VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 22-CV-02437

Barnet Tradepost, LLC v. Jeffrey Alden, Jr.

ENTRY REGARDING MOTION

Title: Motion to Dismiss (Motion: 3)
Filer: Jean L. MurrayJeffrey Alden, Jr.
Filed Date: September 08, 2022

The motion is DENIED.

Defendant seeks to dismiss the present ejectment action on four bases: (1) failure of Landlord to include a curative amount in its April 5, 2022 termination letter; (2) Landlord's notice sought to terminate the tenancy mid-month; (3) Landlord's failure to provide a blank answer form; and (4) Landlord's failure to file a CARES Act Certificate of Compliance.

Lack of an Answer Form and Rule 4(j)

Beginning with Defendant's third argument, Defendant asserts that the failure to include a blank answer form is a violation of V.R.C.P. 4(b), and the fact that one was not included in the initial service packet sent to Defendant constitutes a procedural defect, which in turn deprives the Court of jurisdiction. Plaintiff admits that it did not include the answer form in its original filing, but it notes that it has cured this defect by subsequently serving a copy of this form on Defendant's counsel.

This raises an interesting jurisdictional issue. If Plaintiff had omitted the summons from its service package, there is no dispute that the Court would lack jurisdiction, and the case could be dismissed for failure to properly serve. *Smith v. Brattleboro Reformer, Inc.*, 147 Vt. 303, 304 (1986). What then is the distinction between the summons and the answer form? Rule 4(b) states that a plaintiff must include a blank answer form and a blank notice of appearance as part of its service packet with its summons. The 2015 Reporter's Notes to Rule 4, however, indicates that the blank notice of appearance form requirement was added, not for jurisdictional purposes, but to address

the practical problem of self-represented litigants filing answers without contact information for the Court to reach them. While not expressly stated in the 2022 Reporter's Nots to Rule 4, the Court understands the addition of the blank answer form requirement to arise from the same type of problem-solving and aiding the large number of self-represent litigants who might struggle with the formatting of an answer after being served. While these provisions are important and could, in certain cases, lead to either a dismissal or denial of a default judgment motion, they are not jurisdictional requirements and have not been recognized as such by any trial court in Vermont.

This reasoning is further supported by the Vermont Supreme Court's decision in *Howe v. Libson Sav. Bank & Trust Co.*, 111 Vt. 201, 208–13 (1940). The case, which pre-dates the Rules of Civil Procedure, analyzes the different effects that issues with process and procedure can create in a case. In particular, the Court talk about three types of process defects. The first category are what it classifies as voidable defects "where the defect is of such a nature that it is capable of being amended, and it is valid until attacked, and an amendment is allowable where the process, although irregular, is sufficient to give jurisdiction . . . ." Id. at 208. This concept has since been modernized iunder V.R.C.P. 4(j), which gives the Court discretion to "allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued." V.R.C.P. 4(j).

Applying Rule 4(j) to the present situation, the Court finds that the lack of a blank answer form in this case among the service packet was a defect, but it was not a substantive defect. It did not affect the jurisdiction of the court or the effective notice that the summons and complaint gave to Defendant. Plaintiff has amended this oversight by delivering a copy of the answer form to Defendants. Given Defendant's vigorous defense and briefing, the purpose of the answer form has not been frustrated, and its delayed receipt has not prejudiced the parties. Based on this, Defendant's argument to dismiss for lack of an answer form with the initial service packet is denied.

The CARES Form

Defendant's fourth argument, while important, also does not merit dismissal. As Defendant notes, dismissal under Administrative Order 49, ¶ 21 is permissive. In this case, there is no evidence that the alleged defects in the initial CARES certification filing altered this action or rendered prejudice to Defendant. Plaintiff has stated that any defect in the form was likely a typographical error, and that it was properly completed and filed in a timely manner. Upon review of the filings,

the Court finds in this case that the accurate and complete filing of the CARES Act certification and lack of any jurisdictional or substantive impact on Defendant warrants no additional sanction or dismissal. Defendant's argument to dismiss on this count is denied.

Mid-Term Termination

Defendant's next argument is that following the initial expiration of the lease, the term of Defendant's tenancy became a month-to-month relationship, and as such, a termination falling on or before the end of such a period is ineffective as it interrupts the period of the tenancy. In support of this argument, Defendant cites to several provisions of the Vermont Residential Rental Act that reference a "rental period." See 9 V.S.A. §§ 4455, 4456,4457, and 4467. Defendant also cites to 52 CJS Landlord & Tenant § 255. Defendant's arguments are well made, and certainly, they would hold in a situation where a landlord sought to terminate a tenancy in the middle of a rental period where rent had been paid. This is consistent with the Court's understanding that a landlord's right to terminate a lease for a fixed term is sharply curtailed by the terms of the agreement.

Here, however, Plaintiff notes that Defendant was a holdover tenant and was not a tenant at will, so much as a tenant at sufferance. The tether linking Defendant to the property was not an affirmative agreement to stay for set periods, but rather, a procedural hurdle of properly terminating the tenancy, following non-renewaland commencing a timely ejectment action. As such, the Court cannot read an additional requirement that such occupancy in the absence of agreement carry with it an additional requirement of termination on the 1 and 30/31. This does not seem to be supported by the caselaw or by the understanding between the parties. Therefore, Defendant's argument is denied.

Lack of a Fixed Repayment Amount

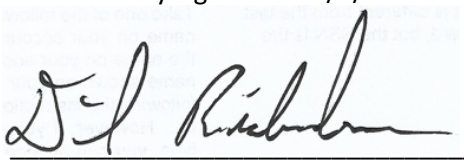
The Court finds that the reasoning in *Corse v. Pickett*, Dckt. No. 219-12-15 Oecv (Vt. Super. Feb. 4, 2016) (Tomasi, J.) to be persuasive. 9 V.S.A. § 4467 does not contain language requiring a landlord to provide express notice of the right to cure. In this respect, the Court is not inclined to foist such an obligation on Landlord. In fact, the cases cited by Defendant illustrate the dangers of such a requirement. In neither *Sandor v. Preston*, Dckt. No. 179-4-19 Wrcv (Vt. Super. Jun. 19, 2019) (Kainen, J.), nor *Courtyard Partners, LP v. Bourn*, Dckt. No. 687-12-18 Rdcv (Vt. Super. Feb. 6, 2019) (Hoar, J.), do the courts proscribe a notice requirement for an amount to repay and cure the non-

payment breach. Instead, both decisions involve the confusion when a landlord attempted to notify a tenant of re-payment amounts but created confusion as to what amounts were expected and due. In this respect, *Corse*, *Sandor*, and *Courtyard Partners, LP*, all stand as illustrations of the primary guidance for notices of termination under *Andrus v. Dunbar*, 2005 VT 48, ¶ 13. As that decision holds, one of the primary requirements of a notice of termination is to keep a tenant from being "put into the position of having to speculate on the meaning and legal effect of the landlord's actions." In this respect, less is likely more. Tenant has a right to cure a termination for non-payment of rent under 9 V.S.A. § 4467(a), but it is not landlord's obligation to inform the tenant in the notice to terminate of this right or the precise amount sought. It is incumbent on tenant to reach out to Landlord to effectuate such a cure. For these reason, Defendant's motion is denied on this final argument as well.

ORDER

Based on the foregoing, Defendant's Motion, while well-briefed and argued, does not raise issues sufficient as a matter of law to require or establish sufficient grounds for dismissal of Plaintiff's action under V.R.C.P. 12(b) as a matter of law. Therefore, Defendant's Motion to dismiss is **Denied.** The Court will set this matter for a merits hearing at its next available date.

Electronically signed on 11/8/2022 6:24 PM pursuant to V.R.E.F. 9(d)



Daniel Richardson
Superior Court Judge