STATE OF VERMONT
WINDSOR COUNTY, SS

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| Leo W. Batten, Jr.<br>Lucy N. Batten<br>Plaintiff<br><br>v.<br><br>Ben Johnson<br>Defendant | SUPERIOR COURT<br>Docket No. 875-12-09 Wrcv |

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This landlord tenant dispute came on for final hearing on June 21, 2010. All parties were present, pro se. Based upon the evidence adduced at hearing, the Court makes the following findings, conclusions and order:

Findings of Fact

Plaintiffs rented an above-garage studio apartment on Bridgewater Hill Road in Bridgewater to the Defendant in June 2005. Defendant lived there until March 2009 when he moved out. Plaintiffs seek monies for unpaid rent and damages to the apartment. Defendant has asserted what looks to be a counterclaim for $25,000 for work he claims he performed around the property for which he never was paid. No filing fee was apparently paid for the counterclaim but the Court will consider its merits nonetheless.

There was no written lease between the parties. No security deposit was paid by Defendant. After negotiation, however, the parties agreed to a lease for $300 per month for a furnished apartment and for Defendant to mow the lawn around the house and garage as an additional contribution to the rent. Plaintiffs repeatedly point out the apartment is located in proximity to Killington and Plaintiffs' assert the $300 per month figure is well below what they could have otherwise received in rent for the apartment. Defendant claims he did a great deal of other work, such as mowing a field, which was not part of the rental agreement and for which he should have been paid.

The parties dispute whether gas and electric charges were included in the $300 per month rent or in addition to the monthly charge. However, in a pre-trial memo submitted by Defendant he states "I did not have a lease however, I agreed to a monthly rental of $300 plus gas and electric." In another pre-trial filing on June 21, 2010 stating his position on the issues, Defendant does not dispute that he owed for gas and electric charges but rather asserts that "gas and electric charges were estimated by the Battens." In addition, Plaintiffs had been providing monthly rental receipts, many of which were received in evidence ( D. Ex. A), and many of which indicate that gas an electric charges remain due even after the receipt of rental monies. A rental of $300 per

month inclusive of gas and electric charges would be extremely nominal. The credible evidence demonstrates the agreement was rent of $300 per month and gas and electric (and TV) charges for the apartment.

The apartment was separately metered for gas use and Plaintiffs divided the electric bill, holding Defendant responsible for 25% of the bill during the winter and 20% in the summer months when Plaintiffs were using fans in their house. While this method of accounting for the electric charges is not precise, it is a fair a division of the electric charges under the circumstances.

Defendant claims he disputed the written accountings provided by the Plaintiffs documenting the amounts he owed for gas and electric charges. There is no written evidence of any objection by Defendant and ample evidence that repeated demands for payment of gas and electric charges were made by plaintiffs. Plaintiffs made periodic accountings to Defendant concerning rent and utility charges (P. Ex 1, D. Ex. C). Despite these, Defendant did not pay the agreed upon sums.

Plaintiffs also claim that rent was unpaid for seven months in 2006. Defendant at first asserted that he had paid the rent for those months. Later he conceded that he may not have made those payments. The evidence supports Plaintiffs' claim for unpaid rent for seven months in 2006.

During the rental period, Defendant did perform work around the house which was outside of the rental agreement. Plaintiffs gave Defendant a credit for that work off from the amounts due and owing to them for the rental. While Defendant claims he was owed much more than Plaintiffs' credited him, the evidence does not support such a claim. The credits applied by Plaintiffs to Defendant's account were a fair adjustment for the work performed by Defendant which was outside of the rental agreement. Defendant is owed no additional sums or credits.

From 2005-2009 Defendant failed to pay $9614 in rent and utilities after credit for monies paid and work done. Of this sum, $2100 is for unpaid rent in 2006 and the balance for utilities.

Plaintiffs claim Defendant owes them additional sums for lost rent, damage to the property, cleaning expenses, repairs and replacement of items. They also seek several months of lost rent, claiming that due to the condition of the apartment when Defendant vacated it was not suitable for rental.

Defendant denies damaging or taking any property of Plaintiffs. He does admit he lost a garage door opener which is valued at $31. The Court finds the Defendant credible in his denials of breaking or taking any of Plaintiffs' property.

A number of photographs (P. Ex. 3) show the condition of the apartment when it was vacated. The apartment was left in disarray, with trash strewn throughout the living space. Defendant's claim that the premises were left as he found them is simply not credible given the length of the rental here. Plaintiffs seek $2880 for cleaning of the apartment, an amount which is

excessive. Some cleaning is necessitated by the change in tenants in any rental property. An additional $500 charge is reasonable given the excessive trash left in the apartment by Defendant for the time, effort and expense of extra cleaning.

Plaintiffs claim the apartment was un-rentable for seven months following Defendant's departure. The reason clean up and repairs took so long was that the persons hired by Plaintiffs to do the work were only available sporadically. This delay is not the responsibility of the Defendant. Had Plaintiffs undertaken prompt cleaning, the apartment would have rentable without unnecessary delay.

Plaintiffs also claim additional repair expenses at the apartment for plumbing, electrical and carpentry work. The Court does not find these expenses to be the responsibility of Defendant, with the exception of $368 for a broken skylight which the Court finds was broken by Defendant placing a heating plate too close to it. The remainder of the repair work is that which might be expected after a rental of over three years.

The Plaintiffs have incurred a filing fee of $250 and service costs of $94.

## Conclusions of Law

The absence of a written agreement between the parties provides fertile fuel for this dispute. Plaintiffs and the Defendant disagree about almost all aspects of their relationship. But the course of conduct between the parties over the term of the lease serves to provide clarification as to the nature of the agreement. The lease was on a month to month basis with a rent of $300 per month plus mowing around the house and gas and utilities.

An oral contract is enforceable according to its terms. *Appropriate Technology Corp. v. Palma*, 146 Vt. 643 (1986). The Defendant occupied the apartment and did not pay the amount required under the lease. He owed Plaintiffs $9614 as of the time he vacated in March 2009.

In addition, Defendant caused $899 in damages to the apartment, consisting of $500 in unnecessary cleaning expense, $31 for the lost garage door opener and $368 for the broken skylight. Defendant is obligated to pay these sums. The tenant's obligations are implied in all rental agreements, whether written or oral. *9 VSA 4453*. One of the specific obligations is that "the tenant shall not deliberately or negligently destroy, deface, damage or remove any part of the premises or its fixtures, mechanical systems or furnishings." *9 VSA 4456(c)*. And if a tenant acts in violation of that obligation, "the landlord is entitled to recover damages, costs and reasonable attorneys' fees." *9 VSA 4456(e)*. This provides a basis for damages to the Plaintiffs for the loss of the garage door opener and the broken skylight.

With respect to the extra cleaning costs, *9 VSA 4461(b)(4)* permits the landlord to retain all or a portion of the security deposit for expenses required to remove from the rental unit articles abandoned by the tenant. Here there was no security deposit. The trash was clearly abandoned by Defendant upon departure. Had a security deposit been collected charges for the

trash removal could have been deducted by the Plaintiffs. The absence of a security deposit does not make these costs the responsibility of Plaintiffs.

Plaintiffs had an obligation to mitigate their damages by taking prompt steps to return the apartment to rentable condition. *Estate of Sawyer v. Crowell*, 151 Vt. 257 (1989). The evidence demonstrates that they did not do so. There is also no evidence that they would not have been able to rent the property once it was returned to rentable condition, especially given the property's proximity to Killington which Plaintiffs emphasized at the hearing.

Defendant left the property in March 2009 owing amounts that were reasonably ascertainable. Prejudgment interest is available as of right when the principal sum recovered is liquidated or capable of ready ascertainment at the time of the breach or default giving rise to the obligation to pay. *B&F Land Development, L.L.C. v. Steinfeld,* 184 Vt. 624 (2008).

Plaintiffs are entitled to judgment in their favor against Defendant in the amount of $9614 for unpaid rent and utilities, $899 for additional damages, pre-judgment interest at 12% from April 2009 to date of judgment, and their costs of this action.

Defendant is not entitled to recovery on his counterclaim even if it is properly before the Court.

Dated at Woodstock this 23rd day of June, 2010.

Harold E. Eaton, Jr.
Superior Court Judge