

VERMONT SUPERIOR COURT
Lamoille Unit
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CIVIL DIVISION
Case No. 22-CV-02269

Peter Kelly v. Helen Gauthier

ENTRY REGARDING MOTION

Title: Motion to Dismiss (Motion: 1)
Filer: Carolyn M. Jarrett
Filed Date: July 21, 2022

Defendant's Motion to Dismiss cites three bases for granting a motion to dismiss. First, Defendant claims that the terms of the lease do not permit No Cause Evictions. Second, Defendant notes that service has not been completed in this matter. Third, Defendant argues that the Complaint is defective due to its silence on Plaintiff's compliance or non-compliance with various HUD regulations that apply due to Defendant's enrollment in the federal Section 8 rental assistance program.

Defendant has been a tenant on the property since 1989. Plaintiff's original complaint was filed on June 29, 2022. No return of service or waiver of service has been filed. Defendant filed the present Motion to Dismiss on July 21, 2022. Plaintiff has not filed a reply or opposition to Defendant's Motion.

The Court grants Defendant's Motion to Dismiss for two reasons, one raised by Defendant in her motion to dismiss and another that the Court has found in its review of the pleadings. Under Rule 3, Plaintiff had 60 days to complete service in this matter following the filing of the complaint. That time expired on August 28, 2022. Plaintiff's failure to serve is a failure to prosecute under V.R.C.P. 41(b), and the Court dismisses without prejudice.¹

¹ While the Court often gives parties notice and an opportunity to cure service issues, Plaintiff in this case was on notice of this issue through Defendant's motion over 30 days prior to the expiration of the deadline and did not attempt to cure, file a motion to extend, or otherwise address this defect in the initiation of this action.

The Court also finds a second basis to dismiss in the timing of Plaintiff's notice of termination. While there is a serious question as to whether Plaintiff has a right to pursue a no-cause eviction, as discussed below, the documents submitted by Plaintiff under the no cause provision of 9 V.S.A. § 4467(c)(1)(B) are defective on its face. The termination notice submitted by Plaintiff is dated February 2, 2022. It notices a termination date of April 30, 2022.

Even assuming that the termination notice was delivered on February 2, 2022 and the last day is included, the total notice is for 88 days, two days less than required under 9 V.S.A. § 4467(c)(1)(B), which requires "at least 90 days" of "actual notice." As stated in 9 V.S.A. § 4453, the Vermont Residential Rental Act and its provisions, including 9 V.S.A. § 4467, are "implied in all rental agreements." Therefore, Plaintiff's failure to comply with the notice provisions of 9 V.S.A. § 4467 constitute a breach of the requirements of the Residential Rental Act. See *Deschene v. Congel*, 149 Vt. 579, 583 (1988) (termination of a lease must conform with the time, mode, and manner of termination required). For this second reason, Defendant's Motion to Dismiss is well-founded.

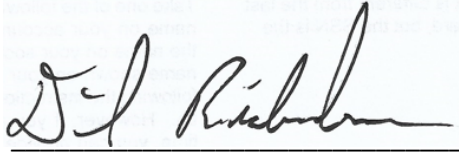
Finally, Defendant argues that the 1989 Housing Voucher Agreement between Plaintiff and Defendant expressly limits the basis for landlord's right to evict to a list of "for cause" bases under Section 9.A. of the Agreement. Plaintiff admits in his complaint that the written lease has been renewed and re-incorporated as the governing agreement between the parties. Within the lease, Section 9A and the remainder of the provisions of Section 9 do appear to limit a landlord's right to terminate a tenancy for anything other than "good cause." In particular, Section 9.E. gives the Tenant,—not the Landlord—the right to voluntarily terminate the lease without cause.

Given this language and its limitations, there is a serious question as to whether Plaintiff has any right to pursue a no-cause eviction. Furthermore, Plaintiff has not opposed this motion or presented any arguments or facts that would lead to a separate conclusion. While the Court limits its dismisses to the two grounds cited above, this issue is likely to persist if Plaintiff renews or attempts to file another termination of lease and ejectment action premised on a no-cause basis.

For the foregoing reasons, Defendant's Motion is Granted, and the present Matter is hereby Dismissed without prejudice based on the cited lack of service and the defects found in Plaintiff's underlying Notice of Termination.

The motion is GRANTED.

Electronically signed on 9/5/2022 12:14 PM pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read "D. Richardson", is positioned above a horizontal line. The signature is written in a cursive style.

Daniel Richardson
Superior Court Judge