prior to an administrative hearing before the Housing Authority’s Tenant Review Board that would adjudicate and determine their eligibility to remain in the apartment. *Escalera v. New York City Housing Authority*, 425 F.2d 853, 858, 862 (2d Cir. 1970); see also *Edgecomb v. Hous. Auth. of Town of Vernon*, 824 F.Supp. 312, 314–15 (D.Conn. 1993). In such cases, preliminary notice is the difference between being able to mount a defense in an administrative hearing or losing one’s claim to that housing and to seek judicial remedies to overcome the administrative decision.

In contrast, the present case does not have an administrative step but is prelude to a court process governed by the civil rules and discovery process. In such a case, a tenant not only has time to prepare a defense but may call upon the full panoply of discovery tools, subpoenas, and witnesses. At least two other jurisdictions looking at similar HUD regulations have recognized this distinction to be meaningful in terms of compliance with the notice provisions. See *Hous. Auth. of City of Newark v. Raindrop*, 670 A.2d 1087, 1090–91 (N.J. Super. Ct. App. Div. 1996); *Richmond Redevelopment Hous. Auth. v. Tyson*, 82 Va. Cir. 297, 2011 WL 7478304, at *2 (Cir. Ct. of Va. 2011) (noting that the specificity requirement must be read in conjunction with the administrative hearing process and the function of the notice necessary for such administrative process).

The second distinguishing feature is that most of the cases cited in *Meacham* dealt with very vague or conclusory language. *Nealy v. Southlawn Palms Apartments*, 196 S.W.3d 386, 390 (Tex. App. 2006) For example, in *Escalera* the notice of allegations were limited to the

statements that the son of one set of tenants had a “Record of antisocial activities and arrests . . . constituting a threat to the peace and safety of the community.” The other stated that the “Illegal acts of [the tenant was] having an adverse effect on the project and its tenants.” *Escalera*, 425 F.2d at 858, n.2. In *Nealy*, “the notice sent to Nealy stated only ‘Owner desired possession’ and ‘Un-desirable tenant behavior.’” *Nealy*, 196 S.W.3d at 391. The Texas Court of Appeals found this language insufficiently specific. In *Edgecomb*, the notice contained no specific factual allegations but stated that the “reason for this action is . . . having engaged in drug related criminal activity or violent criminal activity, including criminal activity by any family member and is in violation of HUD regulations . . .” *Edgecomb*, 824 F. Supp. at 313; see also *Hous. Auth. Of King Cnty v. Saylor*, 578 P.2d 76, 78–79 (Wash. Ct. App. 1978) (rejecting as insufficient notice that simply stated that tenant was “in violation of your lease in section 6j: The Tenant shall not commit or maintain a nuisance on or about the premises.”); *Moon v. Spring Creek Apartments*, 11 S.W.3d 427, 433 (Tex. Ct. App. 2000) (finding the language that tenant “was in violation of lease provision 23B by ‘endangering [the] welfare of other tenants’” to be insufficient).

The only decision cited by *Meacham* that arguably had more substantive notice is *Hous. Auth. of DeKalb Cnty. v. Pyrtle*, 306 S.E.2d 9, 10–11 (Ga. Ct. App. 1983). In that case, the Court found that “the housing authority had notified the tenant by certified mail in writing that there had been ‘[r]epeated incidents of intoxication and irresponsible use of the kitchen facilities in your Unit [which] have imposed a threat [to] the peaceful enjoyment and safety of your neighbors. This conduct results in a violation of the provisions [of the lease and because of the violations] by you . . . you are hereby notified that your Lease shall be terminated in ten days from the date of this Notice.’” *Id.* at 10. But even this allegation of “repeated incidents of intoxication” shares a certain vagueness. The intoxication and misuse of the kitchen facilities suggests specific incidents that would be tied to dates and witnesses.

In this case, Plaintiff cites chronic issues: daily smoking and on-going failures to clean up trash. These incidents, by their very nature, are less susceptible to corresponding to a specific date or incident report that would follow from an acute or even periodic set of actions. The regulations at issue do not require landlords to catalog each time a tenant smokes on the property or leaves trash on the stairs.

The key here is context. If a person is a daily smoker and being accused of violating the lease rules with regards to smoking, then citing to a specific day or days where they were caught smoking on the premises does not offer greater notice than a specific allegation that the person is chronically smoking on the property in violation of the specific provisions of the lease. If the tenant is not a chronic smoker and if the incidents are more limited or periodic, then greater notice may become necessary. By way of example, a tenant who is an ex-smoker and who only has approximately one cigarette per month when he or she becomes stressed, might require more notice as the behavior is more remote and limited and the details of notice with the specific incident become more important. In such cases, the allegation may require the details of when and where. This is consistent with Judge Toor's analysis in *Meacham*. In that case, the tenant was accused of smoking in the apartment on certain occasions but was not provided with notice of the dates, timeframe, or even circumstances. Such notice in terms of singular or periodic behavior may, in fact, require additional notice.

At this juncture, however, the Court cannot conclude as a matter of law that Plaintiff's notice is insufficient given this lack of detail. If, in fact, Defendant is a chronic smoker, then the allegation would appear to fit, but if Defendant is more limited in her habits, then the notice may prove insufficient. In this regard, the record before the Court is insufficient to determine if the notice is, in fact, too vague, or sufficient to describe a chronic and on-going behavior.

The third and final distinguishing feature is what standards a landlord must follow under Vermont law to establish a cause of action. Vermont is a notice pleading state, and the threshold for satisfying the minimal standards for such is low. *Bock v. Gold*, 2008 VT 81, ¶¶ 4, 5. The primary purpose of notice is to the opposing party on notice of not only the category of claims being asserted but the nature and basis of the claim. In this case, Plaintiff has met that threshold by citing two specific sections of the lease that it believes Defendant violated and specific instances.

Similar to the first point, the Court is not persuaded that the C.F.R. provisions are intended or should be read to overrule the low bar for parties in their pleadings. Such a high threshold would effectively create special pleading standards for some terminations of tenancy that are inconsistent with the provisions of *Bock* and the Vermont Residential Rental Act. Cf. *Silva v. Stevens*, 156 Vt. 94, 105 (1991) (requiring the facts and circumstances to satisfy all of

the elements of fraud to be pled). It would also render the discovery and litigation process largely moot.

Courts generally disfavor motions to dismiss. *Bock*, 2008 VT 81, at ¶ 4 (“Motions to dismiss for failure to state a claim are disfavored and should be rarely granted.”). For these reasons, a party seeking dismissal has a high burden to show that they are entitled to such an initial ruling. *Id.* To determine whether a complaint survives a motion to dismiss, the court assumes the factual allegations in the complaint are true. *Colby v. Umbrella Inc.*, 2008 VT 20, ¶ 5. The court will only grant the motion if there are no facts or circumstances that would grant plaintiff relief. *Id.* This is because the purpose of a motion to dismiss for failure to state a claim is “to test the law of the claim, not the facts which support it.” *Brigham v. State of Vermont*, 2005 VT 105, ¶ 11 (quoting *Powers v. Office of Child Support*, 173 Vt. 390, 395 (2002)). Courts rarely grant motions to dismiss for failure to state a claim. *Colby*, 2008 VT 20, at ¶ 5; see also *Kaplan v. Morgan Stanley & Co., Inc.*, 2009 VT 78, ¶ 7.

In this case, the Court understands that there are certain factual issues in dispute, but if all reasonable inferences are drawn in favor of Plaintiff, the Court understands there to be sufficient basis to proceed on the eviction complaint. Therefore, Defendant’s motion to dismiss is **Denied**. The Court will set this matter for a status conference.

So Ordered.

Electronically signed pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read "D. Richardson", written over a horizontal line.

Daniel Richardson
Superior Court Judge

August 19, 2026