SUPREME COURT OF NEW HAMPSHIRE

Miller v. Slania Enterprises, Inc.

150 N.H. 655 (2004) · Decided March 15, 2004

SUMMARY

The New Hampshire Supreme Court affirmed an award of damages arising from a landlord's unlawful eviction. It held that the landlord's acceptance of payment for rent through the end of the lease term created a new or renewed tenancy, requiring compliance with eviction procedures before removing the tenants. The court also upheld damages for the unlawful eviction and unjust enrichment based on the landlord's retention of May rent.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Broderick, C.J.; Nadeau, J.; Dalianis, J.; Duggan, J.
JURISDICTION	New Hampshire
DECIDED	March 15, 2004
DISPOSITION	affirmed
PROCEDURAL POSTURE	The landlord appealed the Durham District Court's judgment awarding the tenant damages for an unlawful eviction, unjust enrichment, and improper security-deposit deductions.
STANDARD OF REVIEW	Findings of fact are not disturbed unless unsupported by the evidence; legal conclusions and the application of law to fact are reviewed independently for plain error; questions of law are reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Slania Enterprises, Inc. v. Joseph Miller

TOPICS

eviction · landlord tenant · quiet enjoyment · unjust enrichment · statutory interpretation

PRACTICE AREAS

landlord-tenant law · real estate litigation · contracts · consumer protection · civil procedure · remedies

QUESTIONS PRESENTED

1. Whether the trial court could award relief based on the landlord's violation of RSA 540:13, VII when the theory was not expressly pleaded but was litigated without timely objection.
2. Whether acceptance of the April rent arrearage and May rent after issuance of the writ of possession created a new or renewed tenancy requiring the landlord to follow new eviction procedures.
3. Whether the landlord acted willfully in violating the tenants' statutory right to quiet enjoyment and in circumventing lawful eviction procedures.
4. Whether the trial court's ruling concerning the timeliness of the security-deposit itemization constituted reversible error.
5. Whether the landlord was entitled to May rent damages under the original lease's savings clause or general contract law, and whether retaining the May rent constituted unjust enrichment.

HOLDINGS

1. The trial court did not commit reversible error by considering the statutory new-tenancy issue even though the plaintiff had not expressly pleaded it.
2. Regardless of whether RSA 540:13, VII applied after entry of judgment and issuance of the writ, acceptance of the $3,200 payment and the agreement allowing the tenants to remain until May 25 created a new or renewed tenancy.
3. A landlord may not use a writ of possession issued for a terminated tenancy to evict tenants from a new or renewed tenancy, even if the new tenancy incorporates prior lease terms and the tenants allegedly violated those terms.
4. The evidence supported the finding that the landlord acted willfully in violating the tenants' rights and circumventing lawful eviction procedures.
5. The landlord was not entitled to retain the $2,000 May rent or recover that amount under the savings clause or general contract law, and retaining it after the unlawful eviction constituted unjust enrichment.
6. Any error in ruling that the May 31 security-deposit itemization was untimely was harmless because the trial court awarded no damages for the late notice.

KEY QUOTATIONS

> *"We conclude that in this case, regardless of whether RSA 540:13, VII applies, a new or renewed tenancy was created that required the landlord to again comply with the procedures in RSA chapter 540 to evict the tenants."* (at 661)

> *"No lease or rental agreement, oral or written, may contain any provision by which a tenant waives any of his or her rights under RSA chapter 540, and any such waiver is null and void."* (at 662)

> *"After the landlord received the check for $3,200 on April 25, it caused the unlawful eviction of the tenants on May 1, denying them occupancy of the apartment for which they had paid."* (at 664)

FACTUAL BACKGROUND

The landlord obtained a default judgment and writ of possession for the tenants' failure to pay April 2002 rent. After that judgment and writ, the landlord's representative accepted a $3,200 check covering the April arrearage and May rent in exchange for allowing the tenants to remain until May 25, but the landlord did not tell them that it would proceed with the eviction despite accepting payment. The landlord then caused the sheriff to execute the old writ, and the tenants vacated on May 1. The landlord retained the May rent and withheld the tenants' security deposit based on claimed charges.

PROCEDURAL HISTORY

The Durham District Court found that the landlord's acceptance of a $3,200 payment after issuance of a writ of possession created a new or renewed tenancy. It ruled that the landlord unlawfully evicted the tenants using a writ issued for the prior tenancy, awarded $1,000 for the unlawful eviction, $600 in attorney's fees, $1,353.72 for improper security-deposit deductions, and $2,000 for unjust enrichment based on retention of May rent. The landlord's motion for reconsideration was denied, and the Supreme Court of New Hampshire affirmed.

DISPOSITION

affirmed

CASES CITED

- Sherryland v. Snuffer, 150 N.H. 262, 265 (2003)
- Penrich, Inc. v. Sullivan, 140 N.H. 583, 590 (1995)
- Kravitz v. Beech Hill Hospital, 148 N.H. 383, 393 (2002)
- Corcoran Management Co., Inc. v. Withers, 513 N.E.2d 218, 222-23 (Mass. App. Ct. 1987)
- Havington v. Glover, 143 N.H. 291, 293-94 (1998)
- Rood v. Moore, 148 N.H. 378, 379 (2002)
- Johnson v. Wheeler, 146 N.H. 594, 597 (2001)
- Vogel v. Vogel, 137 N.H. 321, 322 (1993)