

VERMONT SUPERIOR COURT
Bennington Unit
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Bennington VT 05201
802-447-2700
www.vermontjudiciary.org



CIVIL DIVISION
Case No. 21-CV-04055

Nancy O'Neil v. Nicholas Peters et al

DECISION ON MOTION

This is an ejectment action for failure to pay rent, at the pre-trial stage. Defendants filed a motion to dismiss. Plaintiff opposed the motion.

Defendants contend Plaintiff failed to attach a copy of the notice to terminate and copy of a rental agreement, if any, as required by 12 V.S.A. § 4852. Defendants also contend, Plaintiff failed to attach a CARES Act certification and Notice of Emergency Rental Assistance as required by Vermont Supreme Court Administrative Order 49.

Plaintiff contends the A.O. 49 requirements are not mandated because the Defendants are being evicted for no cause, there is no rental agreement, and the Defendants were served with exhibit #2 which was attached to Plaintiff's response to the motion to dismiss.

The motion to dismiss is denied for the reasons set forth below.

Background

This ejectment action was filed on December 21, 2021. The complaint form states three reasons the Plaintiff is "suing" the Defendants. First, for "withholding" rent. Second, "adding channels to cable service." Third, "Refused access to apartment. No attachments were filed with the complaint.

Defendants filed a motion to dismiss. Defendants contend Plaintiff failed to attach a copy of the notice to terminate and copy of a rental agreement, if any, as required by 112 V.S.A. § 4852. Defendants also contend, Plaintiff failed to attach a CARES Act certification and Notice of Emergency Rental Assistance as required by Vermont Supreme Court Administrative Order 49.

Plaintiff responded to the motion to dismiss. Plaintiff contends "The Defendants are also being evicted under 9 V.S.A. paragraph 4467 (c)(b) Termination For No Cause." Plaintiff states there is no rental agreement. Plaintiff does not dispute Plaintiff failed to file the notice to terminate but did file a copy of a termination notice with the court in its response to the motion to dismiss. The notice is titled "Vermont 14-Day notice to pay rent in accordance with § 4467." The notice provided, "Notice is hereby given that you are in breach of the Lease Agreement on above described lease premises due to failure to timely pay rent. Except as provided below, within 14 days after service of this notice upon you, you must pay in full to the Landlord the rent and other charges now due and unpaid as follows: \$590.00 rent for the period of July, August, Sept., Oct., Nov, 2021." The notice indicated that the 14

notice period would “expire” December 7, 2021. The notice purports to have been delivered in hand to Defendant on November 23, 2021.

Plaintiff provided a copy of a second notice, titled, “Vermont Lease Termination Letter.” The notice states, “This notice is for ninety days. The minimum amount for a tenant that has resided on the premises for over two years.” It continues “This notice is to inform my intentions as Landlord that the lease dated the 3 day of each month, 2021 will be terminated in accordance with § 4467(c)(1). This notice was served on November 23, 2021.

Plaintiff states this was an oral lease agreement. Plaintiff attached the above termination notices, the CARES Act form and Appendix D to the response. Plaintiff’s certificate of service notes the response, and all exhibits were provided to the court, Defendants’ counsel and Defendants.

Analysis

At the onset, it must be acknowledged that Plaintiff is self-represented. However, V.R.C.P. 79.1(a) provides that a party may represent themselves, but the party shall be subject to the same rules that are or may be provided for attorneys in like cases, so far as the same are applicable. V.R.C.P. 79.1(a). It is not the obligation of the court to offer affirmative help to the pro-se litigant. *Adamson v. Dodge*, 2006 VT 89, ¶ 4, 180 Vt. 612 (mem.). Moreover, while self-represented litigants may receive some leeway, “they are still bound by the ordinary rules of civil procedure.” *Zorn v. Smith*, 2011 VT 10, ¶ 22, 189 Vt. 219.

“[P]rocedural rules are devices to ensure fairness, uniformity and regularity of treatment to all litigants appearing before the courts, and to be meaningful, they must be enforced.” *Krulee v. F.C. Huyck & Sons*, 121 Vt. 299, 302 (1959). It is incumbent upon the court to ensure the pro se litigant is not “taken advantage of by strict application of rules of procedure.” *Town of Washington v. Emmons*, 2007 VT 22, ¶ 7, 181 Vt. 586 (mem.). “The court does not abuse its discretion where it enforces the rules of civil procedure equitably, even against a pro se litigant.” *Bloomer v. Gibson*, 2006 VT 104, ¶ 14, 180 Vt. 397.

Defendant contends the motion to dismiss is proper for reasons all related to documents that are required to be attached to the complaint at the onset of the case.

Defendant contends Plaintiff failed to attach the termination notice; a CARES Act Certification; and Notice of Emergency Rent Assistance to the Summons and Complaint.¹

When filing a complaint for ejectment, “A copy of the rental agreement, if any, and any notice to terminate the defendant's tenancy shall be attached to the complaint.” 12 V.S.A. § 4852.

Additionally, The Vermont Supreme Court, since December 1, 2021 mandated additional attachments be filed with the complaint.

In any action for eviction of a residential tenant based solely or in part on nonpayment of rent filed after December 1, 2021, the summons and complaint must be accompanied by a notice in

¹ Defendant also contends the written lease agreement was not attached; however this representation is not correct. There is no evidence this agreement was written.

the form provided in Appendix D concerning the availability of Vermont Emergency Rental Assistance (VERAP) funds.

Administrative Order 49, Declaration of Judicial Emergency and Changes to Court Procedures, Promulgated March 16, 2020, 11-15-21 Amendment, ¶21(d).

This is an action based solely or in part on nonpayment of rent. It was filed after December 1, 2021. The requirements of *A.O. 49* apply.²

The Administrative Orders also states, “A failure to serve the notice may be corrected within 30 days, or the court may dismiss the case.” *Id.*³ The administrative order does not indicate a mandatory dismissal, rather it states the court “may” dismiss the case. *Id.*

Vermont Rules of Civil Procedure Rule 1 states, “[The rules] shall be construed, administered, and employed by the court and the parties to secure the *just*, speedy, and inexpensive determination of every action.” V.R.C.P. 1 (emphasis added).

However, a motion for more definite statement is appropriate when, as in this case, a complaint is missing required or necessary components. V.R.C.P. 12(e). “Mere vagueness or lack of detail is not a ground for a motion to dismiss but should be attacked by a motion for a more definite statement.” *Dugan v. City of Burlington*, 135 Vt. 303, 305, 375 A.2d 991, 992 (1977)(quoting Moore’s Federal Practice); see also *Lemnah v. American Breeders Service, Inc.*, 144 Vt. 568, 577, 482 A.2d 700, 705 (1984).

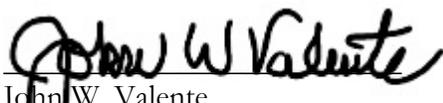
Plaintiff provided Defendants with the CARES Act certification and Emergency Rental Assistance Notice with the response to the motion. Defendant has the information to apply for rental assistance. Defendants are not prejudiced by the failure to serve the form with the summons and complaint in this instance.

The motion to dismiss is denied for those reasons.

Order

The motion to dismiss is denied. Defendant shall file an answer to the complaint no later than 14 days after the entry of this order.

Electronically Signed 4/13/2022 12:16 PM pursuant to V.R.E.F. 9(d)


John W. Valente
Superior Court Judge

² Plaintiff states this action is for no cause. This action is not for no cause. The complaint lists for reasons for termination of the tenancy. None of those reasons is for no cause. Additionally, the complaint was filed on December 21, 2021. While a notice for no cause was served on November 23, 2021 the ninety days provided in the notice ran on February 21, 2021. That is two months after this complaint was filed. This action cannot be based on notice that was not ripe. *Andrus v. Dunbar*, 2005 VT 48, ¶ 15, 178 Vt. 554 (Tenant was entitled to judgment because the tenancy had not been terminated on the date the landlord filed the ejectment action, which is precisely what Plaintiff did in this case.)

³ *A.O. 49* is silent on when the 30 days begins to run. Defendant was served the Appendix D on February 18, 2022. That date is more than thirty days after the verified complaint was filed and the initial pleadings were served. That date is less than thirty days after, the motion to dismiss was filed, the motion to amend the complaint was filed and granted.