

NOT DESIGNATED FOR PUBLICATION

**KAREN RACHAL HUMPHREY** \* **NO. 2004-CA-1030**  
**VERSUS** \* **COURT OF APPEAL**  
**KERI L. RACHAL** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**  
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APPEAL FROM  
FIRST CITY COURT OF NEW ORLEANS  
NO. 2004-1603, SECTION "A"  
Honorable Charles A. Imbornone, Judge  
\* \* \* \* \*  
**JUDGE MAX N. TOBIAS, JR.**  
\* \* \* \* \*

(COURT COMPOSED OF JUDGE TERRI F. LOVE, JUDGE MAX N. TOBIAS, JR., AND JUDGE LEON A. CANNIZZARO, JR.)

KAREN RACHAL HUMPHREY  
3649 LAKE ASPEN EAST DRIVE  
GRETN, LA 70056  
IN PROPER PERSON, PLAINTIFF/APPELLEE

KERI L. RACHAL  
1267 MILTON STREET  
NEW ORLEANS, LA 70122-1464  
IN PROPER PERSON, DEFENDANT/APPELLANT

**AFFIRMED.**

The defendant, Keri L. Rachal (“Keri”), appeals a judgment of the trial court evicting her from the premises located at 1267 Milton Street, New Orleans. For the following reasons, we affirm.

The record before us discloses that the dwelling at 1267 Milton Street was owned by Raymond Anthony Rachal, Sr. (“Mr. Rachal”) and Louise Landry Rachal (Mrs. Rachal”), who were husband and wife. Mr. and Mrs. Rachal had six children, namely, Raymond Anthony Rachal, Jr. (who is Keri’s father), Craig Rachal, Mary Rachal, Lonnie Rachel, Karen Rachal Humphrey (“Karen”), and Dedra Rachal Demasiliere. Approximately 30 years ago, Mr. Rachal died intestate, but his succession was never opened. Approximately seven years ago, Mrs. Rachel moved into Karen’s home. (Apparently prior thereto she had been living in the dwelling at 1267 Milton Street.) One year later, Mrs. Rachal and Karen asked Keri to move into the house in order to take care of it. Keri moved in and began paying rent of \$300.00 per month. No written contract of lease was entered into between the parties; only an oral month-to-month contract of lease existed.

A factual dispute between the parties about the subsequent events

exists. Karen maintains that Keri became delinquent in the rental payments. Keri asserts there was a family squabble. In any event, Karen posted a handwritten note on the dwelling dated 1 January 2004, advising Keri that she had thirty days to vacate the premises. On 30 March 2004, Karen filed in First City Court a motion for eviction against Keri, ruling her into court to show cause why she should not be evicted and stating that Karen wanted possession of the premises. On 6 April 2004, Keri filed an “Answer and Exceptions of No Cause of Action and /or No Right of Action for Rule of Possession of Premises,” the basis of which was that Karen, as the named plaintiff in the motion for eviction, did not own the property. (Essentially, Keri argued that Karen had no right of action, and thus had no standing to evict her.) A hearing was held 7 April 2004, at which Karen produced a power of attorney from Mrs. Rachal that gave Karen the authority to proceed on her behalf and in her place and stead. The court granted a judgment on 7 April 2004 in Karen’s favor ordering Keri to vacate the premises within 24-hours. From that judgment, Keri now appeals.

By the law of intestacy, when Mr. Rachal died, (1) Mrs. Rachal became the owner of an undivided one-half interest in the 1267 Milton Street property, (2) Mr. Rachal’s six children became the undivided owners of the other one-half interest in the property, and (3) Mrs. Rachal became the

usufructuary of the one-half interest that Mr. Rachal's six children inherited. As usufructuary of the one-half and the owner of the other one-half of 1267 Milton Street, Mrs. Rachal had the "right to possess... and to derive the utility, profits, and advantages" of the property. La. C.C. art. 539. Thus, she had the right to manage and lease the property and collect all rents and income that might be derived therefrom.

Keri argues that Karen had no right to institute eviction proceedings against her because Karen is not the owner of the property. Although the power of attorney does not appear in the record on appeal, we are required to rely on the fact that the trial judge viewed the power of attorney and found it to be valid. *See* La. C.C.P. arts. 2128 and 2131. As usufructuary of one-half and the owner of the other one-half of the 1267 Milton Street property, Mrs. Rachal had the right to grant a power of attorney to Karen to manage the property; the right to manage includes the right of evicting Keri or any other person from the premises. La. C.C.P. art. 694.

Because only an oral month-to-month lease for the premises existed, Karen, as Mrs. Rachal's agent, had the authority to terminate the lease (and/or occupancy of Keri) and require that Keri vacate the premises upon five days written notice. La. C.C.P. arts. 4701, *et seq.*, and 4731, *et seq.* This Karen did, giving Keri 30-days to vacate.

We find no evidence in the record before us that the trial court  
improperly  
granted a judgment evicting Keri from the premises at 1267 Milton Street.

Accordingly, we affirm the judgment of the trial court.

**AFFIRMED.**