

SUPREME COURT OF NEW HAMPSHIRE

Colonial Village, Inc. v. Pelkey

157 N.H. 91 (2008) · Decided April 4, 2008

SUMMARY

The New Hampshire Supreme Court held that a landlord's acceptance of future rent does not necessarily create a new tenancy or waive the landlord's right to proceed with an eviction. Notice to the tenant that the landlord intended to continue eviction proceedings despite accepting rent supported the eviction. The court distinguished *Miller v. Slania Enterprises* and affirmed the trial court's judgment for possession.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Dalianis, J.; Broderick, C.J.; Duggan, J.; Galway, J.; Hicks, J.
JURISDICTION	New Hampshire
DECIDED	April 4, 2008
DISPOSITION	affirmed
PROCEDURAL POSTURE	Tenant appealed the Manchester District Court's order granting the landlord possession of the apartment after the landlord accepted future rent following service of a notice to quit.
STANDARD OF REVIEW	The Supreme Court will not disturb trial-court findings unless they lack evidentiary support or are erroneous as a matter of law. Legal conclusions and the application of law to fact are reviewed independently for plain error, and questions of law are reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Robert Pelkey v. Colonial Village, Inc.

TOPICS

- eviction
- landlord tenant
- waiver
- civil procedure
- real estate

PRACTICE AREAS

- landlord-tenant law
- eviction
- real estate
- civil procedure

QUESTIONS PRESENTED

1. Whether a landlord's acceptance of future rent after providing notice that the eviction would proceed necessarily waives the notice to quit and creates a new tenancy.
2. Whether the landlord's pre-notice letter was sufficient to inform the tenant that acceptance of future rent would not waive the landlord's right to evict.
3. Whether RSA 540:13, VII permits a landlord to accept future rent without creating a new tenancy.

HOLDINGS

1. A landlord's acceptance of future rent does not necessarily create a new tenancy or waive the right to evict. Whether acceptance of rent waives the right to proceed with eviction depends on the circumstances, including evidence that the landlord intended to continue the eviction proceedings.
2. The landlord's July 12, 2006 letter, sent after dismissal of the first eviction proceeding and before initiation of the second proceeding, sufficiently notified the tenant that acceptance of future rent would not waive the landlord's right to evict.
3. RSA 540:13, VII does not govern a landlord's acceptance of future rent; it provides a safe harbor only for acceptance of rental arrearages in specified nonpayment eviction circumstances when the tenant is notified that payment will not stop the eviction proceeding.

KEY QUOTATIONS

“A landlord’s acceptance of future rent does not necessarily create a new tenancy.” (157 N.H. at 93)

“However, all agree that where there is evidence that a landlord intended to continue with eviction proceedings, a new tenancy is not created.” (157 N.H. at 94)

FACTUAL BACKGROUND

Colonial Village and Robert Pelkey entered into consecutive residential leases from 2002 through 2005. After the landlord served a notice to quit in September 2005, it accepted rent, and the first eviction action was dismissed. Before commencing a second eviction proceeding, the landlord sent Pelkey a letter stating that acceptance of future rent would not waive its right to issue a notice to quit; it then served a new notice to quit and continued accepting rent. The district court found that the landlord had informed Pelkey that the eviction would proceed even if rent was paid and granted the landlord possession.

PROCEDURAL HISTORY

The landlord first served the tenant with a notice to quit and then accepted rent. The first eviction action was dismissed after the trial court determined that the circumstances did not overcome the presumption that acceptance of rent waived the eviction. Before initiating a second eviction proceeding, the landlord sent the tenant written notice that acceptance of future rent would not waive its right to issue a notice to quit. After a second notice to quit and continued acceptance of rent, the district court found good cause for eviction and granted the landlord possession. The New Hampshire Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Miller v. Slania Enterprises, 150 N.H. 655 (2004)
- Corcoran Management Co. v. Withers, 513 N.E.2d 218 (Mass. App. Ct. 1987)
- Wang v. Marcus Brush Co., 823 N.E.2d 140 (Ill. App. Ct. 2005)

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