

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
Docket No. 649-12-19 Wncv

Lynda Harvey,
Plaintiff

v.

Ryan Brady,
Anna Ball,
Defendants

DISMISSAL

This matter came before the Court for a Rent Escrow hearing on this date. Plaintiff was present and was represented by Karen Cooper, Esq. Defendant was present and was represented by Grace Pazdan, Esq. Defendant moved to dismiss the action arguing that the notice of termination for failure to pay rent was defective because it included late fees and a security deposit.

The Court made findings of fact and conclusions of the law on the record and dismissed the case. Specifically, the Court concluded that:

1. Leaving aside whether a landlord must provide notice to tenant of her ability to cure, if the landlord provides such notice, it may not include legally impermissible charges in a notice of termination for the failure to pay rent.

2. Vermont law broadly defines “rent” to include “all consideration to be made to or for the benefit of the landlord under the rental agreement.” 9 V.S.A. § 4451(7). Some trial courts have refused to allow landlords to include late fees in such notices of termination. Based on that definition, however, the Court concludes that the late fees included in Plaintiff’s notice, which were also provided for in the written agreement between the parties, could lawfully be included in the notice. In the Court’s view, the late fees are part of the “consideration” for the rental unit, and the law is clear that “rent” includes “*all consideration.*” *Id.* (emphasis added).

3. The inclusion of the security deposit stands on a different footing. Section 4451(7) specifically excludes security deposits from the definition of “rent.” It expressly states that “rent” means “all consideration to be made to or for the benefit of the landlord under the rental agreement, not including security deposits.” *Id.* Accordingly, a landlord who chooses to give notice of a right to cure may not include in that notice a requirement that a tenant pay a security deposit in order to avoid termination.

The matter is dismissed without prejudice.

Electronically signed on January 13, 2020 at 12:08 PM pursuant to V.R.E.F. 7(d).

Timothy B. Tomasi
Superior Court Judge