

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
Docket No. 21-CV-2948

FRANK PIAZZA,
Plaintiff,

v.

TAMMY TATTERSALL,
Defendant

CORRECTED RULING ON THE MERITS¹

In this residential eviction action, Plaintiff Frank Piazza (landlord) seeks to recover approximately \$60,000 from Defendant Tammy Tattersall (tenant) for unpaid rent, attorney's fees and damage allegedly caused to premises that Piazza rented to Tattersall from 2019 to 2022. The Court held a hearing on the merits on June 30, 2022, at which both parties appeared, testified and presented exhibits. Attorney Angela N. Zaikowski represented Piazza, and Tattersall represented herself at the hearing. Based upon the credible evidence, the Court makes the following findings, conclusions and orders.

On September 1, 2019, the parties entered into a written lease for a single-family residence at 778 Route 100B in Moretown, Vermont. The agreed-upon rent was \$1,600 a month, and Tattersall gave Piazza a \$3,200 security deposit at the outset of the lease to cover any damages caused to the premises over and above normal wear and tear. Under the lease, the premises were to be occupied by Tattersall and her "immediate family," defined as her "mother," and there were to be no animals in the premises without the landlord's written consent. The lease also contained a provision stating: "Should it become necessary for Landlord to employ an attorney to enforce any of the conditions or covenants hereof, ... Tenant agrees to pay all expenses so incurred, including a reasonable attorney's fee."

The premises were served by a water system consisting of a spring connected to a cistern in the basement. At the outset of the tenancy, Piazza informed Tattersall that she would need to use the water "judicially" so as not to over tax the

¹ The sole purpose of this Correction is to correct typographical errors found in the Decision on the Merits that the Court issued on July 1, 2022. None of the corrections affects the substance of the Court's decision.

system. Piazza instructed Tattersall to contact him if there was any interruption of water flow.

Tattersall moved into the premises in mid-August 2019 with her elderly mother, boyfriend and daughter, and she paid \$800 of rent to Piazza for that half month. Tattersall also paid Piazza rent of \$1,600 a month in September and October of 2019. In November of 2019, however, Tattersall refused to pay her rent because she ran out of water and had to hire a contractor to fill the cistern in the basement in order to have water for her household. Piazza arranged for his handyman to re-prime the water system, but Piazza refused to reimburse Tattersall the cost she had incurred to fill the cistern. Then, on January 1, 2020, the cistern ran dry, again leaving Tattersall without water.

On January 6, 2020, Richard Valentinetti, the Moretown Health Officer, came to the premises in response to a complaint from Tattersall. By then Tattersall had been out of water for five days. Valentinetti sent Piazza a letter dated January 6, 2020, informing him that his tenants were out of water and that they had been out of water about a month before. Valentinetti added, “[i]t is a spring fed water system that has had problems in the past with lack of water.” Valentinetti’s letter to Piazza went on to say:

The health regulations are clear, “every dwelling unit shall be connected to a supply of water sufficient in quantity and pressure to meet the ordinary needs of the occupants.” Here, there are at least four individuals occupying this rental home. The failure to provide potable water to rental units is a substantial public health risk. Potable water is needed to drink and for sanitation, cleaning and cooking....

Therefore, by the authority granted in (18 VSA 130) it is hereby ordered:

1. You shall immediately provide an adequate potable water supply.
2. On a temporary basis, you shall provide the occupants with an alternative, adequate and accessible supply of potable water for drinking, cooking, cleaning and sanitation until a regular source of water is found.
3. A permanent source of potable water must be provided before June 1, 2020.

In response to Valentinetti’s letter, Piazza sent his handyman to the premises to re-prime the cistern. However, Piazza never replaced the spring-fed system with “[a] permanent source of potable water” as ordered by the Health

Officer. As a consequence of that failure, Tattersall continued periodically to run out of water at the rental premises. Piazza would send his handyman out to re-prime the system each time this happened, but the problem recurred so frequently that Tattersall could no longer do laundry at the premises, and her infirm elderly mother had to move out due to the lack of a reliable permanent source of water.

There is no credible evidence that Tattersall or her family members overused the water system at the rental premises or that their actions caused the system to fail on any of the occasions when they ran out of water. Because of the ongoing problems with the water supply, and other issues at the premises, Tattersall refused to pay her rent from November 1, 2020, onward.

On July 26, 2021, Piazza sent Tattersall termination notices terminating her tenancy for non-payment of rent and for no cause effective September 5, 2021. When Tattersall refused to move out, Piazza commenced this eviction suit on September 24, 2021. In response to Piazza's complaint, Tattersall filed an answer denying that she owed any back rent and asserting habitability issues as an affirmative defense. Eventually, Tattersall agreed to vacate the premises on April 30, 2022. By then, she had lived at the property for 31 months without paying rent.

After Tattersall moved out, Piazza discovered that carpets and floors throughout the house were saturated with dog urine. Piazza incurred \$9,500 to remove debris that Tattersall had left behind, remove and replace carpeting that had been destroyed, clean floors and walls, and remove the odor left behind by dog urine.

Piazza seeks to recover from Tattersall \$49,600 of unpaid rent (31 months at \$1,600 a month) plus \$9,500 in damages to the rental premises caused by her dogs, plus \$2,131 in attorney's fees plus \$443.08 in costs of action (filing fee and service costs). Piazza is clearly entitled to an award of the \$9,500 he has incurred in costs to repair the damage caused by Tattersall's dogs. Such damage was clearly beyond normal wear and tear. Therefore, the Court will award Piazza damages in the amount of \$6,300 (i.e., \$9,500 minus Tattersall's \$3,200 security deposit). Piazza is also clearly entitled to an award of his attorney's fees and costs of action, because those costs were necessitated by Tattersall's refusal to vacate the rental premises in response to Piazza's no-cause termination notice and by her having caused \$9,500 of damage to the rental premises. Therefore, the Court will award Piazza \$8,874.08 in damages, attorney's fees and costs.

However, Piazza is not entitled to recover \$49,600 of unpaid rent from Tattersall. Landlords are required to "deliver over and maintain, throughout the period of the tenancy, premises that are safe, clean, and fit for human habitation and that comply with the requirements of applicable building, housing, and health regulations." 9 V.S.A. § 4457(a). As part of this "implied warranty of habitability,"

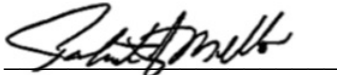
landlords are also required to “provide an adequate amount of water” to their tenants. *Id.*, §4457(c). If, after receipt of actual notice of a condition making the premises uninhabitable, the landlord fails to remedy the defect within a reasonable time, the tenant “may ... withhold the payment of rent for the period of the noncompliance.” *Id.*, §4458(a)(1).

Here, the ongoing lack of a reliable source of water constituted a breach of Piazza’s implied warranty of habitability. As the town health officer noted in his January 6, 2020, letter to Piazza, the water supply problem at the rental premises had pre-dated Tattersall’s tenancy, it had continued into Tattersall’s tenancy, and it constituted “a substantial public health risk” for Tattersall and her family. The health officer gave Piazza until June 1, 2020, to provide “a permanent source of potable water,” but he failed to do so. Indeed, Piazza never complied with that order. As a result, Tattersall continued to run out of water periodically throughout the time she lived at the property, she could not do laundry at home, and her mother had to move out due to the lack of a reliable source of potable water. Moreover, Tattersall credibly testified that she would not have rented the premises had she known how unreliable the water supply would be. Under these circumstances, Tattersall was within her statutory rights to withhold her rent.

Judgment

Based upon the foregoing, Plaintiff Frank Piazza is awarded judgment against Defendant Tammy Tattersall in the amount of \$8,874.08. All other claims are dismissed with prejudice.

SO ORDERD this 11th day of July, 2022.



Robert A. Mello
Superior Judge