

Kuhn v. Brown, No. 754-10-08 Rdcv (Cohen, J., Feb. 3, 2009)

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**STATE OF VERMONT
RUTLAND COUNTY**

ADAM KUHN,

Plaintiff,

v.

KENNETH BROWN,

Defendant

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**Rutland Superior Court
Docket No. 754-10-08 Rdcv**

DECISION ON SMALL CLAIMS APPEAL

This case is before the Court on appellant Adam Kuhn’s Small Claims Appeal, filed October 2, 2008. Appellant appeals the small claims Opinion and Order filed by the Honorable Jean H. Coloutti on September 4, 2008. Both Adam Kuhn and Kenneth Brown represented themselves throughout the case.

An appellate hearing was schedule for December 9, 2008. Neither party appeared.

Background

Kenneth Brown is the current owner of an apartment complex located at [address redacted] in Castleton, Vermont.

Prior to 2006, Mr. Brown held the mortgage on the property, and the mortgagor and apartment operator was William J. Dydo, Jr. In his capacity as operator of the apartment building, Mr. Dydo entered into rental agreements with tenants and collected

rents and security deposits. Security deposits received by Mr. Dydo were placed into an “escrow account.”

In mid-2006, tenant Adam Kuhn entered into a rental agreement with landlord Mr. Dydo for an apartment unit at the complex in Castleton, Vermont. Mr. Kuhn paid a security deposit of \$750.00 to Mr. Dydo.

In August 2006, Mr. Brown commenced foreclosure proceedings after Mr. Dydo failed to meet his financial obligations. The foreclosure proceedings resulted in an October 5, 2006 Order from the Rutland Superior Court directing tenants to make future payments to Mr. Brown and authorizing Mr. Brown to enter onto the property for the purpose of maintaining the property. Mr. Kuhn agreed to stay in the apartment through May 2007, which was the original rental agreement with Mr. Dydo.

Mr. Kuhn remained in the apartment complex through May 2007. Rent was paid in full for every month except May 2007, which was the last month of the original rental agreement with Mr. Dydo, and as verbally modified. Mr. Kuhn withheld payment for May 2007 in an attempt to secure the return of his security deposit. Mr. Brown did not return the \$750.00 security deposit to Mr. Kuhn. Mr. Dydo had not turned over the “escrow account” containing the security deposits to Mr. Brown.

Mr. Brown brought a small claims action against Mr. Kuhn in Rutland Superior Court, seeking payment of May 2007 rent and damages for damage to the apartment unit. Mr. Kuhn did not file a counter-claim for withholding of the security deposit by Mr. Brown. Hearings were held on May 1, 2008 and July 24, 2008.

On September 4, 2008, the Honorable Jean H. Coloutti issued an Opinion and Decision. The court held that the statute governing the return of security deposits, 9

V.S.A. 4461, authorized Mr. Kuhn to sue his landlord, Mr. Brown, if the security deposit was not returned within 14 days after Mr. Kuhn vacated the dwelling unit. The statute however did not permit Mr. Kuhn, however, to withhold last month's rent in order to secure a return of the security deposit. The court rejected this "offset" defense to non-payment of rent.

The court ruled, however, that although Mr. Kuhn did not file a counterclaim, he was free to pursue his claim for return of the security deposit against whomever he saw fit by filing a complaint with the court and paying the filing fee. The court declined to speculate on whether Mr. Brown or Mr. Dydo was ultimately responsible for the return of the security deposit.

The court held in favor of the landlord Mr. Brown for the \$750.00 in withheld rent and \$60.00 in court costs. The court found that Mr. Kuhn did not damage the apartment and declined to award Mr. Brown any damages on that claim.

Discussion

On appeal of a small claims court decision, this court's standard of review is one of high deference. The court is limited to questions of law, V.R.S.C.P. 10(d), and must be mindful that small claims court exists "to secure the simple, informal, and inexpensive disposition" of claims. V.R.S.C.P. 1. Small claims court findings "must be construed, where possible, to support the judgment" and the procedural informality of small claims does not authorize an appellate court to make its own substantive findings. *Kopelman v. Schwag*, 145 Vt. 212, 214 (1984). Small claims court findings, however, must be supported by the evidence. *Brandon v. Richmond*, 144 Vt.496, 498 (1984).

The court found that tenants are not ordinarily permitted to withhold last month's rent in order to guarantee the return of their security deposit. However, the function of the security deposit is to secure the performance of a tenant's obligation to pay rent and to maintain a dwelling unit. 9 V.S.A. § 4461(a). The landlord may retain all or a portion of the security deposit for nonpayment of rent. 9 V.S.A. § 4461(b)(1). Clearly, the legislature foresaw a landlord keeping the security deposit in response to nonpayment of rent.

The court ruled that the tenant was authorized to sue his landlord under 9 V.S.A. 4461(c) if the security deposit was not returned within 14 days after he vacated the dwelling unit. However, a landlord is required to return the security deposit along with a written statement itemizing any deductions to a tenant within 14 days from the date on which the landlord discovers that the tenant vacated or abandoned the dwelling unit, or the date the tenant vacated the dwelling unit, provided the landlord received notice from the tenant of that date. 9 V.S.A. 4461(c). If the landlord fails to return the security deposit with a statement within 14 days, the landlord forfeits the right to withhold any portion of the security deposit. 9 V.S.A. 4461(e).

The court also ruled that Mr. Kuhn was free to pursue his claim for return of the security deposit against whomever he saw fit by filing a complaint with the court and paying the filing fee. The court declined to speculate on whether Mr. Brown or Mr. Dydo was ultimately responsible for the return of the security deposit.

Upon termination of the landlord's interest in the dwelling unit, the security deposit shall be transferred to the new landlord. 9 V.S.A. § 4461(f). The new landlord

shall give the tenant actual notice of the new landlord's name and address with a statement that the security deposit has been transferred to the new landlord. *Id.*

Mr. Brown was responsible for having Mr. Dydo transfer the security deposit "escrow account" into his name, upon termination of Mr. Dydo's interest in the property. The burden of not complying with this requirement cannot be passed on to the tenant, by making him sue a third party former landlord.

Appellant Mr. Kuhn need not file a counterclaim or separate claim to "offset" the withheld rent money for the withheld security deposit. As stated previously, the purpose of Vermont's small claims court is to provide a simple, informal and inexpensive procedure for determining small claims actions. *Cold Springs Farm Development, Inc. v. Ball*, 163 Vt. 466, 469 (1995). Litigants are encouraged to appear *pro se*, and since a great majority of them are untrained in the law, the proceedings are to be as simple and untechnical as possible. *Ferris-Prabhu v. Dave & Son, Inc.*, 142 Vt. 479, 480 (1983) (citing 12 V.S.A. § 5536). Indeed, the litigants in this matter appeared *pro se*.

For Mr. Kuhn's purposes, it is immaterial that Mr. Brown did not secure the "escrow account" from Mr. Dydo. That is a dispute between Mr. Brown and Mr. Dydo, as the transfer of security deposits was required under 9 V.S.A. § 4461(f).

Mr. Kuhn was required to pay rent for his final month in the amount of \$750.00. Mr. Brown was required under Vermont law to return the deposit to Mr. Kuhn in the amount of \$750.00. The court found that there was no damage to the property by Mr. Kuhn. The rent and security deposit "offset" each other.

ORDER

The decision of the Small Claims Court is REVERSED and Judgment is entered for the APPELLANT. Accordingly, neither party will take anything and each party will bear their own costs.

Dated at Rutland, Vermont this _____ day of _____, 2009.

Hon. William Cohen
Superior Court Judge