SUPERIOR COURT
Washington Unit
65 State Street
Montpelier VT 05602
802-828-2091
www.vermontjudiciary.org

CIVIL DIVISION
Case No. 23-CV-01014

37 Perry Street, LLC v. Abigail Seaberg

Opinion and Order on Defendant's Motion to Dismiss

Defendant Abigail Seaberg has moved to dismiss this no-cause eviction action asserting that the notice of termination was ineffective because it did not give her 90 days' notice. Plaintiff argues against dismissal and maintains that it was required to give Defendant only a 60-day notice of termination. The Court makes the following determinations.

The Facts

The parties do not dispute the salient facts:

1. As of the date of the notice of termination, Defendant had leased the premises from the Plaintiff for over two years.

2. The parties entered into a written lease for the yearlong period from August 1, 2017 to July 31, 2018.

3. Defendant continued to reside at the premises after 2018, and Plaintiff continued to accept rental payments from her.

4. Plaintiff issued a notice of termination to Defendant for a no-cause eviction on or about November 19, 2022.

5. The notice of termination granted Defendant more than 60 days' notice but less than 90 days' notice.

6. The 2017-2018 lease contained the following provision:

> Unless otherwise agreed by the parties in writing, there shall be no holding over by Lessee after the expiration of the term of the Agreement of Lease. Any holding over by lessee after the termination of the term of the Agreement of Lease shall be a tenancy at will. In the event the lease becomes a month-to-month lease, either Lessor or Lessee may terminate the lease only upon 30 days' written notice to the other unless a longer period is required by law. *See* Complaint Exhibit 1.

7. No written agreements were made between the parties after the end of the 2018 lease.

Analysis

Resolving the motion to dismiss calls for the Court to construe the 2017-2018 lease and 9 V.S.A. §§ 4467(c) and (e). If the parties' leasing arrangement was pursuant to a "written lease," Plaintiff is correct that the 60-day notice of termination was effective. *Id*. § 4467(e). If the parties' leasing arrangement was not pursuant to a "written lease," Defendant's long-term tenancy would have demanded that the landlord afford her a 90-day notice of termination. *Id*. §4467(c).

The Vermont Supreme Court has long held that a "tenancy by implication" can arise when a tenant "holds over" after the end of a written lease period and both sides continue to acknowledge the leasing arrangement. In *Maniatty v. Carroll Co*., the Court explained:

> When a tenant for a fixed term of years or for a year under a formal written lease holds over after the expiration of the term, with the consent or acquiescence of the landlord, a tenancy by implication results. This begins as a tenancy at will, but when the landlord accepts the rent, it may and usually does ripen into a tenancy from year to year. In either case the tenant holds the premises subject to all

> covenants and conditions of the original lease, without any stipulation or bargain to that effect.

114 Vt. 168, 169 (1945); *see Bergeron v. Forger*, 125 Vt. 207, 211–12 (1965) ("If the tenant holds over by consent given, either expressly or constructively, after the determination of a lease for years, it is held to be evidence of a new contract, without any definite period, and is construed to be a tenancy from year to year." (internal quotation omitted)).

Both sides appear to agree that the instant circumstances are analogous to those in *Maniatty* and *Bergeron*: Defendant held over after July 2018; Plaintiff accepted rental payments; and, per the above precedents, the parties were bound to follow the terms of the prior written lease. The parties disagree as to whether, as of November 2022, the parties landlord/tenant relationship was pursuant to a "written lease," as that phrase is used in Sections 4467(c) and (e).

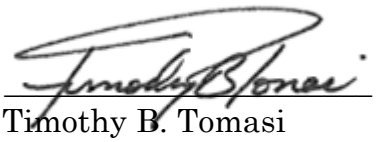
The legal question is a close one that has not been determined by the Vermont Supreme Court. *Cf. Memphremagog Rentals v. Kelley*, No. 2013-464, 2014 WL 3714919 at *3 n.1 (Vt. May 2014) (declining to decide the issue). For the following reasons, the Court concludes that the parties' relationship was not pursuant to a "written lease" in November 2022. First, while the provisions of the 2017-2018 lease still have force, they have such power solely through "implication" and the common law. No written lease between the parties exists that, by its own terms, applies after July 31, 2018. As noted in *Bergeron*, in a holdover circumstance, there is a "new contract." 125 Vt. at 211-12. In the Court's view, that "new contract" is not a "written lease" under Section 4467.

Second, the key terms of the written lease between the parties suggest that they did not bargain for any extension of the lease provisions beyond 2017-18. As described above, the lease states: "Unless otherwise agreed by the parties in writing, there shall be no holding over by Lessee after the expiration of the term of the Agreement of Lease. Any holding over by lessee after the termination of the term of the Agreement of Lease shall be a tenancy at will." The lease gives instructive guidance as to the understandings of the parties themselves and the agreements they made in this regard. Some leases expressly state that their terms will continue in the event of a holdover circumstance; some do not. This lease does not. While *Maniatty* and *Bergeron* may allow prior lease provisions to spring back to life by implication from the parties' conduct, those precedents do not establish that the resulting tenancy is pursuant to a "written lease" for purposes of Section 4467. To the extent a landlord may wish to continue the terms of a lease beyond its initial term in a holdover situation, the landlord may seek to include such an express provision in the contract between the parties.

Accordingly, under Section 4467(c), Plaintiff was required to give Defendant at least 90 days' notice of termination in this case. It provided no such notice. Since a proper notice of termination is required to proceed with an eviction case, *see Andrus v. Dunbar*, 2005 VT 48, ¶¶ 10-15, 178 Vt. 554, 556-57 (mem.), the action is subject to dismissal.

WHEREFORE, the Defendant's motion to dismiss is granted.

Electronically signed on Wednesday, April 12, 2023, pursuant to V.R.E.F. 9(d).



Timothy B. Tomasi
Superior Court Judge