VERMONT SUPERIOR COURT

SUPERIOR COURT
Orange Unit

CIVIL DIVISION
Docket No. 28-2-12 Oecv

Clifford Bador
Plaintiff

v.

Christina Byrd
Phillip Bishop
Defendant

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above matter came on for hearing on April 30, 2012. Plaintiff was present with is attorney, Geoffrey Fitzgerald, Esq. Defendants were present, pro se. Based upon the evidence at the hearing, the court makes the following findings, conclusions and order:

Findings of Fact

Plaintiff leased an apartment to Defendants in a written lease dated February 26, 2011 (P. Ex 1). The apartment was located at 2401 Vt. Route 14 in Williamstown, Vt. The term of the lease was month to month, with a monthly rental of $825. A security deposit of $500 was paid to the Plaintiff.

Defendant Byrd and Bishop both signed the lease. At some point Bishop moved out of the apartment, a fact made known to Plaintiff. At a later time, Bishop moved back into the apartment, although Plaintiff was unaware of this. Bishop's absence from the apartment was for a period of about two months. When Plaintiff filed suit, he did not name Bishop as a Defendant as he did not believe he was living at the apartment at that time. However, the action is captioned against Ms. Byrd and "any other current occupant of 2401 Vt. Rte 14 Apt. #2". Later, once Plaintiff learned Bishop had returned to the apartment, Bishop was served with the suit papers (through Ms. Byrd) which included the notices to quit, although he was not formally named in the action until the time of trial and his name did not appear on the notices to quit. Mr. Bishop was afforded the opportunity to have continuance once he was named in the action, which he declined.

Ms. Byrd and Mr. Bishop had some concerns about conditions in and around the apartment. Specifically, water from the upstairs apartment occupied by Ms. Byrd's sister leaked into their apartment. They also had other concerns about repairs which they felt were not being properly handled. On August 2, 2011, Ms. Byrd sent Plaintiff a letter (Def. Ex. C) indicating she would withhold rent until her concerns regarding the condition of the apartment [illegible]

At the time she sent the letter Byrd and Bishop were current on their rent. She also said she would call the health inspector. She did not do so, although she claims she was present when her sister called the health inspector in August.

Mr. Bador sent a notice to quit for no cause to Ms. Byrd on August 10, 2011. That notice is not being relied upon by Plaintiff as any basis for the termination here. Defendants suggest this notice demonstrates a retaliatory motive by Plaintiff, which has not been established, and which is not supported by Plaintiff's subsequent efforts to address the concerns of Defendants.

In response to the letter, Plaintiff contacted the Defendants and undertook many repairs to the property. Defendants agree that Plaintiff was responsive once he received the letter and made a good faith effort to get repairs made. Consequently, Defendants did not withhold rent as they had indicated they would. The water leaking into the apartment from above was a persistent problem and took several attempts before the cause was identified. The leaking water was due to the failure of the upstairs tenant to prevent water from spilling out of shower and onto the floor due to not properly closing the shower curtain or door. That problem was remedied, but cosmetic repairs remain to be done to the ceiling.

Rent for December 2011 was not paid, but it was not because Defendants were withholding payment due to apartment conditions. As a result, a notice to quit for non-payment (P. Ex. 3) was sent to Ms. Byrd on December 27, 2011 requiring her to vacate by January 31, 2012. A separate notice to quit for no cause (P. Ex. 4) was sent on the same date with the same termination date. Mr. Bishop was not named in either notice to quit.

Rent was not paid to Plaintiff for February, although a portion has since been paid under a rent escrow order. Suit for eviction was filed February 6, 2012. A rent escrow hearing was held on March 19, 2012, which both Defendants attended, resulting in a rent escrow order against Ms. Byrd and any other occupant of the apartment. That order was served on both Defendants. As a result of that order, the court is currently holding $2304 in funds paid into the court by Defendants.

At present, Defendants are $996 in arrears on their rent, not including rent for May 2012.. They have not been current on their rent since they fell behind in December 2011.

There was testimony concerning a dispute between the parties over notification of the health inspector about conditions in the apartment. The court finds that regardless of when the health inspector may have been called, the Plaintiff was not notified of any government health inspection until February 2012, after the notices to quit had been given. There is no counterclaim here for retaliatory conduct and the evidence does not support that Plaintiff's action in providing notices to quit was retaliatory in nature so as to provide a defense to a claim for possession. Further, one notice to quit was for nonpayment of rent which does not implicate the retaliatory conduct statute.

The Plaintiff has not recovered possession of the premises at present and does not know if there has been any damage caused to the property beyond ordinary wear and tear.

Conclusions of Law

A landlord may terminate a tenancy for non-payment of rent by providing actual notice to the tenant of the date the tenancy will terminate, which must be at least 14 days after the date of the actual notice. 9 V.S.A. § 4467. Actual notice is written notice hand delivered or mailed to the last known address. 9 V.S.A. § 4451.

There is no dispute that tenants were behind in their rent at the time the notice to quit was sent. There is also no dispute that Ms. Byrd received the notice. Since receipt of the notice the tenants have not caught up on their past due rent.

Mr. Bishop claims he can not be ejected as he was not initially named in the action and was not named in the notice to quit. However, it is undisputed that Bishop had left the apartment during the tenancy and Plaintiff had no knowledge Bishop had moved back in when the rent fell behind. Notice of the termination was provided to the known tenant at the time the rent became in arrears. The notice statute requires notice be provided "to the tenant," meaning the persons who are entitled to have possession of the rental unit to the exclusion of others. 9 V.S.A. § 4451(9). The purpose of the notice is to put the tenant on notice of the attempt by the landlord to terminate the tenancy, a purpose that is fulfilled by notice being sent to the premises in care of one of the tenants. No purpose is served to require a landlord to provide a separate notice to each person residing at the property. Ms. Byrd received the notice to quit, and that notice was effective against any person residing with her at the time, as Mr. Bishop claims he was.

Once the Plaintiff became aware that Mr. Bishop was residing in the premises once again, he had Bishop served with the action and notice of rent escrow hearing. While Bishop was not separately named in the action until later, he was on notice of the effort to terminate the lease, and included by description in the caption of the action. Mr. Bishop attended the rent escrow hearing and was served with the rent escrow order. Mr. Bishop had ample notice of the Plaintiff's effort to terminate the lease and the claimed rent arrearage. Nothing further was required of the landlord under the circumstances.

The notice to quit for non-payment of rent complied with the statutory requirements of 9 V.S.A. § 4467(a). The notice to quit for "no cause" complied with 9 V.S.A. § 4467(e) as the rental agreement was from month to month, had been in existence for less than 2 years, and at least 30 days notice was provided. The actions of the landlord in terminating for no cause was not retaliatory. The lease here was effectively terminated both for non-payment and for "no cause." See 9 V.S.A. § 4467(i) (explaining that "[a] landlord may maintain an ejectment action and rely on as many grounds for ejectment as are allowed by law at any time during the eviction process").

Plaintiff is entitled to partial judgment in the amount of $1821 ($996 plus May's rent of $825), in addition to the monies on deposit with the court pursuant to the rent escrow order. Plaintiff has incurred filing fees of $262.50 and services costs of $141.25, which are also recoverable. Pursuant to 12 V.S.A. § 4854, Plaintiff is also entitled to a writ of possession.

Plaintiff shall have 30 days to assert any claim for additional damages. In the event no further claim is made, the judgment shall become final.

Plaintiff shall account for the security deposit as required by 9 V.S.A. § 4461(c).

Dated at Chelsea this 3 day of May, 2012.

Harold E. Eaton, Jr.
Civil Division Judge

Joyce E. McKeeman
Assistant Judge

Victoria N. Weiss
Assistant Judge

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Partial Final Judgment Order

Based on the findings of fact and conclusions of law entered on even date, plaintiff Clifford Bador is entitled to a judgment for possession of 2401 Vermont Route 14 in Williamstown, Vermont. Plaintiff is further entitled to a judgment for rents due in the amount of $1,821 in addition to release of sums being held by the court, and costs in the amount of $403.75, for a total partial judgment of $2,224.75.

A writ of possession shall issue directing the sheriff of the county in which the property or a portion thereof is located to serve the writ upon the defendants and, no sooner than ten days after the writ is served, to put the plaintiff into possession.

Dated at Chelsea this 3day of May, 2012.

Harold E. Eaton, Jr.
Civil Division Judge

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