

VERMONT SUPERIOR COURT, CIVIL DIVISION, WINDHAM UNIT

PE2 Housing LP v. Dylan Baker

PE2 Housing LP v. Baker · No. 25-CV-05036 · Decided May 27, 2026

SUMMARY

The Vermont Superior Court, Windham Unit, denies both Defendant Dylan Baker’s motion to dismiss and Plaintiff PE2 Housing LP’s motion to require rent payments into court in an ejectment action for nonpayment of rent. The court holds that a notice of termination for nonpayment need not state the tenant’s right to cure absent a statutory requirement, although any cure information included must be accurate. The court further concludes that an order requiring rent to be paid into court requires proof that the tenancy was terminated, that rent is owed, and that the tenant failed to pay; Plaintiff did not prove lawful termination at the hearing.

CASE DETAILS

COURT	Vermont Superior Court, Civil Division, Windham Unit
WRITING FOR THE COURT	John R. Treadwell; Carolyn Partridge; Lamont Barnett
JURISDICTION	Vermont Superior Court, Civil Division, Windham Unit
DECIDED	May 27, 2026
DOCKET	25-CV-05036
DISPOSITION	other
PROCEDURAL POSTURE	In an ejectment action based on alleged nonpayment of rent, the tenant moved to dismiss for failure to properly terminate the lease, and the landlord moved for an order requiring rent to be paid into court under 12 V.S.A. § 4853a. The court denied both motions and scheduled a hearing on the merits.
STANDARD OF REVIEW	For the Rule 12(b)(1) motion, the court assumed the nonmoving party's factual allegations were true and accepted reasonable inferences, dismissing only if no facts or circumstances could entitle the plaintiff to relief. For the rent-escrow motion, the landlord bore the burden of proving the required elements by a preponderance of the evidence.
PRECEDENTIAL VALUE	Unpublished Vermont Superior Court trial-level decision; persuasive authority only unless otherwise provided by Vermont law.

TOPICS

ejectment

landlord tenant

motions to dismiss

statutory interpretation

eviction

PRACTICE AREAS

landlord-tenant law

ejectment

civil procedure

statutory interpretation

housing law

QUESTIONS PRESENTED

1. Whether the complaint should be dismissed for lack of subject matter jurisdiction because the lease was allegedly not properly terminated.
2. Whether a notice of termination for nonpayment must state the tenant's right to cure.
3. Whether the term "rental period" in Vermont's rent-increase statute refers to the lease term or the period for which a particular rent payment is owed.
4. What the landlord must prove to obtain an order requiring rent to be paid into court under 12 V.S.A. § 4853a.
5. Whether the landlord proved that the tenancy was lawfully terminated when the termination notice calculated the cure amount using a rent increase whose LIHTC authorization was not established.

HOLDINGS

1. A landlord must terminate the tenancy in the manner required by law, including providing actual notice of termination, before bringing an ejectment action; continued possession after a lawful termination is a necessary predicate to the action.
2. Because 9 V.S.A. § 4467 does not expressly require a notice of termination for nonpayment to state the tenant's right to cure, the notice need not include that information.
3. When rent is paid monthly, "rental period" means the specific period for which a rent payment is owed, such as the month, rather than the entire term of the lease.
4. To obtain an order requiring a tenant to pay rent into court, a landlord must prove by a preponderance of the evidence that the tenant remains in possession after termination of the lease, is obligated to pay rent, and has failed to pay it.
5. The landlord did not prove lawful termination because the termination notice stated cure and rent amounts based on a rent increase whose compliance with LIHTC limitations was not established; the potentially inaccurate cure amount materially invalidated the notice.

KEY QUOTATIONS

"Thus, this court concludes that a landlord seeking an order for a tenant to pay rent into court must establish: 1. That tenant maintains possession of the premises after termination of the lease; 2. That tenant is obligated to pay rent; and, 3. That tenant has failed to do so." (at 7-8)

“It is hard to imagine a defect that would have a more meaningful and practical effect than a potential inaccuracy in the amount necessary to cure and, thus, to discontinue this ejectment proceeding.” (at 13)

FACTUAL BACKGROUND

PE2 Housing's predecessor entered into a one-year lease with Dylan Baker for a Vermont apartment subject to Low-Income Housing Tax Credit rent restrictions. The landlord increased the monthly rent from \$739 to \$761 and later sent a termination notice demanding payment of amounts calculated using the increased rent. Baker did not pay the demanded amount and remained in possession. At the rent-escrow hearing, the landlord presented no evidence establishing that the rent increase complied with the applicable LIHTC limitations, leaving the amount necessary to cure potentially inaccurate.

PROCEDURAL HISTORY

PE2 Housing LP filed an ejectment action seeking possession of the premises after alleged nonpayment of rent. The court held a hearing on the landlord's rent-escrow motion on April 13, 2026, received testimony and exhibits, and considered the parties' memoranda. It denied the tenant's motion to dismiss because the complaint satisfied the applicable pleading standard, and denied the landlord's rent-escrow motion because the landlord did not prove that the tenancy had been lawfully terminated.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand was ordered. The matter will be set for a hearing on the merits of the complaint.

CASES CITED

- Vermont Small Bus. Dev. Corp. v. Fifth Son Corp., 2013 VT 7, ¶ 5
- In re Soon Kwon, 2011 VT 26, ¶ 14
- Andrus v. Dunbar, 2005 VT 48, ¶¶ 9-15, 178 Vt. 554
- Sabourin v. Woish, 116 Vt. 385, 387 (1950)
- Crestmark Inc. v. Tuliper, 2025 WL 2380235, at *1-2 (Vt. Super. Ct., Rut. Civ. Div. July 30, 2025)
- Garcia v. Birch, 2024 WL 4328592, at *2 (Vt. Super. Ct., Cal. Civ. Div. Aug. 30, 2024)
- Swanson v. Gilmartin, 2012 WL 13257779, at *2 (Vt. Super. Ct., Orange Civ. Div. May 3, 2012)
- Giancola v. Boyd, 2024 WL 5159642, at *3 (Vt. Super. Ct., Rut. Civ. Div. Dec. 10, 2024)
- Tyler v. Elbersen, No. 21-CV-01041 (Vt. Super. Ct. Dec. 6, 2021)
- Crompton v. Ball, No. 686-10-05 Rdcv (Vt. Super. Ct. Dec. 15, 2005)
- Mills v. Smart, No. 155-6-97 Bncv (Vt. Super. Ct. July 9, 1997)
- Barnet Tradepost, LLC v. Alden, No. 22-CV-02437, 2022 WL 19002742 (Vt. Super. Ct. Nov. 9, 2022)
- Corse v. Pickett, 2016 WL 1167745, at *1 (Vt. Super. Ct., Orange Civ. Div. Feb. 2, 2016)

- Stearns v. Mondell, 2024 WL 409037, at *1 (Vt. Super. Ct., Winds. Civ. Div. Jan. 11, 2024)
- Rockport Schooner Co. v. Rockport Whale Watch Corp., 789 N.E.2d 151, 152 (Mass. Ct. App. 2003)
- Elizabeth's Pine West, LLC v. Francis, 2026 WL 491059, at *1 (Vt. Super. Ct. Feb. 9, 2026)
- Boyer v. Bedrosian, 57 A.3d 259, 270 (R.I. 2012)
- Gandhi-Kapoor v. Hone Cap. LLC, 307 A.3d 328, 340-41 (Del. Ch. Ct. 2023), as corrected (Dec. 4, 2023), aff'd sub nom. CSC Upshot Ventures I, L.P. v. Gandhi-Kapoor, 326 A.3d 369 (Del. 2024)
- Off. of Auditor of Accts. v. Off. of Att'y Gen., 2025 VT 36, ¶ 8
- Conley v. Crisafulli, 2010 VT 38, ¶ 3
- Bleich v. Bleich, 981 N.W.2d 801, 806 (Neb. 2022)
- Wool v. Off. of Prof. Regul., 2020 VT 44, ¶ 8, 212 Vt. 305, 236 A.3d 1250
- Murray v. City of Burlington, 2012 VT 11, ¶ 2, 191 Vt. 597, 44 A.3d 162
- Housing Our Seniors in Vermont Inc. v. Agency of Com. & Cmty. Dev., 2024 VT 12, ¶ 11
- Kaplan v. Morgan Stanley & Co., Inc., 2009 VT 78, ¶ 10 n.4, 186 Vt. 605
- Davis v. Am. Legion, Dep't of Vt., 2014 VT 134, ¶ 13, 198 Vt. 204
- Pigeon v. Stone, 2025 WL 1913248, at *5 (Vt. July 11, 2025) (unpub. mem.)
- Mad Partners, LLC v. Fifth Son Corp., 2012 WL 8899890, at *2 (Vt. Super. Ct., Wash. Civ. Div. Apr. 12, 2012)
- In re M.L., 2010 VT 5, ¶ 25
- Livanovitch v. Livanovitch, 99 Vt. 327, 328 (1926)
- In re Smith, 169 Vt. 162, 174 (1999)
- Est. of Daniels by & through Lyford v. Goss, 2022 VT 2, ¶ 11
- State v. A.P., 2021 VT 90, ¶ 12
- Robes v. Town of Hartford, 161 Vt. 187, 194 (1993)
- 32 Intervale, LLC v. City of Burlington, 2026 VT 9, ¶ 21
- Tarrant v. Department of Taxes, 169 Vt. 189, 197 (1999)
- Off. of Child Support ex rel. Lewis v. Lewis, 2004 VT 127, ¶ 7
- Jud. Watch, Inc. v. State, 2005 VT 108, ¶ 16
- Taylor-Hurley v. Mingo County Bd. of Educ., 551 S.E.2d 702, 710 (W. Va. 2001)
- Colwell v. Allstate Ins. Co., 2003 VT 5, ¶ 11
- Billewicz v. Town of Fair Haven, 2021 VT 20, ¶ 28
- Gibbons v. Bristol-Myers Squibb Co., 919 F.3d 699, 706 (2d Cir. 2019)
- Encompass Ins. Co. v. Stone Mansion Rest. Inc., 902 F.3d 147, 152 (3d Cir. 2018)