

STATE OF VERMONT  
WASHINGTON COUNTY, SS.

FILED

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JULIANA C. KEENAN

v.

DAVID DION

SUPERIOR COURT  
Washington Superior Court  
Docket No. 678-10-02 Wncv

**Decision on Appeal of Small Claims Judgment**

This case is an appeal from a judgment of the Small Claims Court dated September 27, 2002, in Docket #454-6-02 Wnsc. The Court has reviewed the Appellant's Statement of Legal Questions, reviewed the submission of Appellant filed on January 21, 2003, and listened to the tape of the hearing below. Neither party requested oral argument.

It is not the function of the Superior Court judge to substitute her own judgment for that of the Small Claims Court trial judge. Rather, the role of the Superior Court judge on appeal is to determine whether the trial judge correctly applied the law, and whether or not the findings on factual matters are supported by the evidence at the hearing.

Mr. Dion, who was Ms. Keenan's landlord, sued Ms. Keenan for amounts he claimed were due at the conclusion of the lease. His original claim, filed before the lease ended, was for \$725.00 in unpaid rent and a late fee, but at the time of the small claims hearing, he claimed a balance due of \$441.63 after application of the security deposit. Ms. Keenan's position was that she did not owe him any money for a variety of reasons. The hearing was held on September 27, 2002, at which time the Small Claims court judge heard all of the evidence of both parties, and announced his decision and reasons. He agreed with Mr. Dion that Ms. Keenan owed rent for June of 2002. He also granted Mr. Dion's claim for a \$25 late fee in the payment of the June rent. He denied Mr. Dion's request for maintenance costs. He determined that Ms. Keenan owed one-half of the cost of cleaning the carpet, based on conflicting testimony about whether there was a stain in the carpet that was above and beyond normal wear. Therefore, judgment was entered for \$126 (carpet cleaning) + 25 = \$151.00. In addition, the court filing fee of \$50 was included in the judgment for a total of \$201.00.

In her appeal, Ms. Keenan asked for the court to review three questions as stated below.

1. *Does Vermont law prohibit awarding landlord an automatic late fee?* Ms. Keenan cites the case of Highgate v. Merryfield, 157 Vt. 313 (1991), in which the Supreme Court upheld a trial court ruling that a late fee of \$30 per month was unenforceable as excessive under the circumstances because it exceeded the landlord's actual expenses resulting from late payment. In

this case, Ms. Keenan showed in the first sentence of her Answer that she was challenging the amount of the late fee: "Late fee—'This charge may only cover the landlord's actual expenses incurred.' I believe it is invalid." This is a correct statement of the law as set forth in Highgate v. Merryfield. The Small Claims Court Judge allowed the \$25 late fee because it was set forth in the parties' lease agreement, but did not explore whether it was a reasonable charge in relation to actual expenses incurred. Ms. Keenan is entitled to a remand to the Small Claims Court for the judge to elicit evidence from Mr. Dion concerning the relationship between the \$25 late fee and the actual expenses incurred due to late payment, and make a decision consistent with Highgate v. Merryfield.

2. *Was it an error for the Judge to refuse to consider evidence that the landlord had agreed to pro-rate the rent for July?* The Small Claims Court Judge did not make an error on this issue. The Judge heard Ms. Keenan's evidence that Mr. Dion had, in the course of correspondence, offered to consider prorating rent if Ms. Keenan left early, and the Judge followed up by asking Ms. Keenan if an agreement on this point had been reached. The evidence does not show that the parties ever reached an agreement—a meeting of the minds, confirmed between them by written or oral communication—that rent would be prorated under defined circumstances. The Judge concluded that there was no agreement to modify the lease to prorate July rent, and thus he concluded that Ms. Keenan was required under the lease to pay rent for the full month. Both the evidence and the law support the Judge's ruling.

3. *Does Vermont law prohibit charging for carpet cleaning in this situation because it is normal wear and tear?* Ms. Keenan cites 9 Vermont Statutes Annotated §4461(b)(2) in support of the principle of law that a landlord is not entitled to damages for the result of normal wear and tear. In this case, it is a question of fact for the trial judge to decide whether the condition in which the carpet was left was a condition of normal wear and tear, or whether there was a stain that was greater than normal wear and tear. The judge heard conflicting evidence. Ms. Keenan acknowledged that there was a coffee spill, but testified that it was cleaned up sufficiently that it did not result in damage beyond normal wear and tear. Mr. Dion's evidence was that the carpet was new when Ms. Keenan moved in, that he had tried to clean the stains with a portable carpet cleaner but was unable to do so, and that he therefore had the carpets professionally cleaned. On this evidence, it was reasonable for the court to determine that the stain required the landlord to undertake expense to clean stain that could not be removed by a portable carpet cleaner (which would have been normal wear and tear), but that the full cost of professional cleaning of all the carpets exceeded what was necessary to clean the amount of stain that was beyond normal wear and tear. Thus, the evidence supports the Judge's decision to divide the responsibility for the carpet cleaning cost equally between Ms. Keenan and Mr. Dion.

In reviewing the judgment, the court notes that costs of \$50.00 were included. Mr. Dion paid \$50.00 when he filed the case, because he was claiming more than \$500.00. However, since he only proved a claim of \$151.00, which is less than \$500.00 and therefore only calls for a \$25.00 filing fee, the costs to be assessed against Ms. Keenan should only be \$25.00. This adjustment should be made upon remand.

**Order**

For the foregoing reasons, the judgment is *affirmed in part* and *remanded* to the Small Claims Court for further hearing on the first issue, and reduction of the costs to \$25.00.

Date at Montpelier, Vermont this 27<sup>th</sup> day of May, 2003.

Mary Miles Teachout  
Hon. Mary Miles Teachout  
Presiding Superior Court Judge