

## LANDLORD/TENANT ISSUES FOR PRO BONO AND LOW BONO WORK

Presented by: Teri Corsones, Clerk of the Vermont Superior Court, Rutland Unit

Jessica Radbord, Staff Attorney, Vermont Legal Aid

Angela Zaikowski, Bennett & Zaikowski P.C.

- I. The Importance of Representation for Low to Moderate Income Tenants
- II. The Eviction Process
  - What rarely happens: Notice to Quit → Summons & Complaint → Motion to Dismiss, Answer & Counterclaims → Motion for Rent Escrow & Rent Escrow Hearing → Discovery → Trial
  - What often happens to a pro se: Notice to Quit → Summons & Complaint & Motion for Rent Escrow → Rent Escrow Hearing → Default & Inability to Pay → Writ
  - What usually happens with an attorney present: Notice to Quit → Summons & Complaint → Motion to Dismiss, Answer & Counterclaims → Motion for Rent Escrow & Rent Escrow Hearing → Settlement
- III. Make the Case Go Away: Motions to Dismiss
  - Notice Problems:
    - Adequate time
    - Right to redeem in non-payment cases
    - Non-payment notice cannot include anything other than rent as the amount of rent due to redeem (no late fees, maintenance fees, etc.)
    - For cause notice must be sufficiently specific
    - FDCPA
  - Standing Problems:
    - Ownership
    - Wrong addresses
  - Eviction is contrary to lease terms:
    - No cause during the written lease term.
    - Cause alleged is permitted under the lease.
- IV. Rent Into Court
  - Client wants to stay, the only problem is the non-payment:
    - Refer to Community Action, Housing Resource Center, charitable organizations.
    - Work out a repayment agreement outside of the RIC process.
    - If RIC order is unavoidable, seek latest payment date possible.

- Client wants to stay, but has concerns about conditions:
  - Oppose RIC until defective conditions are repaired.
  - RIC released to LL only with proof that repairs have been made.
  - Document conditions via Town Health Officer or Department of Public Safety
- Client wants to leave:
  - Client has a date certain she can move: Negotiate settlement, no RIC.
    - Waiver of arrearage
    - References
    - Abandoned property
    - Security deposit
  - Client does not have a date certain she can move: Probably paying RIC.
    - Continue to try to settle later
    - Negotiated move-out dates are considered “choosing homelessness” by DCF – family will not be able to get emergency housing assistance.

#### V. Answer & Counterclaims

- Habitability: Requires a showing of a defective condition that is a material threat to safety that the landlord failed to remedy within a reasonable period of time after actual notice was received.
- Violation of the Consumer Fraud Act: Where the landlord knew of defective conditions at the time the tenant leased the unit but failed to disclose them, CFA is a reasonable counterclaim.
- Retaliation: Notice of defective conditions must be in writing or from a state/local official.
- Negligence: Any and all personal injury claims.
- Trespass: Landlord entering the property absent exigent circumstances and without notice or permission.
- Illegal eviction: Water shut-off, no heat in the winter, electrical shut-off, and changing the locks.
- Intentional infliction of emotional distress

#### VI. Discovery & Trial

- For cause cases: Waste of time. Landlord would be better served by no cause. Faster and less painful.
- Tenant counterclaims: Counterclaims usually allow for fees. Reasonable to switch to a contingency fee retainer agreement, particularly where it is likely that insurance will cover the claim.

STATE OF VERMONT

SUPERIOR COURT  
FRANKLIN UNIT

CIVIL DIVISION  
DOCKET NO. [REDACTED] Fc

[REDACTED] )  
Plaintiffs, )  
 )  
v. )  
 )  
[REDACTED] )  
Defendant. )

**MOTION FOR SUMMARY JUDGMENT**

NOW COMES the Defendant, [REDACTED], by and through his attorney, Jessica Radbord, Vermont Legal Aid, Inc., to move the Court to dismiss this action pursuant to V.R.C.P. 12(b)(1), or in the alternative, to grant summary judgment in favor of the plaintiff pursuant to V.R.C.P. 12(c) and V.R.C.P. 56. The Plaintiffs do not have standing to bring this action as they have no current interest in the property at issue, as evidenced by the Order Confirming Sale attached herein. Where a party lacks standing to sue, the Court does not have subject matter jurisdiction over the action, and it must be dismissed. This motion is timely raised, as a Rule 12(b)(1) motion may be raised at any time pursuant to Rule 12(h)(3). *See also Poston v. Poston*, 161 Vt. 591, 592 (1993) (mem.). Defendant submits the following Memorandum of Law in support of this Motion.

**MEMORANDUM OF LAW**

“[S]tanding is a necessary component of the court’s subject-matter jurisdiction . . . .” *Bischoff v. Bletz*, 2008 VT 16, ¶ 15. Standing involves both the constitutional requirement of “a particular injury that is attributable to the defendant and that can be redressed by a court of law,” *id.* (quoting *Parker v. Town of Milton*, 169 Vt. 74, 77 (1998)), and prudential considerations,

including “the general prohibition on a litigant’s raising another person’s legal rights,”  
*Hinesburg Sand & Gravel Co.*, 166 Vt. 337, 341 (1997).

To have standing to bring a Complaint for Ejectment, a plaintiff must have “claim to the seisin or possession of lands, tenements or hereditaments.” 12 V.S.A. § 4761. Plaintiffs have no interest whatsoever in the property at issue in this case. The owner of [REDACTED] in [REDACTED] is BAC Home Loans Servicing, LP f/k/a/ Countrywide Home Loans Servicing, LP (“BAC”), as evidenced by the Order Confirming Sale in *BAC Home Loans Servicing, LP v. [REDACTED]* Docket No. [REDACTED] (Franklin Super. Ct. [REDACTED]) (copy attached). No evidence has been presented to support a contrary assertion, and “the burden of proof on a Rule 12(b)(1) motion is on the party asserting that subject matter jurisdiction exists.” 5B Wright, Miller & Kane, Federal Practice and Procedure: Civil 3d § 1350.

The fact that Plaintiffs had an interest in the property in the past has no bearing on their standing to evict plaintiff today. BAC filed a foreclosure complaint against [REDACTED], [REDACTED] on September 10, 2007, and a decree of foreclosure was issued on May 13, 2008.<sup>1</sup> See Docket No. [REDACTED] c. Plaintiffs unlawfully failed to warn [REDACTED] that the property was subject to foreclosure proceedings, and rented the house to him on August 1, 2009.<sup>2</sup> On December 15, 2009, having failed to redeem the property, Plaintiffs were

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<sup>1</sup> Plaintiffs’ son, [REDACTED] was the titleholder of the property. Upon being incarcerated, he granted power of attorney over the property to Plaintiffs.

<sup>2</sup> Pursuant to 12 V.S.A. § 4523, a property owner must notify prospective tenants that the dwelling is subject to a foreclosure action: “Upon receipt of the complaint, the owner of the mortgaged property shall notify each tenant who enters into a residential rental agreement, that the premises are the subject of a pending foreclosure action and that, in the event the owner is unable to redeem the premises, the tenant may be required to vacate the premises upon 30 days notice. The failure of the owner to provide notice under this subsection shall not affect or invalidate the foreclosure action.” Plaintiffs unlawfully failed to issue this warning to [REDACTED] so he was completely unaware of the foreclosure action until the Bank of America posted notices on his door indicating that entry to the property was barred.

issued a Certificate of Non-Redemption that “foreclosed and forever barred [REDACTED] from all equity of redemption.” Thus, equitable title passed to BAC on December 15, 2009. See Certificate of Non-Redemption, *BAC Home Loans Servicing, LP v. [REDACTED]*, Docket No. [REDACTED] Fc (Franklin Super. Ct., [REDACTED]), (copy attached).

Plaintiffs had no basis to assert that “Plaintiff owns rental property located at [REDACTED] [REDACTED], Vermont [REDACTED]” as they claimed in their Complaint at ¶2. BAC owns the property. [REDACTED] concedes that BAC has the right to eject him from the property, but BAC is not the plaintiff in this case. [REDACTED] are strangers to the property at issue here. They have no legal right to request the relief they seek from the Court. They have not had this right since December 15, 2009. Since Plaintiffs lack standing, the Court does not have subject matter jurisdiction over this action, and the Complaint for Ejectment must be dismissed.

[REDACTED] should not be required to pay rent into court. As the Supreme Court noted in *Ravenwood Estates v. Mason*, 156 Vt. 642 (1991) (mem.), “[12 V.S.A.] § 4853a abates that requirement when the eviction proceeding is discontinued.” In the event that the Court does not immediately dismiss the eviction action, [REDACTED] requests that the rent into court order be stayed pending the Court’s final determination regarding ownership of the subject property.

Dated in Burlington, this \_\_\_ day of December, 2010.

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Jessica Radbord, Esq.  
Vermont Legal Aid, Inc.

STATE OF VERMONT

SUPERIOR COURT  
RUTLAND UNIT

CIVIL DIVISION  
DOCKET NO. [REDACTED] Rdev

[REDACTED],  
Plaintiff,  
  
v.  
  
[REDACTED],  
Defendant.

MOTION TO DISMISS

The Defendant, [REDACTED], by and through her attorney, Jessica Radbord, Vermont Legal Aid, Inc., moves the Court to dismiss this action pursuant to V.R.C.P. 12(b)(6), or in the alternative, to grant summary judgment in favor of the Defendant pursuant to V.R.C.P. 12(c) and V.R.C.P. 56. Plaintiff cannot evict [REDACTED] from [REDACTED] Road in [REDACTED] because she does not reside at [REDACTED] Road in [REDACTED]. Similarly, the Notice of Termination of Tenancy for Nonpayment of Rent served upon [REDACTED] was defective in that it seeks to terminate her tenancy at [REDACTED] Road. Because notice was inadequate, [REDACTED]'s tenancy at [REDACTED] Road is not terminated. A complaint for eviction filed prior to termination of tenancy must be dismissed pursuant to V.S.A. § 4467(a). Mere amendment of the address listed in the Complaint cannot cure its defects because notice itself was inadequate. For these reasons, the Complaint must be dismissed.

Defendant submits the following Memorandum of Law in support of this Motion.

MEMORANDUM OF LAW

Plaintiff seeks to evict [REDACTED] from a property that she has never possessed. [REDACTED] served [REDACTED] with Notice of Termination of Tenancy for Nonpayment of Rent for the property located at [REDACTED] Road in [REDACTED] Vermont. He subsequently filed a

Complaint with this Court seeking possession of that property. Plaintiff's notice and complaint are fatally flawed because [REDACTED] has never been in possession of [REDACTED] Road.

[REDACTED] is not a tenant in possession of the premises situated at [REDACTED] Road, thus she she cannot be evicted from that property. In an action for ejection under Chapter 169 of Title 12, the appropriate defendant is "the tenant in possession of the premises." 12 V.S.A. § 4761. "[I]f otherwise brought, on motion, the same shall be abated." *Id.* [REDACTED] resides at [REDACTED] Road. See Exhibit 1. Although he seeks a writ from this Court to take possession of [REDACTED] Road, M [REDACTED] is already in possession of [REDACTED] Road. It is his family home. See Exhibit 2. Plaintiff seeks relief the Court cannot grant. As such, the Complaint should be dismissed pursuant to V.R.C.P. 12(b)(6).

Because M [REDACTED] has never been in possession of [REDACTED] Road, the Notice of Termination of Tenancy for Nonpayment of Rent is not adequate. A "tenant cannot be put in the position of having to speculate on the meaning and legal effect of the landlord's actions," thus "notice must be so certain that it cannot be reasonably misunderstood." *Andrus v. Dunbar*, 2005 VT 48, ¶13 (internal citations omitted). The notice provided to [REDACTED] did not terminate her tenancy at [REDACTED] Road because it makes no mention of [REDACTED] Road; it only terminates [REDACTED]'s tenancy at [REDACTED] Road. [REDACTED] is free to terminate [REDACTED]'s purported tenancy at [REDACTED] Road because M [REDACTED] does not live there nor does she make any claim of right to possess the property at [REDACTED] Road.

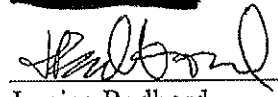
Even if the Court were to allow amendment of the Complaint to change the address listed from [REDACTED] Road to [REDACTED] Road, this eviction action would still have to be dismissed because [REDACTED]'s tenancy at [REDACTED] Road has not been terminated. Pursuant to 9 V.S.A. § 4467(a), a landlord must "provid[e] actual notice to the tenant" of the termination of

tenancy, and a complaint for eviction cannot be filed until "at least 14 days after the date of actual notice." Where a defendant has not been provided with "adequate notice to quit the premises as required by § 4467(a)," the eviction action should be dismissed. *Thibault v. Barratt*, Docket No. 12-2-87-Fc (Franklin Dist. Ct., Mar. 16, 1987) (copy attached). In *Andrus v. Dunbar*, the Supreme Court held that "[b]ecause the tenancy had not been terminated on the date that the landlord brought the ejectment action, the trial court should have entered judgment for tenant." 2005 VT 48, ¶15. Similarly, in this case, because tenancy at [REDACTED] Road was not terminated by the notice provided by Plaintiff, this ejectment action cannot lie, and judgment should be entered for [REDACTED].

Dismissal of the Complaint voids the order to pay rent into court. As noted in *Ravenwood Estates v. Mason*, "[12 V.S.A.] § 4853a abates that requirement [that rent be paid into court] when the eviction proceeding is discontinued." 156 Vt. 642; 590 A.2d 884, 885 (1991) (mem.) (copy attached). Because the order to pay rent into court is void, no writ of possession can be issued for failure to tender timely payment of rent into court. Lastly, were the Court to issue a writ of possession to [REDACTED] for [REDACTED] the only address at issue in this case – it could not be enforced against [REDACTED] at [REDACTED] Road.

Because "the damages action is derivative of the ejectment action . . . the damages aspect of the [complaint] also cannot be sustained." *Andrus v. Dunbar*, 2005 VT 48, ¶15.

Dated in Burlington, this 3<sup>rd</sup> day of February, 2011.

[REDACTED]  


By: Jessica Radbord  
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STATE OF VERMONT

SUPERIOR COURT  
CHITTENDEN UNIT

CIVIL DIVISION  
DOCKET NO.

[REDACTED]	)
Plaintiff,	)
	)
v.	)
	)
[REDACTED]	)
[REDACTED]	)
[REDACTED],	)
Defendants.	)

MOTION TO DISMISS

Now comes [REDACTED] by and through her attorney, Jessica Radbord, Vermont Legal Aid, Inc., and moves the Court to dismiss Count I of Plaintiff's Complaint pursuant to V.R.C.P. 12(b)(6). Pursuant to 9 V.S.A. § 4467(e), termination for no cause under terms of a written rental agreement shall be at least thirty days before the end or expiration of the stated term of the rental agreement where a tenancy has continued for two years or less. As demonstrated by Plaintiff's Exhibit 1, there is a valid lease agreement in effect. The initial term began on September 3, 2013, and ends on August 20, 2014. The tenancy cannot be terminated for no cause until August 20, 2014, with notice to issue at least thirty days in advance. There is no contrary provision in the lease that allows for a no cause termination prior to the expiration of the initial lease term. As such, the lease cannot be terminated for cause on April 28, 2014, and the Complaint must be dismissed.

Dated in Burlington, Vermont, this \_\_\_\_ day of October 2014.

\_\_\_\_\_  
 Jessica Radbord  
 Staff Attorney  
 Vermont Legal Aid, Inc.  
 jradbord@vtlegalaid.org

STATE OF VERMONT

SUPERIOR COURT  
CHITTENDEN UNIT

CIVIL DIVISION  
DOCKET NO. [REDACTED] Cnev

[REDACTED] )  
Plaintiff, )  
 )  
v. )  
 )  
[REDACTED] )  
[REDACTED] )  
Defendants. )

MOTION TO DISMISS

[REDACTED], by and through his attorney, Jessica Radbord, Vermont Legal Aid, Inc., moves the Court for an order dismissing Plaintiff's Complaint for lack of subject matter jurisdiction pursuant to V.R.C.P. 12(b)(1). In the alternative, Defendant moves the Court to dismiss this matter for failure to state a claim upon which relief can be granted pursuant to V.R.C.P. 12(b)(6). In support of his motion, he states:

1. This is an ejectment case for non-payment of rent.
2. Defendant resides in [REDACTED], a property managed by the [REDACTED]  
[REDACTED]  
[REDACTED]
3. Plaintiff demanded payment of sums other than rent in its non-payment termination notice.
4. Because Plaintiff demanded payment of other charges in its non-payment notice, the notice is defective.
5. The defective notice is not valid to support an eviction for non-payment of rent.

6. Without a valid notice of termination of tenancy, the Court lacks subject matter jurisdiction over this Complaint for Ejectment.
7. Without a valid notice of termination of tenancy, Plaintiff has failed to state a claim upon which relief can be granted.
8. In support of this motion, Defendant directs the Court to the memorandum of law below.

WHEREFORE, Defendant asks the Court to:

- a. Dismiss Plaintiff's Complaint;
- b. Grant such other relief as is just and equitable.

MEMORANDUM OF LAW IN SUPPORT OF MOTION

“A motion to dismiss for lack of subject matter jurisdiction or for failure to state a claim upon which relief can be granted, V.R.C.P. 12(b), will not be granted unless it appears beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief.” *Murray v. City of Burlington*, 2012 VT 11, ¶ 2 (internal quotations omitted). A Rule 12(b)(1) motion may be raised at any time pursuant to Rule 12(h)(3). *See Poston v. Poston*, 161 Vt. 591, 592, 657 A.2d 1076 (1993) (mem.).

Pursuant to 9 V.S.A. § 4467(a), a tenant must be provided with “actual notice” of termination of his tenancy for nonpayment of rent and the tenant must be afforded the opportunity to redeem his tenancy when “the tenant pays or tenders rent due through the end of the rental period in which payment is made or tendered.” Notice must accurately inform the tenant of his right to redeem by paying the arrearage. *See Bender v. Quigley*, 914-92 Cnc (Chitt. Super., Aug. 12, 1992); *Spiegel v. Smith*, S035-93 Rcm (Rut. Super., July 2, 1993). Because the “tenant cannot be put in the position of having to speculate on

the meaning and legal effect of the landlord's actions," *Andrus v. Dunbar*, 2005 VT 48, ¶12, the notice must state the amount of rent due.

In this case, Plaintiff's notice to quit advised Defendants that they were required to pay \$2,614 to redeem their tenancy. This amount, as noted in the Tenant Account History attached to the Complaint, includes not only rent, but a \$1,600 charge for extermination fees as well. Rent does not include extermination fees.

Pursuant to federal law, "tenant rent" for public housing residents is defined as "[t]he amount payable monthly by the family as rent to the unit owner (Section 8 owner or PHA in public housing)." 24 C.F.R. § 5.603(b). Rent is commonly understood to be the "agreed consideration for use and occupancy of the premises." *American Law of Landlord and Tenant* 5:34, Robert J. Schoshinski (1980). While there is nothing to preclude Plaintiff from charging reasonable fees for extermination caused by a tenant (Defendants neither admit nor deny the allegation that they caused the infestation or that the amount charged for extermination was reasonable), extermination fees are certainly not rent. For instance, *In re Parker* held that rent in the public housing context does not include utility or repair charges or attorney fees. 269 B.R. 522, 533 (D. Vt. 2001). Similarly, in *DML Corp. v. Tavares*, Judge Wesley dismissed a nonpayment of rent ejectment "... due to the complaint's reliance on a notice of termination that improperly indicated that late fees were required to be paid in order to avoid termination." 253-7-11 Bncv (Benn. Super., Aug. 22, 2011).

Plaintiff erred legally by demanding payment of charges other than rent in the notice to quit. Thus, its notice is void and this case should be dismissed for failure to state a claim and lack of subject matter jurisdiction.

STATE OF VERMONT

SUPERIOR COURT  
CALEDONIA UNIT

CIVIL DIVISION  
DOCKET NO. [REDACTED] Cacv

[REDACTED],  
Plaintiff,  
  
v.  
[REDACTED],  
Defendant.

MOTION TO DISMISS

Pursuant to Rule 12(b)(6) of the Vermont Rules of Civil Procedure, Defendant [REDACTED] respectfully moves this Court for an order dismissing this eviction action for failure to state a claim upon which relief may be granted. [REDACTED]'s landlord failed to comply with applicable procedural requirements for termination of her lease under the applicable state law.

Vermont protects tenants facing eviction by requiring landlords to satisfy procedural mandates. A Notice of Termination of Tenancy and Notice to Vacate was mailed to the [REDACTED] family on July 1, 2010, but this notice did not meet statutory requirements. Since [REDACTED]'s attempt to terminate the tenancy of the [REDACTED] fails to comply with state requirements, it is invalid and cannot form the basis for a judgment in this action.

**A. The notice to quit failed for cause to give the tenants the thirty days as required by Vermont law.**

[REDACTED] has failed to prove that [REDACTED] received the notice to terminate thirty days before the date of termination, thus barring action on the termination. 9 V.S.A. § 4467(b)(1); *Northgate Housing Limited v. Kirkland*, Vermont Supreme Court Docket No. 2002-152 (entry order, attached). Landlords bear the burden of proving that the tenant

received notice at least thirty days prior to the termination date. In *Northgate*, the Vermont Supreme Court held that a landlord had failed to satisfy notice requirements where the plaintiff landlord could prove only that notice of intent to terminate on October 19 had been mailed to the tenant on September 19. In holding for the tenant, the Supreme Court indicated that “landlords must prove the mailed or hand delivered notice was actually *received* at least . . . thirty days prior to the stated date of termination for breach of the lease agreement.” *Id.* (emphasis added).

██████████ attempted to terminate the ██████ lease for cause on August 1. Complaint, ¶ 16. Thirty days before August 1 is July 2. *See* V.R.C.P. 6; 1 V.S.A. § 138. The landlord alleges that it mailed the termination of lease notice by certified and regular mail on July 1. Complaint, ¶ 15. The Complaint does not explicitly allege that the ██████ received the notice or when, but, as a matter of law, it is presumed that the tenants received the notice three days after mailing. In this case, because of the July 4 holiday, receipt of the notice must be presumed to be July 6, 2010. 9 V.S.A. § 4451(1). This is inadequate to meet the statutory prerequisite for a nonpayment eviction.

**B. ██████ may not rely on its notice to quit for nonpayment, because that notice was issued in violation of the consumer fraud regulations.**

The termination of lease notice which the landlord’s attorney mailed to ██████ ██████ on May 11, 2010 was unfair and deceptive in violation of Vermont’s Consumer Fraud Act. In adopting laws prohibiting consumer fraud, the legislature instructed the Attorney General to make rules and regulations describing what were unfair and deceptive acts within the meaning of the consumer fraud laws. 9 V.S.A. § 2453. The Attorney General has done that, and those rules are available at <http://www.atg.state.vt.us/issues/consumer-protection/laws-and-regulations/vermont-consumer-fraud-rules.php>.

It is an unfair and deceptive act to fail to warn the debtor in any correspondence attempting to collect a debt “that the debt collector is attempting to collect a claim and any information obtained will be used for that purpose” Consumer Fraud Rule 104.04(b). In the termination of lease notice, the landlord’s attorney was attempting to collect a debt. “If you do not cure the defect or vacate your unit by the end of the day on the Termination Date, we will commence legal action to evict you, for back rent, and for attorney’s fees and costs.” *See* Notice of Termination of Tenancy, May 11, 2010. The landlord’s attorney failed to include the required warning in his letter. *Id.* This failure was an unfair and deceptive act in violation of the prohibition against consumer fraud.

This court should prohibit [REDACTED] from proceeding with any claims for eviction or money which rely on this notice. The consumer fraud statute prescribes “appropriate equitable relief” as a remedy for unfair and deceptive practices. 9 V.S.A. § 2461(b). Appropriate equitable relief would be to prohibit the landlord with proceeding with his claims for eviction and money in this case, because the claims are based on a notice which is unfair and deceptive.

### **Conclusion**

The possessory rights of landlords and tenants are governed by statute. 9 V.S.A. §§ 4451-4469 (Residential Rental Agreements Act); 12 V.S.A. §§ 4761–4859 (ejectment). “[T]he Legislature enacted the Residential Rental Agreements Act (RRAA), . . . in which it expressed its desire to protect the State’s tenant population from unscrupulous and recalcitrant landlords, while striking a fair balance between the rights of landlords and tenants.” *Willard v. Parsons Hill Partnership*, 2005 VT 69, ¶ 16, 178 Vt. 300. Before a landlord can use the great power of this Court to forcibly evict a tenant from her home, he must meet fundamental statutory

prerequisites, such as proper termination of the lease. *Andrus v. Dunbar*, 2005 Vt. 48, ¶ 15, 178 Vt. 554 [REDACTED] simply has not met the prerequisites in federal regulation and state law for such evictions.

The eviction claim should be dismissed.

Dated in St. Johnsbury, Vermont, this \_\_\_\_ day of October, 2014.

[REDACTED]

By: \_\_\_\_\_  
Maryellen Griffin  
Staff Attorney  
Vermont Legal Aid, Inc.



STATE OF VERMONT

SUPERIOR COURT  
CHITTENDEN UNIT

CIVIL DIVISION  
DOCKET NO. [REDACTED]

[REDACTED] )  
Plaintiff, )  
 )  
v. )  
 )  
[REDACTED] )  
Defendant. )

JOINT STIPULATION OF SETTLEMENT

Now come the parties and with the advice and assistance of counsel to stipulate and hereby advise the Court that the parties have reached a full and complete settlement in this ejectment action. Defendant agrees to vacate Plaintiff's property, [REDACTED] on or before [REDACTED]. Plaintiff waives any and all claims of right to allegedly unpaid rent from Defendant. Defendant shall not cause damage to the apartment beyond normal wear and tear. Plaintiff shall not return Defendant's security deposit.

The parties shall be responsible for their own costs and attorney's fees so long as Defendant vacates the subject property by 4:00 p.m. [REDACTED]

Should Defendant fail to timely vacate the property, the parties agree that the Court Clerk shall issue a Writ of Possession to Plaintiff on [REDACTED]. Defendant shall accept service of the writ by mail to attorney Jessica Radbord. The Writ shall restore possession of the property to Plaintiff at noon on [REDACTED]. If Defendant fails to vacate the property by [REDACTED] p.m. [REDACTED] shall pay Plaintiff's costs and attorney's fees.

SETTLEMENT AGREEMENT

WHEREAS, [REDACTED] ("Landlords") own the property located at [REDACTED] in Burlington, Vermont (the "apartment");

WHEREAS, [REDACTED] was a tenant ("Tenant") residing in the apartment pursuant to a written lease;

WHEREAS, Landlords terminated Tenant's lease and commenced a nonpayment ejectment action in the Vermont Superior Court, Chittenden Civil Division in Burlington, Vermont;

WHEREAS, Tenant has asserted claims against Landlords relating to the habitability of the apartment;

WHEREAS, Landlords and Tenant wish to settle this matter; AND

NOW THEREFORE, the parties agree to be bound by the following terms:

1. Tenant agrees to vacate the apartment on or before **Noon on Friday, June 1, 2012** and to take with him all of his personal property. Once the Tenant has vacated, any personal property left behind shall be considered abandoned. Landlords may dispose of the abandoned property as they wish. Landlords shall not have to store any property left behind by Tenant and members of Tenant's household and Tenant waives any storage requirement after 12:01 p.m. on June 1, 2012. Tenant hereby forever waives any claim or right of damages against Landlords for any and all loss incurred to any and all of the personal property remaining in the apartment after 12:01 p.m. on June 1, 2012 as outlined above.

2. Tenant must turn in the keys to the apartment to Landlords by 12:01 p.m. on Friday, June 1, 2012.

3. Landlords waive collection of all rent owed through May, 2012 in the amount of \$11,650.00. Landlords waive all court costs and attorney's fees associated with the court action. Each party is responsible for their own attorney's fees and court costs.

4. If Tenant fails to vacate on or before Noon on June 1, 2012, Landlords shall have the right to take immediate possession of the apartment at 12:01 p.m. on Friday, June 1, 2012. The parties shall file a separate written stipulation with the Vermont Superior Court dismissing this action, advising the Court that the parties have reached a settlement and finally that the Court Clerk shall issue a Writ of Possession to Landlords on May 10, 2012 that shall provide that Landlords shall be restored to possession at Noon on June 1, 2012 in the event the Tenant and the members of his household have not previously vacated the apartment.

5. Once Tenant has vacated the apartment, the disposition of his security deposit shall be done in accordance with the laws of the State of Vermont. Tenant understands that he shall be charged and responsible to pay Landlords for any damages beyond normal wear and tear, expenses for removing any and all abandoned property and any other rent and non-rent charges the Tenant may have outstanding that exceed his deposit. If Tenant fails to provide a forwarding address to Landlords, the security deposit transmittal letter shall be sent to the Tenant's last known address.

[REDACTED] \_\_\_\_\_ INITIAL HERE

6. Landlords have previously provided Tenant with a neutral landlord reference.

7. The parties further agree that all monies being held in the Court's escrow account shall be released to Tenant.

8. This Agreement is in full settlement of all claims either party had or could have had against the other arising from or occurring during Tenant's tenancy and occupancy of the apartment.

9. Tenant may be present at a move-out inspection, which he can arrange with Landlords. Tenant agrees to leave the premises clean with all rubbish properly removed and cause no intentional damage to the apartment when vacating.

10. This Agreement shall be deemed a mutual rescission of the lease.

11. The Parties agree to execute a separate mutual and reciprocal release of all claims in full settlement of this matter.

12. Landlords and Tenant agree that the terms of this Settlement Agreement shall be kept confidential and shall not be disclosed to any third party at any time, except as may be required in connection with their consultation with their own counsel. Furthermore, the monetary terms of this Settlement Agreement shall not be filed, used or disclosed to any court.

I have read this Agreement and agree to be bound by its terms:

STATE OF VERMONT

SUPERIOR COURT  
FRANKLIN UNIT

CIVIL DIVISION  
DOCKET NO.

[REDACTED] )  
Plaintiff, )  
 )  
v. )  
 )  
[REDACTED] )  
Defendants. )

MEMORANDUM IN OPPOSITION  
TO PAYMENT OF RENT INTO COURT

[REDACTED]’s apartment is not worth what [REDACTED] charges for it, and for the duration of their tenancy, it never has been. The apartment is a threat to the health and safety of [REDACTED] and [REDACTED] and their two children. Thus, Plaintiff’s request for payment of rent into court should be denied.

Plaintiff seeks a rent escrow order pursuant to 12 V.S.A. § 4853a. He is not entitled to this order because the statute only allows payment of rent into court “[i]f the court finds the tenant is obligated to pay rent and has failed to do so . . .” 12 V.S.A. § 4853a(d). As described in Defendant’s affidavit and in the counterclaims in their Answer, the condition of the apartment so egregiously violates the warranty of habitability that their obligation to pay rent is drastically reduced or voided. Rather than being able to make a demand for rent owed, [REDACTED] should pay back the rent he collected from [REDACTED] and [REDACTED].

The warranty of habitability, implied in all residential rental agreements, provides that a landlord “shall be deemed to covenant and warrant to deliver over and maintain, throughout the period of the tenancy, premises that are safe, clean and fit for human habitation and which comply with the requirements of applicable building, housing and health regulations.” 9 V.S.A.

§ 4457(a). Where a violation of the warranty of habitability exists, a tenant has the legal right to withhold rent:

If the landlord fails to comply with the landlord's obligations for habitability and, after receiving actual notice of the noncompliance from the tenant, a governmental entity or a qualified building inspector, the landlord fails to make repairs within a reasonable time and the noncompliance materially affects health and safety, the tenant may withhold the payment of rent for the period of the noncompliance . . . .

9 V.S.A. § 4458. In *Hilder v. St. Peter*, the Supreme Court noted that a tenant can seek damages where a violation of the warranty of habitability exists, in the form of "the difference between the value of the dwelling as warranted and the value of the dwelling as it exists in its defective condition." 144 Vt. 150, 161 (1984). Similarly, in *Rinaldo v. Doucette*, 158 Vt. 649; 968 A.2d 914 (attached), the Supreme Court's unpublished decision indicated that a tenant may be awarded damages for violation of the warranty of habitability and pain and suffering even where the tenant had paid no rent whatsoever.

Thus, a tenant is only obligated to pay rent based on the value of a dwelling when viewed in light of any defective conditions present. Here, given the numerous violations of Vermont rental housing safety laws present in the apartment, Defendants should not be ordered to pay rent into court until Mr. Minor is able to produce an inspection report demonstrating that he has, after over two and one half years of flouting the orders of state and local inspectors, brought the property into compliance with all applicable rental housing safety laws and codes.

There is no obligation to pay rent into court in this case. Plaintiff has flouted his legal responsibilities to his tenants, and flouted his moral responsibilities by endangering the health and development of [REDACTED] and [REDACTED] children.

STATE OF VERMONT

SUPERIOR COURT  
CHITTENDEN UNIT

CIVIL DIVISION  
DOCKET NO. [REDACTED]

[REDACTED]

Plaintiff,

v.

[REDACTED]

Defendant.

)  
)  
) Vermont Superior Court  
)  
) SEP 18 2014  
)  
) Chittenden Unit  
)

PROPOSED AMENDED JUDGMENT ORDER

By Entry Order dated August 8, 2014, judgment for Plaintiff was entered following a court trial. The plaintiff was present and represented by Angela Zaikowski, Esq. Defendant [REDACTED], pro se, was not present at the trial. She asserts that she did not receive notice of the hearing and thus did not have the opportunity to present her defenses.

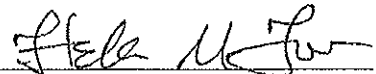
After she was served with a Writ of Possession, [REDACTED] obtained counsel. The parties, both represented by counsel, have now stipulated and agreed to the terms of this Amended Order of the Court:

1. Possession of the subject property shall be awarded to Plaintiff.
2. The Writ of Possession served upon [REDACTED] on August 19, 2014, shall not be executed until October 1, 2014.
3. Rent paid to the Court on September 2, 2014, shall be immediately released to Plaintiff.
4. Judgment for rent arrearage shall be waived.


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5. Judgment for Plaintiff for \$217.12 Sheriff's fees, <sup>262.50</sup>~~\$200~~ filing fees, and \$1,200 attorney's fees. Total judgment \$1679.62.

SO ORDERED, this 17<sup>th</sup> day of September, 2014.

  
\_\_\_\_\_  
Presiding Superior Court Judge  
Helen M. Toor

Approved:

  
\_\_\_\_\_  
Angela Zaikowski, Esq.  
Attorney for Plaintiff

  
\_\_\_\_\_  
Jessica Radbord  
Vermont Legal Aid, Inc.  
Attorney for Defendant

STATE OF VERMONT

SUPERIOR COURT  
Rutland Unit

CIVIL DIVISION  
Docket No.

Rdev

\_\_\_\_\_,  
Plaintiff

v.

\_\_\_\_\_,  
and all others residing at the premises,  
Defendants

NOTICE OF HEARING  
MOTION TO PAY RENT INTO COURT  
("Rent Escrow Hearing")

A hearing will be held on the Plaintiff's Motion for Payment of Rent into Court on \_\_\_\_\_, at \_\_\_\_\_ that day.

If you do not come to the hearing, the Court may issue a Rent Escrow Order requiring you to pay to the court the rent owed since the day this case was filed, and to pay future rent to the court while this case is in court. **If you miss any payment required by a Rent Escrow Order, your landlord will be entitled to a court order allowing the Sheriff to evict you within a few days.**

If you do not send to the Court a written Answer to the Complaint that the landlord has served on you within twenty days of when you received it, **you may lose the case without another court hearing.** However, if you come to the Rent Escrow Hearing at the date and time above, you will get another ten days to send your Answer to the Court and the landlord or the landlord's lawyer.

Be sure to give the Court and the landlord or the landlord's lawyer, your mailing address in writing. You must let them know if that address changes, so you will get notice of future court proceedings. Be sure to file a written response to any Motions you receive from the landlord or landlord's lawyer. **You may wish to seek help from a lawyer.**

Dated at Rutland Vermont, this \_\_\_\_ day of \_\_\_\_\_ 2014.

\_\_\_\_\_  
Docket Clerk

Original sent to plaintiff for service on defendant(s).



STATE OF VERMONT

SUPERIOR COURT  
Rutland Unit

CIVIL DIVISION  
Docket No. \_\_\_\_\_ Rdev

\_\_\_\_\_,  
Plaintiff

v.

\_\_\_\_\_,  
Defendant

**RENT ESCROW ORDER**

This matter came before the Court on \_\_\_ / \_\_\_ / \_\_\_ to consider Plaintiff's Motion for Rent Escrow. Plaintiff was /was not present and was / was not represented by counsel. Defendant was / was not present and was / was not represented by counsel.

Based on the evidence presented, it is hereby **ORDERED**:

Pursuant to 12 V.S.A. § 4853, Tenant \_\_\_\_\_ is ordered to pay rent to the Court while this case is pending in amounts as set forth in this Order. The amount of rent due from the date this case was filed/served, including rent due for this month, is \$ \_\_\_\_\_.

That amount must be paid to the Court:

(Def(s) *did not appear*): within \_\_\_ business days of the date that this Order is served on Tenant.

--- OR ---

(Def(s) *did appear*): by \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_.

After that, every month's rent of \$\_\_\_\_\_ must be paid to the Court on the \_\_\_ day of the month (or, if the Court is closed that day, on the next day the Court is open).

All payments must be made to the court clerk's office by cash, money order, or bank check between the hours of 8:00 a.m. and 4:30 p.m.

- The Court is located at: \_\_\_\_\_, Vermont.
- The mailing address is: \_\_\_\_\_.

If the Tenant has not accepted service of this order in court, it must be served upon the Tenant by the sheriff before it is effective, and on any other tenants named as defendants.

**IF TENANT DOES NOT MAKE THE FULL PAYMENTS TO THE COURT BY THE DUE DATES, THE LANDLORD MAY ASK THE**

**COURT FOR AN IMMEDIATE ORDER EVICTING TENANT (CALLED A "WRIT OF POSSESSION"), WHICH MAY BE ISSUED WITHOUT ANY FURTHER HEARING. THE SHERIFF WILL BE AUTHORIZED TO REMOVE TENANT FIVE DAYS AFTER GIVING TENANT A COPY OF THE WRIT OF POSSESSION.**

If Tenant appeared in court at the rent escrow hearing, Tenant has ten days from today to file an answer to the complaint; if no answer is filed, Tenant may lose the case by default even though Tenant came to the hearing.

Dated at Rutland, Vermont, this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Hon.  
Superior Court Judge

I have been given a copy of this order today:

Tenant's Name: \_\_\_\_\_ Date: \_\_\_\_\_

STATE OF VERMONT

SUPERIOR COURT  
Rutland Unit

CIVIL DIVISION  
Docket No. \_\_\_\_ - \_\_\_\_ - \_\_\_\_ Rdcv

\_\_\_\_\_,  
Plaintiff

v.

\_\_\_\_\_,  
and all others residing at the premises,  
Defendant(s)

**PARTIAL JUDGMENT FOR POSSESSION**

A Rent Escrow Order was issued by the Court on \_\_\_\_ / \_\_\_\_ / \_\_\_\_ and served on all defendants as of \_\_\_\_ / \_\_\_\_ / \_\_\_\_ . Because the full amount of rent due has not been paid to the Court as ordered since the date of service, pursuant to 12 V.S.A. § 4853a(h), Landlord is entitled by law to an order evicting Tenant(s), and granting possession of the apartment or leased residence. Therefore, the Court grants judgment to Plaintiff for possession of the premises at: \_\_\_\_\_, and hereby authorizes the court clerk to issue a writ of possession. The writ shall authorize the Sheriff to evict Tenant(s) no sooner than five days after serving it and this order upon Tenant(s).

This Order does not resolve any other issues in the case, such as back due rent. Tenant must give the court and the Landlord's lawyer (or, if they have no lawyer, the Landlord) any new mailing address so that Tenant(s) can receive all future mail about the other issues in the case.

Dated at \_\_\_\_\_, Vermont, this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Hon.  
Superior Court Judge

STATE OF VERMONT

SUPERIOR COURT  
Rutland Unit

CIVIL DIVISION  
Docket No. \_\_\_\_\_ Rdev

\_\_\_\_\_,  
Plaintiff

v.

\_\_\_\_\_,  
Defendant

**RENT ESCROW ORDER**

This matter came before the Court on \_\_\_ / \_\_\_ / \_\_\_ to consider Plaintiff's Motion for Rent Escrow. Plaintiff was /was not present and was / was not represented by counsel. Defendant was / was not present and was / was not represented by counsel.

Based on the evidence presented, it is hereby **ORDERED**:

Pursuant to 12 V.S.A. § 4853, Tenant \_\_\_\_\_ is ordered to pay rent to the Court while this case is pending in amounts as set forth in this Order. The amount of rent due from the date this case was filed/served, including rent due for this month, is \$ \_\_\_\_\_.

That amount must be paid to the Court:

(Def(s) *did not appear*): within \_\_\_ business days of the date that this Order is served on Tenant.

--- OR ---

(Def(s) *did appear*): by \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_.

After that, every month's rent of \$ \_\_\_\_\_ must be paid to the Court on the \_\_\_ day of the month (or, if the Court is closed that day, on the next day the Court is open).

All payments must be made to the court clerk's office by cash, money order, or bank check between the hours of 8:00 a.m. and 4:30 p.m.

- The Court is located at: \_\_\_\_\_, Vermont.
- The mailing address is: \_\_\_\_\_.

If the Tenant has not accepted service of this order in court, it must be served upon the Tenant by the sheriff before it is effective, and on any other tenants named as defendants.

**IF TENANT DOES NOT MAKE THE FULL PAYMENTS TO THE COURT BY THE DUE DATES, THE LANDLORD MAY ASK THE**

**COURT FOR AN IMMEDIATE ORDER EVICTING TENANT (CALLED A "WRIT OF POSSESSION"), WHICH MAY BE ISSUED WITHOUT ANY FURTHER HEARING. THE SHERIFF WILL BE AUTHORIZED TO REMOVE TENANT FIVE DAYS AFTER GIVING TENANT A COPY OF THE WRIT OF POSSESSION.**

If Tenant appeared in court at the rent escrow hearing, Tenant has ten days from today to file an answer to the complaint; if no answer is filed, Tenant may lose the case by default even though Tenant came to the hearing.

Dated at Rutland, Vermont, this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Hon.  
Superior Court Judge

I have been given a copy of this order today:

Tenant's Name: \_\_\_\_\_ Date: \_\_\_\_\_

STATE OF VERMONT

SUPERIOR COURT  
Rutland Unit

CIVIL DIVISION  
Docket No. \_\_\_\_ - \_\_\_\_ - \_\_\_\_ Rdcv

\_\_\_\_\_,  
Plaintiff

v.

\_\_\_\_\_,  
and all others residing at the premises,  
Defendant(s)

**WRIT OF POSSESSION**  
**(Nonpayment of Rent into Court)**

**TO THE SHERIFF OF RUTLAND COUNTY:**

Because the Tenant(s) of \_\_\_\_\_ in \_\_\_\_\_, Vermont have failed to pay rent to the Court as ordered, the Court has granted partial judgment for possession of that property to Landlord(s) \_\_\_\_\_. Therefore, by the authority of the State of Vermont, you are hereby ordered to remove from the property Tenant(s) \_\_\_\_\_ and all others residing at the premises no sooner than five (5) days after you serve this Writ upon Tenant(s).

You are ordered to return this Writ to the Court reporting your service within sixty (60) days. The Writ will expire in sixty (60) days if it is not served within that time.

Dated at \_\_\_\_\_, Vermont, this \_\_\_\_ day of \_\_\_\_\_, 201\_.

\_\_\_\_\_  
Clerk

STATE OF VERMONT

SUPERIOR COURT  
Rutland Unit

CIVIL DIVISION  
Docket No. \_\_\_\_ - \_\_\_\_ - \_\_\_\_ Rdev

\_\_\_\_\_,  
Plaintiff

v.

\_\_\_\_\_,  
and all others residing at the premises,  
Defendant(s)

**WRIT OF POSSESSION**  
**(Final Judgment)**

**TO THE SHERIFF OF \_\_\_\_\_ COUNTY:**

By the authority of the State of Vermont, and pursuant to the Judgment issued on \_\_\_\_\_ in the instant cause, you are hereby commanded to restore to the Plaintiff, \_\_\_\_\_, the possession of the property, to wit, the premises at \_\_\_\_\_, Vermont, now occupied by \_\_\_\_\_, no sooner than ten (10) days after this Writ is served upon the Defendant.

You are ordered to return this writ to the Court reporting your service within sixty (60) days. The Writ will expire in sixty (60) days if it is not served within that time.

Dated at \_\_\_\_\_, Vermont, this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Clerk