Vermont Superior Court
Filed 04/23/26
Rutland Unit

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 25-CV-02166

Steven Mitowski v. Tracy Rose

FINDINGS AND CONCLUSIONS

This case began with a complaint seeking eviction from a leased residence and damages. Defendant Tracy Rose no longer occupies the subject property; the claim for possession was dismissed on February 2, 2026. A merits hearing was held on March 23, 2026 on Plaintiff Steven Mitkowski's claim for unpaid rent, damages, court costs, and attorney fees. Both parties were present. Mr. Mitkowski was represented by Attorney Francesca Bove, and Ms. Rose represented herself.

The court found the testimony of both parties sometimes vague and sometimes not reliable. The court has evaluated the credibility of each party on each issue in relation to all the evidence admitted and the record. Based on the court's evaluation of the strength of the evidence, the court makes the following findings of fact to the standard of a preponderance of the evidence.

Findings of Fact

Mr. Mitowski owns a residential property in Proctor, Vermont. On December 11, 2024 the parties signed a "Residential Lease" whereby Ms. Rose rented the property for a period of two years, beginning December 20, 2024 with monthly rent of $2,400 payable on the 20th day of each month. The lease states that the Tenant "paid a security deposit" of $2,400, indicating a completed payment, but both parties agreed that no such security deposit was paid at that time. It provided that no one but the tenants could occupy the property without the landlord's consent. Although not named in the lease, both parties recognized that the permitted tenants included Ms. Rose, her three minor children, and occasionally her two older children. The lease provided for attorneys' fees in the event of a suit for damages.

The property was not ready for occupancy on December 20th and Ms. Rose did not make a rental payment that day. It was not available until December 30th, which is when she got the key and started possession. She asked Mr. Mitkowski about adjusting the dates in the written contract. He declined to do so but agreed to accept rent payments as of the first of each month. She paid $2,400 with a check dated January 6, 2025 with the memo line of "Jan Rent," which he

accepted. He claimed that he told her that she could pay for the period of December 20 to Jan 1 later, but the court does not find this claim credible.

The parties had a good landlord-tenant relationship for the first few months. Ms. Rose was responsible for heat and other utilities and she kept the premises in good condition. The fuel tank was not full when she took possession and she paid to fill it. Mr. Mitowski came periodically to make repairs, some of which were needed due to actions of the prior tenant, and he was responsive to other landlord obligations. There was some wear and tear left over from the prior tenant that was not repaired. Specifically, there were scrapes in the floor that Ms. Rose covered with a rug.

For rent, Ms. Rose paid $2,400 with a check dated 2/1/25 marked "Feb Rent." She paid $2,400 with a check dated 3/1/25 and marked "March Rent." She paid $2,400 with a bank check dated 4/2/25 and marked "April 2025 rent."

On April 15, 2025, Mr. Mitowski's attorney sent Ms. Rose a regular and certified letter labeled "NOTICE TO QUIT – MATERIAL BREACH OF LEASE." The Notice stated that the tenancy would terminate on May 16, 2025 for material breaches of the lease agreement. It identified two reasons:

(1) *failure to pay a $2,400 security deposit and last month's rent of $2,400 pursuant to the written lease It stated that "Mr. Mitowski has requested these payments from you multiple times, and you have provided no payment."* There was no evidence at trial that Mr. Mitowski had requested these payments from Ms. Rose at any time during her occupancy, whereas the course of dealing of the parties over 4 months shows that the parties departed from the terms of the written contract as to payments. Ms. Rose testified that Mr. Mitowski's daughter visited her periodically at her restaurant, and that she informed Ms. Rose that her father wanted Ms. Rose out of the property so that she (the daughter) could live there.

(2) *allowing an unauthorized occupant to live in the property without consent.* Mr. Mitowski's testimony at trial was that he saw cars at the property that did not belong to Ms. Rose. She testified that her boyfriend maintained a separate residence throughout her entire tenancy.

After the Notice to Quit, Ms. Rose gave Mr. Mitowski a check dated 5/1/25 for $2,400. She testified credibly that he asked her to write 'security deposit' on the check. She complied and wrote "Security Deposit" [quotation marks are on the check] on the memo line. He testified that he did not cash or deposit it right away. At one point he testified that when he did, payment on the check had been stopped, and at another point he testified that it was returned for insufficient funds. There are no markings on the copy of the face of the check in evidence (Exhibit 5) indicating insufficient funds or stopped payment. Ms. Rose testified that she does not know whether the funds were deducted from her account or not. Mr. Mitowski provided no testimony that he ever asked for a replacement check due to insufficient funds or payment having been stopped. The evidence is clear that Ms. Rose gave him a check for $2,400 dated May 1, 2025. He has not proved by a preponderance of the evidence that Ms. Rose caused him to not receive the $2,400 represented by the check.

With respect to rent payments, the parties established a course of dealing with which Ms. Rose complied. There is no evidence that before the Notice to Quit, he asked her to make a separate security deposit payment or a payment for last month's rent.

Ms. Rose claims that she left the premises on May 12 when she went to Georgia and that she was out by May 16. She claims that she left the key on a window sill, and that she informed Mr. Mitkowski of that by text. Mr. Mitowski testified credibly that he did not receive a text from Ms. Rose about the key. It is possible that she went to Georgia in May, but that does not mean that she surrendered possession as of May 16. The Complaint was filed May 21, 2025.

On June 10, 2025, Ms. Rose filed an Answer in which she stated, in the present tense, "There is no one living in or at 25 Park St. other than me and my children." The court finds that, based on her own words, she was still occupying the property on June 10, 2025. She had not paid any rent for June. The court also finds, based on her testimony at trial, that although her boyfriend may have occasionally been at the property, he maintained his own residence throughout the entire period and was not occupying the property as a tenant. Mr. Mitowski's evidence did not prove that an unauthorized occupant lived at the property without consent.

Mr. Mitkowski testified that cars were still at the property on June 21, but that there were no cars on June 22. Mr. Mitowski's attorney's billing statement shows a telephone call on 6/23 "regarding tenant vacating premises." The court finds that Ms. Rose occupied the property until June 21, 2025, at which time she ended possession. Although she did not notify Mr. Mitkowski, he does not claim that she occupied the property after June 21, 2025. The court finds credible Mr. Mitowski's evidence that she did not turn over the key, and that he was therefore obliged to replace the lock for later rentals.

Mr. Mitowski claims the following damages:

Rent for 3 months (Rents due March 20, April 20, May 20)		$7,200
Cost of refinishing floors due to scrapes		1,825
Repair of holes in walls from hangings:	supplies	620
	labor	720
Replenishing fuel tank		620
Disposal fee for trash left behind		16.50
Replacement of damaged smoke detector		74,87
Replacement lock set		69.99

The court finds that Ms. Rose did not owe rent beginning on December 20, 2024 because Mr. Mitowski did not make possession available to her then. By agreement, she took possession and received the key on December 30, 2024. He agreed that she could pay on the first of each month beginning with January and he accepted checks stating that each was for a full month.

The court finds that Ms. Rose paid $2,400 by the check dated 5/1/25 which was received by Mr. Mitowski. Although the memo line said "Security Deposit" at his request, because the Notice to Quit had given May 16th as a termination date, the check could serve partially as rent

for half of the month and partially as a security deposit. Mr. Mitowski had the check and has not proved that Ms. Rose stopped payment of the funds. Because the court has found that Ms. Rose did not give up possession until June 21, 2025, the court will count the May 1 check as a rent check for the month of May. She owes pro rata rent for June (21 days). $2,400 per month means a daily rate of $80.00. Thus Ms. Rose owes 21 x $80 = $1,680 in unpaid rent.

The court finds that the repairs of refinishing the floors and repairing the walls were due in part to conditions caused by Ms. Rose but also in part to conditions caused by the prior tenant. Thus Ms. Rose owes half of each of those claims, or $912.50 for floors and $670 for walls. She does not owe for filling the fuel tank as Mr. Mitowski did not provide a full tank of fuel when she took possession and she paid to fill it. She does owe for the disposal fee for trash left behind, and for the replacement lock set. Mr. Mitowski did not prove that she was the tenant who damaged the smoke detector. In total, Plaintiff has proved property damages of $1,668.99 attributable to Ms. Rose.

Attorney fees: Plaintiff has not proved that at the time of the Notice to Quit or filing of the Complaint, he had valid claims for terminating the lease based on breach of contract. The findings show that from the beginning of the tenancy, the terms of the written lease that related to required payments were not followed but replaced by an agreed upon course of dealing, and Mr. Mitowski did not prove that after waiving the terms of the written provisions for payment of $2,400 for a security deposit and $2,400 for the last month's rent he sought compliance with those terms before issuing a Notice to Quit that claimed breach of contract based on those provisions in the written agreement. In addition, Plaintiff did not prove the second basis in the Notice to Quit—that an unauthorized person was living at the property.

Because the evidence does not show that there was a sound basis for the Plaintiff to issue a Notice to Quit and or file a claim for possession when he did, Ms. Rose should not have to pay for attorneys' fees related to that work. There is also no support for why fees were charged for a second attorney on the case, given that the claims and evidence were not complex. On the other hand, in the end there were valid bases for a judgment for unpaid rent and property damages such that attorney work on a lawsuit to pursue those claims was warranted.

Review of the attorney time and billing records in relation to the justified claims indicates that reasonable attorneys fees are half of the $5,104.00 claimed, or $2,552.00. Costs of suit of $317,93 for the filing fee and $103.73 for service of process, totaling $421.66, are necessary costs for the successful claims.

Conclusions of Law

Based on the facts found above, Plaintiff is entitled to judgment in the amount of $1,680 in unpaid rent plus $1,668.99 for damages for a total of $3,348.99. Reasonable attorney fees in the amount of $2,552.00 and costs of $421.66 are approved.

A separate Judgment is issued this day.

Electronically signed April 22, 2026 pursuant to V.R.E.F. 9 (d).



Mary Miles Teachout
Superior Judge (Ret.), Specially Assigned