

SUPREME COURT OF NEW HAMPSHIRE

Lally v. Flieder, 159 N.H. 350

986 A.2d 652 (2009) · No. No. 2008-917 · Decided October 30, 2009

SUMMARY

The New Hampshire Supreme Court held that cable television is a protected utility service under RSA 540-A:3, I, which prohibits landlords from willfully interrupting utility services as a self-help eviction tactic. The court reversed the dismissal of the tenant's claim and remanded for further proceedings, including consideration of whether the landlord unlawfully attempted to evict the tenant under RSA 540-A:2.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Hicks, J.; Broderick, C.J.; Dalianis, J.; Duggan, J.; Conboy, J.
JURISDICTION	New Hampshire
DECIDED	October 30, 2009
DOCKET	No. 2008-917
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The plaintiff appealed the Concord District Court's dismissal of his RSA chapter 540-A action after the court ruled that cable television was not a protected utility service and granted the defendant a writ of possession.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo.
PRECEDENTIAL VALUE	Published New Hampshire Supreme Court opinion; precedential.
PARTIES	Christopher Lally v. Lauren Flieder

TOPICS

- landlord tenant
- eviction
- statutory interpretation
- civil procedure
- remedies

PRACTICE AREAS

- Landlord-tenant law
- New Hampshire statutory interpretation
- Civil procedure
- Eviction remedies

QUESTIONS PRESENTED

1. Whether cable television service is a protected utility service under RSA 540-A:3, I.
2. Whether Flieder attempted to unlawfully evict Lally in violation of RSA 540-A:2.

HOLDINGS

1. Cable television is a protected utility service under RSA 540-A:3, I, and a landlord's unlawful termination of that service may constitute a prohibited self-help eviction tactic.

KEY QUOTATIONS

"Therefore, we hold that cable television is a protected utility service under RSA 540-A:3, I." (986 A.2d at 654)

FACTUAL BACKGROUND

Lally rented an apartment from Flieder as a month-to-month tenant without a written lease. After the parties agreed that the tenancy would end in August 2008, Flieder served Lally with an eviction notice, and Lally remained in the apartment through the end of August. After filing an eviction action, Flieder disconnected a cable connection to the apartment; she testified that she had learned the connection was illegal. Lally claimed the disconnection was an unlawful self-help eviction tactic and sought relief under RSA chapter 540-A.

PROCEDURAL HISTORY

Lally rented an apartment from Flieder as a month-to-month tenant. After Flieder terminated the cable service to the apartment, Lally filed a petition under RSA chapter 540-A. The Concord District Court granted Flieder's petition for a writ of possession and dismissed Lally's action. The New Hampshire Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court was instructed to conduct further proceedings on Lally's RSA 540-A:3, I claim and to consider whether Flieder attempted to unlawfully evict Lally in violation of RSA 540-A:2, in light of the opinion.

CASES CITED

- In re Estate of King, 149 N.H. 226, 230, 817 A.2d 297 (2003)
- Kenison v. Dubois, 152 N.H. 448, 451, 879 A.2d 1161 (2005)
- Dalton Hydro v. Town of Dalton, 153 N.H. 75, 78, 889 A.2d 24 (2005)
- State v. Njogu, 156 N.H. 551, 553, 937 A.2d 887 (2007)