

NH-1008

Docket No: NHH-CV24-6022461-S

ECR 2 LLC

v.

Raschid Thompson

CLERK'S OFFICE  
SUPERIOR COURT  
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SUPERIOR COURT  
HOUSING SESSION  
AT NEW HAVEN  
HOUSING SESSION  
AT NEW HAVEN  
June 3, 2024

**Memorandum of Decision After Trial**

Plaintiff, ECR 2 LLC, brought a summary process action for non-payment of rent against Defendant, Raschid Thompson, seeking to recover possession of the premises located at 51 Whiting Street, Unit #5 in Hamden, Connecticut. The complaint asserts the failure to pay rent when due or within the grace period provided for the property. Defendant filed an answer and claimed, as special defenses, that 1) he had cured the non-payment prior to the quit date and 2) the equitable defense against forfeiture precludes eviction in this case. The case was tried on May 24, 2024.<sup>1</sup> Both parties were represented by counsel. Plaintiff submitted as evidence a copy of the lease agreement (Exhibit 1), copies of money orders issued on April 3, 2024 for the defendant's portion of rent for January through April of 2024 (Exhibit 2), a copy of the Notice to Quit, dated February 28, 2024, including the return of service (Exhibit 3), a letter to the New Haven Housing Authority informing it of the Notice to Quit served on the defendant (Exhibit 4), and the defendant's tenant ledger (Exhibit 5). Defendant submitted an email from Plaintiff's property manager regarding Defendant's payment status as of April 5, 2024.

The Court fully considered and weighed all of the testimony and evidence received at trial; evaluated the credibility of the witnesses; assessed the weight, if any, to be given specific evidence and measured the probative force of conflicting evidence; has drawn such inferences from the evidence, or facts established by the evidence, that it deems reasonable and logical; reviewed and considered all the relevant pleadings, evidence, and law, as well as balanced the equitable positions of the parties.

The Court finds that Plaintiff has proven, by a fair preponderance of the evidence, all of the essential elements of the case based on non-payment of rent. The Court also finds that Defendant has failed to prove, by a fair preponderance of the evidence, his special defenses. Accordingly, the Court enters judgment for Plaintiff for immediate possession with a stay of execution through July 31, 2024.

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<sup>1</sup> Defendant's motion for summary judgment, heard on the same day of trial, was denied as there was a genuine issue of material fact as to whether Defendant had fully paid his arrears prior to the quit date and whether the equitable doctrine against forfeiture applied. The Court also denied Defendant's motion to stay, which was filed after the denial of his motion for summary judgment, and oral motion to preclude evidence, which was raised after Defendant's motion to stay was denied.

## FINDINGS OF FACT

Based on the testimony and evidence presented, the Court makes the following findings:

Defendant is a veteran who was honorably discharged after serving in the United States Air Force from 1993 to 1997. He receives Veterans Affairs disability benefits as well as rental assistance and a case management counselor through the U.S. Department of Housing and Urban Development-VA Supportive Housing (HUD-VASH) program.

Plaintiff is the owner-landlord of 51 Whiting Street, Unit 5 in Hamden (the premises). Plaintiff entered into a written lease agreement with Defendant for the use and occupancy of the premises from December 15, 2023 until November 30, 2024. The total monthly rent is \$1,340 per month due on the first of the month with a nine-day grace period. Defendant's portion is \$93 per month and HUD-VASH pays the balance.

Defendant paid his portion of the prorated rent upon the signing of the lease in December, but did not immediately move in due to a rodent and cockroach infestation. He informed Plaintiff's property manager, Christina Young, of the infestation, which was promptly remediated. In January, Defendant moved in and noticed additional issues with the apartment, including not having a mailbox key and a crack in the door that allows rodents to enter. As a result of these problems, Defendant did not pay rent in January. By February, Defendant still did not have a mailbox key, and so, did not pay February rent. When he was assessed a late fee, Defendant complained by phone to Young. Young told Defendant that he should make his complaint through Plaintiff's online portal and that she would remove the late fee. After Defendant used the portal to inform Plaintiff only about the mailbox key, he received a key within 24-48 hours. After the mailbox key issue was resolved, Plaintiff re-issued the \$50 late fee when Defendant still did not pay February rent.

The relationship between Defendant and Young continued to deteriorate and broke down completely after Defendant called Young a vulgar name when she texted him about his late rent payments. Thereafter, Young decided that all communications regarding the premises would take place through Defendant's HUD-VASH counselor. Defendant's counselor did communicate the continuing issues with the premises, including a clogged kitchen sink and dishwasher, and malfunctioning outlets, but Defendant did not use online portal to notify Plaintiff about them and no work orders were placed for those issues. Instead, Defendant contacted Hamden Housing Authority and asked for an inspection. The inspection took place on May 9, and confirmed some of Defendant's complaints, requiring Plaintiff to correct them.

Defendant was served a notice to quit by abode service on March 2, 2024 for “nonpayment of rent within the grace period provided for residential property” with a quit date of April 7. The notice also indicated that any future payments would be accepted “for reimbursement of costs and for use and occupancy only.” A letter was also sent to the New Haven Housing Authority, as Section 8 Rental Assistance Administrator, that a notice to quit had or would be served on Defendant. Defendant, however, did not receive the notice until March 10, as he was out of town. Upon receipt, Defendant reached out to his HUD-VASH counselor for advice. At some point prior to April 3, Young communicated to Defendant and his HUD-VASH counselor that in addition to Defendant’s portion of the rent from January to April, he would also have to pay \$375 to reimburse Plaintiff for the legal fees associated with serving the notice to quit. On April 3, Defendant purchased and mailed to Plaintiff’s attorney four money orders for \$93 each and indicated that they were for January through April rent. On April 5, Young emailed Defendant and HUD-VASH counselor informing them that she had received the money orders and indicating that they could only be accepted as use and occupancy payments. She further indicated that \$375 fee remained, which would increase to \$1600 after April 7. Defendant agreed to the payments being use and occupancy, but has not paid the \$1600 legal fees or \$50 late fee. He remains in possession of the premises.

#### DISCUSSION

“Summary process is a special statutory procedure designed to provide an expeditious remedy. . . . It enable[s] landlords to obtain possession of leased premises without suffering the delay, loss and expense to which, under the common-law actions, they might be subjected by tenants wrongfully holding over their terms.” *Pollansky v. Pollansky*, 144 Conn. App. 188, 191 (2013). The standard of proof in summary process actions, a fair preponderance of the evidence, is “properly defined as the better evidence, the evidence having the greater weight, the more convincing force in your mind.” (Internal quotation marks omitted.) *Cross v. Huttenlocher*, 185 Conn. 390, 394 (1981).

To prevail on a claim for nonpayment of rent, Plaintiff must establish the following essential elements: (1) a rental agreement; (2) that Plaintiff is the lessor or owner of the subject premises; (3) the address of the subject premises; (4) the amount of rent due to Plaintiff from Defendant; (5) when the rent was due to Plaintiff; (6) the date of the nonpayment; (7) the service of the notice to quit, as well as its service date and termination date; and (8) that Defendant is still in possession. General Statutes § 47a-15a *et seq.* The court finds that Plaintiff has proved by a fair preponderance of evidence, all the elements of the case.

The Court now considers the special defenses raised by Defendant. “The purpose of a special defense is to plead facts that are consistent with the allegations of the complaint but demonstrate, nonetheless, that the plaintiff has no cause of action.” *Deutsche Bank National Trust Co. v. Bretoux*, 225 Conn. App. 455, 463 (2024).

“[T]he party raising a special defense has the burden of proving the facts alleged therein.” *Id.* Defendant bears the burden of proving the allegations in his special defenses by a fair preponderance of the evidence. *O & G Indus., Inc. v. American Home Assurance Co.*, 204 Conn. App. 614, 625 (2021).

Defendant contends in his first special defense that he had the right to cure, and did cure, his non-payment prior to the April 7 quit date when he sent four money orders to Plaintiff’s counsel via certified mail for his portion of rent that was due for January through April. He argues that the Court should apply the contract law principle articulated in *Centerplan Construction Co., LLC v. City of Hartford*, 343 Conn. 368, 412 (2022), that when a contract is silent as to notice and cure rights, the right to cure is implied unless expressly waived.

That principle is inapplicable to this case as the lease agreement is not silent as to Defendant’s notice and cure rights. Section 1.3 of the lease agreement states that Defendant “must pay your rent on or before the 1st day of each month within 10 days of grace period. . . . If you don’t pay your rent on time, you’ll be delinquent and all remedies under this Lease Contract will be authorized.” Similarly, section 4.2 of the lease agreement states: “You’ll be in default under this lease agreement if you do not make every rent payment by the tenth (10th) calendar day of the month when such payment is due or if you. . . violate[] any terms of this Lease Contract including but not limited to the following violations: failure to pay rent or other amounts that you owe when due . . . . If you are in default for any reason, we, at our option, pursue any and all remedies available to us pursuant to Connecticut law.” These provisions are consistent with General Statutes § 47a-15a which defines a grace period as the nine-day time period after the first day that rent is due and unpaid.

By the provisions of the lease agreement and state law, Plaintiff was required to allow Defendant an opportunity to cure his non-payments within nine days after the beginning of each month when his portion of the rent payments became due. Plaintiff could have chosen to accept payment after the 10th day but before the notice to quit was served. Once the notice to quit, which stated that any future payments would be for use and occupancy only, was served, however, Defendant’s opportunity to cure was extinguished. *See Towers v. Kelly*, 199 Conn. App. 829, 841 (2020) (“[I]t is well established that service of a notice to quit possession pursuant to § 47a-23 is typically an unequivocal act terminating a lease agreement with a tenant. . . . [A] notice to quit under § 47a-23 terminates the lease agreement, and there is no opportunity to remedy the violation.”). Because Defendant did not pay his rent portion prior to service of the notice to quit, his special defense must fail.

Defendant contends in his second special defense that the Court should exercise its equitable powers to prevent an unjust forfeiture of Defendant’s possessory interest in the premises under *Fellows v. Martin*, 217 Conn. 57, 66-67 (1991). He claims that

his intentional withholding of rent was based on his housing conditions and his ignorance of the prohibition against self-help. Defendant further asserts that once he received the notice to quit, he sought advice, and paid use and occupancy for January through April. He maintains that as a disabled veteran with case management who will likely become homeless if evicted, the pursuit of summary process is unethical, immoral, unreasonable and unkind. Defendant has not established by a preponderance of the evidence that the Court should exercise its equitable powers under these circumstances.

“The doctrine of equitable nonforfeiture is a defense implicating the right of possession that may be raised in a summary process proceeding, and is based on the principle that [e]quity abhors . . . a forfeiture. . . . Equitable principles barring forfeitures may apply to summary process actions for nonpayment of rent if: (1) the tenant’s breach was not [wilful] or grossly negligent; (2) upon eviction the tenant will suffer a loss wholly disproportionate to the injury to the landlord; and (3) the landlord’s injury is reparable.” (Citation omitted; internal quotation marks’ omitted.) *Boccanfuso v. Daghoghi*, 337 Conn. 228, 239–40 (2020).

“A court of equity will apply the doctrine of clean hands to a tenant seeking such equitable relief; thus, a tenant whose breach was ‘wilful’ or ‘grossly negligent’ will not be entitled to relief.” *Fellows v. Martin*, supra, 217 Conn. 67. “In circumstances involving the nonpayment of rent, we have construed strictly this threshold requirement in deciding whether to grant equitable relief.” *Cumberland Farms, Inc. v. Dairy Mart, Inc.*, 225 Conn. 771, 778 (1993). Thus, “[a] tenant’s intentional nonpayment of rent does not require a finding that the nonpayment is wilful under the equitable nonforfeiture doctrine if nonpayment is accompanied by a good faith intent to comply with the lease or a good faith dispute over the meaning of a lease.” *Boccanfuso v. Daghoghi*, supra, 337 Conn. 241–42.

In the present case, Defendant has not produced any evidence that his intentional nonpayment of rent was accompanied by a good faith intent comply with the lease or a good faith dispute over the meaning of the lease. The lease provides the procedure for reporting housing conditions issues to Plaintiff. Section 3.2 of the lease agreement requires Defendant to “report any damage or problem immediately upon discovery” and indicates that Plaintiff’s compliance with or response to “any oral request regarding security or nonsecurity matters doesn’t waive the strict requirement for written notices under this Lease Contract. You must promptly notify us in writing of: water leaks; electrical problems; malfunctioning lights; broken or missing locks or latches or other conditions that pose a hazard to the property, or your health, or safety.” Defendant not only signed the lease containing this provision, but actually used the procedure to resolve his mailbox key issue. Defendant told Young that he did not pay February rent and should not have a late fee because he had not yet received a mailbox key. She informed him that he needed to use the online portal to make a request and removed the late fee. Once Defendant

did, Plaintiff resolved the mailbox key issue in 24-48 hours. But, even after the reason for the withholding, his lack of a mailbox key, was fully resolved, Defendant still did not pay his February rent. In fact, he did not pay February rent until after the notice to quit was issued. Defendant's actions do not demonstrate a good faith intent to comply with the lease. Defendant was well aware of the process for prompt remediation of any housing conditions, but he presented no evidence that he ever sought to engage in that process again. Instead, he waited another nearly 2 ½ months, not to request redress of his housing problems through the online portal, but to file a complaint with the Hamden Housing Authority.

This case is distinguishable from *Fellows*. In that case, the defendant withheld \$25 from her rent payment because she disputed whether she was required to pay for parking accommodations if the landlord breached the lease. *Fellows v. Martin*, supra, 217 Conn. 69. The Court found that the defendant's mistaken belief that she had the right to withhold rent was a mistake of law, rather than wilfulness. *Id.*, 68.

Here, Defendant does not claim that he is not required to pay his portion of the rent nor could he claim, or prove, that Plaintiff breached the lease agreement. Defendant chose not to use Plaintiff's official reporting system after the mailbox key issue was resolved, which would have triggered Plaintiff's obligations to fix any issues. He was so aggressive towards Young that she refused to interact with him directly. Even if Defendant and Young could not communicate with each other, due to Defendant's own actions, nothing prevented him from continuing to use the online portal to seek resolution of his housing condition issues. Such actions demonstrate that Defendant's nonpayment was wilful, and he was not acting with clean hands. Therefore, Defendant's second special defense fails.

Having taken into account the submissions of the parties, considered and evaluated this matter and in balancing the equities as well, as this Court is required to do, the Court enters judgment in favor of Plaintiff. However, the execution in this matter shall not issue until after July 31, 2024. Defendant shall continue making monthly use and occupancy to Plaintiff in the amount of \$93.00. The monthly payments shall be due by the 10th of each of month until the stay expires.

BY THE COURT,



Alayna M. Stone, Judge