

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-162

SEPTEMBER TERM, 2004

	}	APPEALED FROM:
	}	
Stuart P. Race and Linda Race	}	Chittenden Superior Court
	}	
v.	}	DOCKET NO. S1396-03 CnC
	}	
Michael and Ann Weisler	}	Trial Judge: Matthew I. Katz
	}	
	}	

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

Tenants Michael and Ann Weisler appeal pro se from the trial court's order granting a writ of possession to landlords Stuart P. Race and Linda Race. Tenants argue that they are entitled to back rent because landlords failed to secure a letter of occupancy from the City of Winooski, in violation of their lease agreement. We affirm.

Tenants rented a home in Winooski, Vermont from landlords. They entered into a written lease agreement for one year beginning October 1, 2002 and ending September 30, 2003. The lease required that landlords make repairs to the property, and obtain a letter of occupancy for the premises by July 1, 2003. Tenants stopped paying rent in July 2003; the lease expired at the end of September. In November 2003, landlords filed a complaint against tenants seeking a writ of possession and back rent. In response to the complaint, tenants asserted that the rental property did not comply with local housing codes, and thus they were entitled to the return of all of the rent that they had paid. In January 2004, landlords filed a motion for summary judgment. In response, tenants acknowledged that they owed back rent, but they asserted that they should not be required to vacate the premises because landlords had not complied with the terms of the lease agreement. Specifically, tenants complained that landlords had not secured a letter of occupancy from the City of Winooski.

In February 2004, the trial court issued an entry order granting landlords' motion for summary judgment. The court explained that tenants did not dispute that the lease had expired, and that they owed approximately \$5000 in back rent. The court found that tenants had admitted in their pleadings that a certificate of occupancy for the premises had " been in effect since March 1968." The court found it immaterial whether landlords had delivered a copy of the document to tenants because the purpose of the lease requirement for a certificate had been satisfied. Tenants filed a motion for reconsideration, asserting that the court had erred in finding that a letter of occupancy had been issued. The court denied tenants' motion. Tenants then filed another motion for reconsideration. While this motion was pending, landlords waived their claim for back rent. In March 2004, the court issued a judgment order granting landlords possession of the premises; it later issued a writ of possession. Tenants vacated the premises in April 2004. This appeal followed.

It is difficult to discern tenants' exact claims of error on appeal. They assert that landlords failed to make necessary repairs to the home, and they ask that their rent be returned to them.

Our standard of review is familiar:

When reviewing a motion for summary judgment, we apply the same standard as the trial court: summary judgment is appropriate when the record clearly indicates there is no genuine issue of material fact and that the moving party is entitled to

judgment as a matter of law. In determining whether a genuine issue of material fact exists, we regard as true all allegations of the nonmoving party supported by admissible evidence, and we give the nonmoving party the benefit of all reasonable doubts and inferences.

Lane v. Town of Grafton, 166 Vt. 148, 150 (1997) (internal quotation marks and citations omitted); see also V.R.C.P. 56(c).

The trial court properly granted summary judgment here. If a tenant remains in possession after the termination of a rental agreement, without the express consent of the landlord, the landlord may bring an action for possession, damages and costs. 9 V.S.A. § 4468; see also 12 V.S.A. § § 4851- 4854 (setting out procedures). In this case, it was undisputed that tenants' lease agreement had expired, and the lease had not been renewed. Although tenants argue that they are entitled to back rent, they did not file a counterclaim against landlords. At issue in this appeal is whether a writ of possession was appropriately granted to landlords. The undisputed facts show that landlords were entitled to summary judgment on their complaint for possession of the rental premises.

Affirmed.

BY THE COURT:

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Frederic W. Allen, Chief Justice (Ret.),

Specially Assigned