

VERMONT SUPERIOR COURT
Windsor Unit
12 The Green
Woodstock VT 05091
802-457-2121
www.vermontjudiciary.org



CIVIL DIVISION
Case No. 26-CV-04257

Royalton Terrace, LLC v. John Vaine et al

DECISION ON MOTION

Landlord Royalton Terrace, LLC (Plaintiff “Royalton”) filed a single count ejectment case for non-payment of rent against tenants, John Vaine and Jessica Wright (Defendants). Royalton filed a motion for Defendants to pay rent into court pursuant to 12 V.S.A. § 4853(a) which the Court set for a hearing. Subsequently, the Defendants filed a motion to dismiss pursuant to Rule 12(b) of the Vermont Rules of Civil Procedure (V.R.C.P.). The Court addressed both motions at the rent escrow hearing on September 17, 2026, and upon the conclusion of the evidence, took the decisions under advisement.¹

I. Legal Standard for Civil Rule 12(b)(6) Motion

A motion to dismiss for failure to state a claim faces a high bar. The Vermont Supreme Court has described the familiar standard for Rule 12(b)(6) motions to dismiss for failure to state a claim as follows:

A motion to dismiss . . . is not favored and rarely granted.” This is especially true “when the asserted theory of liability is novel or extreme,” as such cases “should be explored in the light of facts as developed by the evidence, and, generally, not dismissed before trial because of the mere novelty of the allegations.” In reviewing a motion to dismiss, we consider whether, taking all of the nonmoving party’s factual allegations as true, “‘it appears beyond doubt’ that there exist no facts or circumstances that would entitle the plaintiff to relief.” We treat all reasonable inferences from the complaint as true, and we assume that the movant’s contravening assertions are false.

Alger v. Dep’t of Labor & Indus., 2006 VT 115, ¶ 12, 181 Vt. 309 (citations omitted); see also 5B A. Benjamin Spencer, et al., Fed. Prac. & Proc. Civ. § 1357 (4th ed.) (“Ultimately, the burden is on the moving party to prove that no legally cognizable claim for relief exists.”).

¹ Plaintiff Royalton Terrace, LLC presented the sworn testimony of witness Kimberly “Char” Sipperly. The Court admitted Plaintiff’s pre-filed exhibits 1, 4, 2, 3 in order of their introduction. The Defendants presented the sworn testimony of Jessica Wright.

The record for Rule 12(b)(6) purposes generally is limited to the four corners of the complaint and any attachments to it. See *Nash v. Coxon*, 152 Vt. 313, 314–15 (1989) (“[I]f matters outside the pleadings are presented and not excluded by the court, the motion to dismiss must be treated as one for summary judgment.” (internal quotation and citation omitted)). There is a limited exception: documents sufficiently referred to and relied upon in the complaint may properly be considered in a motion to dismiss even if not attached to the complaint. See *Kaplan v. Morgan Stanley & Co.*, 2009 VT 78, ¶ 10 n.4, 186 Vt. 605; *Parada v. Banco Indus. De Venez.*, C.A., 753 F.3d 62, 67–68 (2d Cir. 2014) (decision on whether to exclude extra-record documents or transition motion to summary judgment is discretionary).

II. Findings of Fact

The Defendants entered into a written lease agreement effective on November 1, 2020, to rent lot #49 on Upper Royalton Terrace Lane in South Royalton, Vermont in the mobile home park formerly owned by Reincipis Realty Group, LLC. The lot rent was \$335 per month and was due on the 1st of the month every month. Per paragraph 3(d) of the lease agreement, if lot rent was not received in full from the tenant by 6 p.m. on the 5th day of the month, the tenant agreed to pay the landlord “additional rent” of \$25.00 “for the purpose of making the landlord whole for actual costs incurred as a result of the delinquent payment.”² Paragraph 4 of the lease agreement entitled “Additional Rent” also included the following:

- (a) Any and all costs incurred by the Landlord in connection with enforcing any provision of this lease shall be reimbursed, in full, by the Tenant and shall be considered ‘additional rent’;
- (b) Any and all costs paid by the Landlord on the Tenant behalf (where said costs were previously agreed to be an obligation of the Tenant) shall be reimbursed, in full, by the Tenant and shall be considered ‘additional rent’;
- (c) All ‘additional rent’ shall be due and payable by the Tenant within thirty (30) days of the date shown on the invoice provided to the Tenant. Failure to pay said ‘additional tent’ within the time frame may be grounds for the termination of this lease.³

Sometime after November 2020 but before October 2025, Reincipis Realty Group, LLC sold the mobile home to Plaintiff Royalton Terrace, LLC. On October 16, 2025, Plaintiff mailed a notice to all leaseholders in the mobile home that lot rent was increasing to \$435 from the current rent of \$415 per month, effective January 1, 2026.⁴ The October 16th notice was mailed to the physical address at the mobile home park, as leaseholders have physical mailboxes on site at their lots and receive mail there. Plaintiff mailed the October 16th letter to Defendants at 49 Upper Terrace Lane, South Royalton, Vermont. The Defendants did not receive the letter as they had moved out of their mobile home sometime around 2022 and had begun renting it out. Defendant Jessica Wright conceded that this past winter (2025-2026), she knew she had fallen

² Reflected in Plaintiff’s admitted exhibit 1.

³ Reflected in Plaintiff’s admitted exhibit 1.

⁴ Reflected in Plaintiff’s admitted exhibit 4.

behind in rent and was speaking with a staff member at the mobile home park to learn how much rent was outstanding and the address where she could send payment to. Defendant Wright exchanged email communications with Ms. Sipperly, the office manager to the new owner of the mobile home park who forwarded her a link to pay the outstanding lot rent due. Despite that communication, the Defendants did not pay the outstanding lot rent due.

On June 29, 2026, attorneys for Royalton sent a letter to the Defendants by first class and certified U.S. mail that their lease was terminating for non-payment of lot rent. The letter informed the Defendants that their lease would terminate on July 31, 2026, unless the outstanding rent of \$1,821.50 for 49 Upper Royalton Terrance Lane was not paid in full by that date.⁵ In reviewing Royalton's ledger, Plaintiff included 12 late fees of \$25 each in the demand for outstanding rent in the June 29th letter to the Defendants.

On June 29, 2026, the Defendants did not remove their mobile home from lot #49 nor paid the outstanding rent demanded by Royalton. This civil ejectment action was then filed by Royalton on August 5, 2026.

III. Legal Analysis

A. Rent Defined

Courts generally define rent as the fixed, periodic payment owed for use and occupancy of the premises. See e.g. *Westminster Mgmt., LLC v. Smith*, 486 Md. 616, 648, 312 A.3d 741, 760 (2024); *London Computer Sys., Inc. v. Zillow, Inc.*, No. 1:18-CV-696, 2020 WL 5366108, at *6 (S.D. Ohio Sept. 8, 2020); *BP Oil Pipeline Co. v. Plains Pipeline, L.P.*, 472 S.W.3d 296, 303 (Tex. App. 2015). Courts typically cite definitions from Merriam-Webster's Collegiate Dictionary, Black's Law Dictionary, and Webster's Dictionary in defining rent. An 1878 Vermont Supreme Court decision defined rent as follows:

Rent is the return, whether of money, service, or specific property, which the tenant makes to the landlord as compensation for the use of the premises. It is not necessary it should be an agreed sum. Wherever the relation of landlord and tenant exists, and there is no sum agreed upon as rent, the law implies an agreement to pay such a sum as will reasonably compensate the landlord for the use of the premises.

Baldwin v. Skeels, 51 Vt. 121, 125 (1878).

Black's Law Dictionary defines "rent" as "[c]onsideration paid, usu[ally] periodically, for the use or occupancy of property (real property)." *Rent*, *Black's Law Dictionary* 1551 (11th ed. 2019).

B. Additional Rent

Although the Vermont Supreme Court has not ruled on this precise issue, other jurisdictions have done so and have been reluctant to allow lease language to expand the meaning of rent.

⁵ Reflected in Plaintiff's admitted exhibit 2.

Westminster Mgmt., LLC, 486 Md. at 625. The Maryland Supreme Court held that a residential lease violated a Maryland law prohibiting penalties. *Id.* Maryland law “precludes a landlord from including provisions in a lease permitting it to charge late penalties or fees greater than 5% of the rent due for the period at issue.” *Id.* at 661. The Court clarified that “[w]hen a lease provides for a 5% late penalty/fee, the lease may not also permit the landlord to charge additional fees triggered by late payment.” *Id.*

Further, a Connecticut trial court assessed a rental agreement with a provision directly called “additional rent.” There, the court found that an “addition rent” lease provision “does not remove [the section] from the realm of being a penalty.” *Enfield Retail Props., LLC v. Camel Fitness, Inc.*, No. CVH-8214, 2016 WL 3003143, at *8 (Conn. Super. Ct. May 16, 2016) (citing *Hanson Development Co. v. East Great Plains Shopping Center, Inc.*, supra, 195 Conn. at 65 (contractual language used not determinative of whether provision is penalty)). The lease at issue had a definition section defining “rent” to include “additional rent.” *Id.*

Likewise, the Supreme Court of Oklahoma determined that a provision of residential lease calling for \$20 late-fee plus five dollars per diem late charge, had the effect of penalty, rather than liquidated damages, and was unconscionable in light of \$465 monthly rent. *Sun Ridge Invs., Ltd. v. Parker*, 1998 OK 22, 956 P.2d 876.

The Seventh Circuit Court of Appeals determined that a late fee provision in a lease agreement constituted an unenforceable penalty. *Raffel v. Medallion Kitchens of Minnesota, Inc.*, 139 F.3d 1142, 1146 (7th Cir. 1998). The Circuit Court held that the late fee was “unreasonably large” when it was “seven times the monthly rent.” *Id.* The Court further determined that the purpose of the clause is to ensure performance rather than compensate the landlord for actual damages. *Id.* The combined disproportionate fee with the clause’s purpose led the Court to determine the fee could “only be categorized” as unenforceable. *Id.*

Here, the Court finds that the lease agreement assigned/assumed by Royalton upon their purchase of the mobile home park that Defendants rent lot #49 is located unlawfully includes late fees as additional rent. Royalton simply referring to the late fee as “additional rent” does not render it rent as it is a penalty imposed upon the tenant. The Vermont Supreme Court has addressed the issue of the validity of late-payment charges in residential leases and reviewed them to determine whether they were reasonable liquidated damages or an unenforceable penalty. *Highgate Associates, Ltd. V. Merryfield*, 157 Vt. 313, 316-320, 597 A.2d 1280, 1282-4. Ultimately, here, the lease seeks to circumvent the landlord’s statutory obligations of terminating a tenant’s lease for failure to pay rent only and the tenant’s right to avoid the termination of the lease if rent is paid “through the end of the rental period in which payment is made or tendered.” 9 V.S.A. § 4467(a). This is prohibited under 9 V.S.A. § 4454.

The Court finds Royalton’s notice of termination for non-payment of rent defective as it included a demand for payment other than rent. “Punctilious compliance with all statutory eviction procedures, including notice provision” is required in residential leases. *In re Soon*

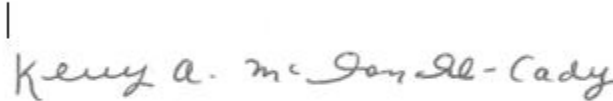
Kwon, 2011 VT 26, ¶ 14, 189 Vt. 598, 19 A.3d 139. As a result, the notice did not terminate the lease and the ejectment action was not ripe. Vermont law is clear that ejectment is a remedy available to the landlord “after the determination of the lease” and “proceed[s] upon the supposition that the lease is at an end.” *Sabourin v. Woish*, 116 Vt. 385, 387, 78 A.2d 333 (1950). It is thus resolutely “only when the lessee holds without right *after the determination of the lease* that a plaintiff can resort to the remedy.” *Id.* (emphasis added). See also *In re Parker*, 2001 WL 34050702, at *2 (Bankr. D. Vt. Apr. 24, 2001) (noting that under Vermont law, a landlord seeking to evict a residential tenant must, before commencing the process, “wait for the termination date in the notice to pass”).

IV. Order

Defendants’ motion to Dismiss (motion #3) is Granted.
Plaintiff’s motion to pay rent into court (motion #1) is Denied.
The case is dismissed without prejudice.

Dated September 23, 2026.

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

|


Kerry A. McDonald-Cady, Superior Court Judge

Vermont Superior Court
Filed 09/24/26
Windsor Unit