

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-055

OCTOBER TERM, 2006

Nina Badger

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APPEALED FROM:

}

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v.

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Addison Superior Court

}

Krista Bragg

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DOCKET NO. 125-6-05 Ancv

Trial Judge: Edward J. Cashman

In the above-entitled cause, the Clerk will enter:

Tenant Krista Bragg appeals the superior court=s judgment granting landlord Nina Badger possession of the premises that landlord had rented to tenant. We dismiss the appeal as moot.

The parties= lease agreement commenced the tenancy on October 1, 2004. On March 4, 2005, landlord served upon tenant a notice of termination for nonpayment of rent. On June 17, 2005, landlord filed an eviction action, seeking a writ of possession, as well as various damages and costs. Tenant denied the allegations of

nonpayment of rent in her answer to the complaint. The superior court then allowed landlord to file a supplemental complaint alleging several breaches of the parties' agreement that landlord had set forth in a second termination notice sent to tenant's attorney after the eviction action commenced. The court held an evidentiary hearing over two days in November and January 20, 2006. At the end of the second day of hearing, the court indicated that it would direct the clerk to enter judgment of possession for landlord and would give the parties ten days to file additional arguments or itemizations regarding damages. On January 24, landlord filed a statement of damages totaling \$2423. On February 3, tenant filed a notice of appeal without having responded to landlord's statement of damages. On February 8, the court entered its judgment granting landlord a writ of possession. That same day, landlord filed a letter, along with a proposed judgment, asking the court to enter a judgment for damages in the amount of \$2423. On February 13, tenant filed a motion with this Court seeking a stay of execution of the writ of possession pending appeal. Tenant withdrew the motion on March 2, however, informing this Court that tenant had vacated the subject rental premises.

On appeal, tenant argues that the trial court erred by granting landlord judgment for possession, given that (1) the tenancy had not terminated as a matter of law because no rent was due on the termination date stated in the first termination notice and because both notices of termination were defective; and (2) landlord waived her right to recover possession of the premises by serving sequential termination notices and regularly accepting rental payments without reservation. We dismiss the appeal as moot insofar as tenant raises claims concerning only the judgment for possession, and tenant vacated the premises shortly after the notice of appeal was filed. A case becomes moot when the parties cease to maintain a legally cognizable interest in the outcome of the case. @ Holton v. Dep't of Employment & Training, 2005 VT 42, & 14, 178 Vt. 147. Here, tenant is challenging the judgment for a writ of possession and yet she left the subject premises of her own volition while her motion for a stay on execution of the judgment was pending. We recognize that there is an exception to the mootness doctrine for situations capable of repetition but evading review, but there must be a reasonable expectation or a demonstrated probability that the appellant will be subject to the same action. @ Id., at & 16. Nothing in the record suggests a reasonable likelihood that the same fact pattern will be repeated.

Appeal dismissed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice