STATE OF VERMONT
CALEDONIA COUNTY, SS.

EDWARD KING	}	
	}	**Caledonia Superior Court**
v.	}	
	}	**Docket No. 202-10-97 Cacv**
DAVID RING	}	

NOTICE OF DECISION

Defendant's Motion to Dismiss
and
Defendant's Motion for Judgment on the Pleadings

Plaintiff rented from Defendant a one acre parcel of land with a mobile home site on it consisting of a mobile home pad, access to electricity, connections for water, septic services, and driveway access from the road to the mobile home site on the property. The rental was payable monthly and did not include a mobile home. The rental agreement was oral and specified no term other than monthly rental payments. The rental term began in September of 1996, at which time Plaintiff and his companion began residing in a mobile home they placed on the lot. On July 15, 1997, the driveway leading to the mobile home washed out, leaving a hole approximately 30 feet wide, 60 feet long, and 14 feet deep. Plaintiff demanded that Defendant repair the driveway, and Defendant refused. Defendant gave notice to quit to the Plaintiff on September 17, 1997 to require the Plaintiff to vacate the premises by November 30, 1997. On October 8, 1997, Plaintiff brought this action to compel the Defendant to repair the driveway and for damages. Defendant filed an Answer and Counterclaim, and a Motion to Dismiss. The Court heard argument on the Motion to Dismiss on April 1, 1998. The parties were given until April 4, 1998 to submit supplemental memos of law. None were filed. On April 1, 1998, Defendant filed a Motion for Judgment on the Pleadings on his counterclaim for eviction. No response has been filed. A Motion for a Temporary Restraining Order has since been filed and scheduled for hearing.

Defendant's Motion to Dismiss

Defendant's Motion to Dismiss is based on the proposition that Defendant has no duty to repair the driveway, and therefore Plaintiff has no cause of action. Defendant claims that Title 10 governing mobile home parks does not apply since the lot is a single lot, and that common law therefore applies; under common law, he asserts, there is no obligation to repair rental property absent a specific term in the rental agreement. He specifically claims no duty to repair a condition as major as a driveway washout, which amounts to destruction of the rental premises. He further claims that even if the court were to find an implied warranty of habitability, a driveway washout has no impact on habitability because the premises may still be used for safe habitation.

Plaintiff agrees that Title 10 does not apply, but claims a breach of a warranty of habitability based on 9 V.S.A. Sec. 4452, which governs residential rental agreements. He claims that Defendant assumed the responsibilities of a landlord in providing suitable premises for a mobile home rental, including driveway access, and he claims that Defendant should not be absolved from having to repair the driveway just because the cost is unusually high.

Having considered the authorities and arguments of both parties, the Court concludes that Title 10 does not apply, and that 9 V.S.A. Sec 4452 also does not apply. The rights conferred in that statute relate to a "dwelling unit and premises," and "dwelling unit" is defined as a building or part of a building used as a home, residence, or sleeping place. The rental agreement in this case was for a mobile home site, and not for any building of any kind. The rental agreement in this case does not fall within the scope of that statute, or its purpose. Thus, common law is the source of the applicable law.

Defendant is correct that at traditional common law, if the subject matter of a rental agreement was arable land as opposed to buildings to be occupied, there was no duty on the part of the landlord to repair. Arable land is not the subject matter of this rental agreement, however. The essence of the agreement was the rental of a site on which Defendant could locate a mobile home for residential purposes. The rental premises included a mobile home pad, electricity access, connections for water, septic facilities, and driveway access, all of which are necessary conditions for the use of a site for mobile home residential purposes.

Prior to the enactment of Chapter 137 of Title 9 in 1985 (Residential Rental Agreements,

including section 4452), the Vermont Supreme Court had declared the existence of an implied warranty of habitability in residential rental units as a matter of common law. Hilder v. St. Peter, 144 Vt. 150 (1984). The principles and reasoning of that case are equally applicable to a situation in which a landlord undertakes to rent property to a tenant for the specific purpose of locating a mobile home unit on it for residential purposes.

> Not only has the subject matter of today's lease changed, but the characteristics of today's tenant have similarly evolved. The tenant of the Middle Ages was a farmer, capable of making whatever repairs were necessary to his primitive dwelling. . . .today's tenant is in an inferior bargaining position compared to that of the landlord. . . . In light of these changes in the relationship between tenants and landlords, it would be wrong for the law to continue to impose the doctrine of caveat lessee on residential leases. "The modern view favors a new approach which recognizes that a lease is essentially a contract between the landlord and the tenant wherein the landlord promises to deliver and maintain the demised premises in habitable condition and the tenant promises to pay rent for such habitable premises. These promises constitute interdependent and mutual considerations. Thus, the tenant's obligation to pay rent is predicated on the landlord's obligation to deliver and maintain the premises in habitable condition." Boston Housing Authority v. Hemingway, 363 Mass. 184, 198, 293 N.E.2d 831, 842 (1973). . . .
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> Therefore, we now hold expressly that in the rental of any residential dwelling unit an implied warranty exists in the lease, whether oral or written, that the landlord will deliver over and maintain, throughout the period of the tenancy, premises that are safe, clean and fit for human habitation. This warranty of habitability is implied in tenancies for a specific period or at will. . . . Additionally, the implied warranty of habitability covers all latent and patent defects in the essential facilities of the residential unit. . . .Essential facilities are "facilities vital to the use of the premises for residential purposes. . . ."

Hilder v. St. Peter, 144 Vt. 150, 158-160 (1984).

Because of the prevalence in Vermont of the use of mobile homes as affordable housing in rural areas, and because owners of land rented for mobile home residential use are likely to be in a superior bargaining position to the tenants of such premises, the reasoning of the Court in Hilder v. St. Peter applies to the mobile home lot rental situation. An implied warranty of habitability is implied in tenancies specifically designed for residential mobile home lot rental, whether oral or written, and it covers defects in the essential facilities of the unit. Because driveway access from the road to the mobile home pad is an essential facility allowing reasonable access to the dwelling unit throughout the year, including winter, Plaintiff has set forth a claim based on the implied warranty of habitability, and Defendant's Motion to Dismiss is denied.

Defendant also claims that the extent of the washout was so great that it amounted to a destruction of the premises, overriding the landlord's duty to repair and relieving him of such obligation. This is essentially the subject matter of a motion for summary judgment rather than a motion to dismiss, since it depends on specific facts as to the extent of the washout and its effect on access to the mobile home. While there may be no dispute about the facts of the washout, there may be disputed facts about its impact on access to the mobile home. The court will not address this issue as the attorneys have not had an opportunity to consider it in light of the court's ruling on the implied warranty of habitability.

Defendant's Motion for Judgment on the Pleadings

Defendant counterclaimed for eviction based on the claim that the tenancy was a month to month tenancy, and Defendant was served on September 19, 1997 with a notice to quit the premises by November 30, 1997. Plaintiff filed no Answer to the Counterclaim. In his own Complaint, Plaintiff alleged that rent was payable monthly, and he alleges that the contract was oral. No specific rental term is alleged. In any event, November 30, 1997 is more than one year from September 1996, so a lease term of such a length would have required a writing under the Statute of Frauds. 12 V.S.A. Sec. 181(4).

Therefore, Defendant was entitled to terminate the rental with notice of at least one month, which was done. Defendant is entitled to judgment on the pleadings based on his counterclaim for eviction.

WHEREFORE,

1. Defendant's Motion to Dismiss is denied.

2. Defendant's Motion for Judgment on the Pleadings is granted as to the counterclaim for eviction.

Dated at St. Johnsbury this 9th day of June, 1998.

Mary Miles Teachout

Mary Miles Teachout
Presiding Judge