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CIVIL DIVISION

Case No. 22-CV-02778

Nancy Bourne et al v. Joyce Baker

Opinion and Order on Defendant's Motion to Dismiss

This matter involves a termination of a tenancy for no cause, pursuant to a written lease agreement. Defendant, Joyce Baker, moves this Court to dismiss Plaintiff's, Nancy Bourne d/b/a Waterford Apartments', action seeking to terminate her tenancy. In chief, Defendant argues that Plaintiff's tenancy termination was ineffective because it improperly purported to terminate her tenancy in the middle of the lease term. Def.'s Mot. to Dismiss, ¶¶ 5–6 (filed Nov. 3, 2022). The Plaintiff opposes the motion.

On January 19, 2023, the Court heard arguments concerning the motion from both sides. After considering written and oral submissions, the Court makes the following determinations.

Relevant Background

For the purposes of Defendant's Motion to Dismiss, the relevant facts are uncontested. Plaintiff owns the rental premises located at 70 Route 106, Apt. # 5 in Springfield, Vermont. Plaintiff and Defendant entered a tenancy agreement whereby Defendant would rent the rental premises from Plaintiff through a written lease agreement. Under the lease agreement, Defendant would begin her initial

term on Mar. 4, 2020, and it would end one year later on Mar. 4, 2021. After the initial term, the lease would convert to a lease renewal on a month-to-month basis.

After the first year of tenancy, the lease allows Plaintiff to terminate the tenancy for no cause provided she provides a specified notification period. The relevant portion of the written lease states

The initial term begins on [Mar. 4, 2020]. The initial term ends on [Mar. 4, 2021]. Following the initial term the lease will be renewed automatically on a month-to-month basis until: (1) a termination of the lease by the Owner in accordance with paragraph 6 or upon a minimum of thirty (30) days but not more than sixty (60) days written notice by the Owner after the initial term for no cause[.]

Pl.'s Exh. 1, ¶ 1 (filed Aug. 10, 2022).

On Apr. 14, 2022, Plaintiff attempted to exercise this provision of the lease by serving a notice of tenancy termination to Defendant. The written notice of termination informed Defendant that the tenancy would end on Jun. 15, 2022 — 61 days after notice was served. To date, Defendant continues to remain on the premises.

### Analysis

A motion to dismiss tests the legal grounds for a complaint. “Dismissal under Rule 12(b)(6) is proper only when it is beyond doubt that there exist no facts or circumstances consistent with the complaint that would entitle Plaintiff to relief.” *Bock v. Gold*, 2008 VT 81, ¶ 4, 184 Vt. 575, 576 (mem.) (quoting *Union Mut. Fire Ins. Co. v. Joerg*, 2003 VT 27, ¶ 4, 175 Vt. 196, 198)). Resolving the legal merit of Defendant’s motion requires the Court to examine the interplay between the

relevant statutory law and the parties' rental agreement. A number of principles arise from those sources.

Vermont's Residential Rental Agreements Act provides that, where, as here, there is a written rental agreement:

the notice to terminate for no cause shall be at least 30 days before the end or expiration of the stated term of the rental agreement if the tenancy has continued for two years or less. The notice to terminate for no cause shall be at least 60 days before the end or expiration of the term of the rental agreement if the tenancy has continued for more than two years.

9 V.S.A. § 4467(e). In this instance, neither side disputes that notice of at least 60 days was required as Defendant had resided at the premises for over two years.

The provisions of the Residential Rental Agreements Act are “implied in all rental agreements,” *id.* § 4453, and “[n]o rental agreement shall contain any provision that attempts to circumvent or circumvents obligations [created by those laws]” *Id.* § 4454.

As to the parties' lease agreement, when the “contract language is unambiguous, the intent of the parties is rooted in the words of the document, where the plain meaning of the language governs its interpretation.” *State v. Prison Health Services, Inc.*, 2013 VT 119, ¶ 9, 195 Vt. 360, 364. “We assume that parties included contract provisions for a reason, and we will not embrace a construction of a contract that would render a provision meaningless.” *Southwick v. City of Rutland*, 2011 VT 53, ¶ 4, 190 Vt. 106, 109. Thus, when the parties have contracted a written lease, the provisions are given effect — provided they do not

conflict with the limitations and protections provided by Vermont statutes. *See* 9 V.S.A. § 4453-54.

In the instant matter, Defendant argues that Plaintiff's action must be dismissed because it invalidly seeks to end her tenancy before the end of the monthly term. Def.'s Mot. to Dismiss, ¶¶ 5–6. Defendant points out that Plaintiff's notice of termination specifies that the last day of tenancy occurs on Jun. 15, 2022, which is in the middle of the monthly lease period then in effect. She maintains that Section 4467 requires the Court to judge the 60-day notice from the end of lease period. As a result, Plaintiff's notice of termination failed to afford Defendant the protections envisioned by that section, any contrary provision of the lease cannot be enforced, and the notice was ineffective to terminate her tenancy as a matter of law. *See Andrus v. Dunbar*, 2005 VT 48, ¶ 10, 178 Vt. 554, 556 (absent proper notice of termination, eviction case must be dismissed). The Court agrees.

This Court has previously held a landlord may not terminate a lease for no cause prior to the end of the lease term. It adheres to that holding. The Court believes Section 4467 requires the Court to enforce the lease term agreed to by the parties and permits terminations for no cause only *at the end of* such a period. That conclusion flows plainly from the language used by the Legislature in drafting Section 4467(e). For example, in a one-year lease, to give effective notice of a termination for no cause, a landlord must provide notice “at least 30 days *before the end or expiration of the stated term of the rental agreement.*” 9 V.S.A. § 4467(e) (emphasis added). A notice of termination seeking termination prior to that point

would not be effective. Other Superior Courts have ruled to the same effect. *See Fiorello v. Latzko*, No. 21-CV-02156 Bncv, 2022 WL 1468935, at \*4 (Vt. Super. Ct. Apr. 4, 2022) (Valente, J.); *Walton v. Howard*, No. 20-CV-00626 Rdev, slip op. (Vt. Super. Ct. Nov. 10, 2020) (Toor, J.).

That result is also supported by an examination of Section 4467 as a whole. Subsection 4467(c), governing oral leases, and Subsection 4467(e), governing written leases, provide different types of notification periods. For oral leases, proper notice is judged by 30/60/90 days from the “date of actual notice” of termination. For written leases, it is viewed from 30/60 days from “the end or expiration of the stated term [or term] of the rental agreement.” The Court apprehends that the Legislature consciously chose to treat notices of termination pursuant to written leases differently than those pursuant to oral ones.

Additionally, the Court’s reasoning is fully consistent with the common law, which also measured the timing of termination notices from the end of term leases and generally precluded terminations of leaseholds in the middle of a lease term. *See, e.g., Maniatty v. Carroll Co.*, 114, Vt., 168, 169–71 (1945); 52 C.J.S. *Landlord & Tenant* § 255 (“notice to terminate a tenancy from month to month must be to quit on one of the recurring periods of the letting .... party has no right to terminate the tenancy before the end of a monthly period”).

When faced with circumstances analogous to those presented in this case, other Superior Courts have come to similar conclusions. *See Gagnon v. Fredrickson*,

No. 22-CV-1376 Wmcv, slip op. (Vt. Super. Ct. Jan. 3, 2023) (Kainen, J.); *Arroyo v. Carter*, No. 22-CV-1736 Rdcv, slip op. (Vt. Super. Ct. June 10, 2022) (Toor, J.).

The real question is whether the circumstances of this case counsel a different result. Here, the initial, yearlong term of the lease did not allow there to be a termination without cause.<sup>1</sup> Thereafter, the agreement provided that “the lease will be renewed automatically on a month-to-month basis until: (1) a termination of the lease by the Owner ... upon a minimum of thirty (30) days but not more than sixty (60) days written notice by the Owner....” Plaintiff relies on this provision to validate the notice of termination provided to Defendant, which Defendant agrees provided more than 60-days’ notice.

The Court concludes that, to the extent the above lease provision results in a notice period that is *shorter* than that set out in Section 4467(e), it cannot be enforced. The notice here provided a termination date in the middle of the July lease period. Prior to that effective date of the termination, then, a new monthly rental period had begun. Defendant’s right to the benefit of that full period, per Section 4467(e), attached at that same point. Since the notice set a termination date prior to the end of that lease period, it failed to afford Defendant the full benefit of the protection given by Section 4467. Stated differently, had Plaintiff proceeded to terminate for no cause solely pursuant to the statute, a proper notice would have set a termination date of no earlier than the last day of the July lease

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<sup>1</sup> Arguably, that provision afforded greater protection to the tenant in that regard than was required by Vermont law.

term. As a result, the Court agrees that the lesser, 60-day notice provision of the parties' lease conflicts with Section 4467 rendering it unenforceable under 9 V.S.A. §§ 4453-54.

Plaintiff's contrary arguments are not persuasive. He notes that Section 4467(e) uses different language for leases requiring a 30-day notice and those requiring a 60-day notice. One uses the words "stated term," the other uses the word "term." Specifically, for the former, the time for termination is judged from the "end or expiration of *the stated term* of the rental agreement." *Id.* § 4467(e). For the latter, it is judged from "the end or expiration of *the term* of the rental agreement." *Id.* From this, Plaintiff postulates that, while the first notice may need to comport with the temporal term written in the lease, the second allows for a flexible "term" other than that specified in the lease. Plaintiff's proposed interpretation would allow the Court to construe the "term" following Plaintiff's 60-day notice as the applicable "term" for purposes of Section 4467(e).


The Court does not believe the absence of the word "stated" can carry the weight assigned to it by Plaintiff. There is no indication in the construct of the statute that would suggest the Legislature intended anything other than a shorthand by failing to employ the word "stated" a second time. Such an interpretation would create the anomalous result that tenants who have been following a written lease for a lengthy number of years would be afforded less protection from no-cause terminations than those who have rented for only a few months. The plain provisions of Section 4467 reflect just the opposite intention.

Nor does Plaintiff take anything from her argument that this factual circumstance should be viewed as a “nonrenewal,” rather than a termination for no cause. Leaving aside its legal merit, the claim is not supported by the present record. First, the lease specifically states that, after the first year, Defendant would have a month-to-month tenancy that automatically renewed until the lease was terminated by the landlord. Pl.’s Exh. 1 (“Following the initial term the lease will be renewed automatically on a month-to-month basis *until* ...” (emphasis added)). Second, the notice of termination served on Defendant expressly provides notice that Plaintiff is terminating the tenancy “pursuant to the Rental Agreement and 9 V.S.A. § 4467.”

#### Conclusion

For the foregoing reasons, Defendant’s Motion to Dismiss is GRANTED.

Electronically signed on Friday, January 20, 2023, pursuant to V.R.E.F. 9(d).

  
Timothy B. Tomasi  
Superior Court Judge

Vermont Superior Court  
Filed 01/20/23  
Windsor Unit