THE STATE OF NEW HAMPSHIRE
SUPREME COURT

2018 TERM

Case No. 2017-0195

NATALIE ANDERSON

v.

ADAM ROBITAILLE and HOMEWOOD SUITES OF NASHUA

APPEAL OF FINAL DECISION
OF THE NEW HAMPSHIRE 9TH CIRCUIT – NASHUA - DISTRICT DIVISION

BRIEF OF APPELLEES ADAM ROBITAILLE AND HOMEWOOD SUITES OF NASHUA

Submitted by:
Karl M. Terrell, admitted *pro hac vice*
[Counsel arguing the case]

Stokes Wagner, ALC
One Atlantic Center, Suite 2400
1201 W. Peachtree Street
Atlanta, Georgia 30309
Tel: (404) 766-0076
Fax: (404) 766-8823
kterrell@stokeswagner.com

R. Brian Snow, N.H. Bar # 2388
The Stabile Center
2 Wellman Avenue
Nashua, New Hampshire 03064
Tel: 603-882-4000
pmlsnow@hotmail.com

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QUESTIONS PRESENTED

1. Whether the lower court erred in its February 21, 2017 final order, [App-241-44], by ruling that Plaintiff Natalie Anderson and her husband Andre Bisasor were not tenants under the state's landlord-tenant law, RSA 540, *et. seq.*, subject to the procedures set forth at RSA 540-A, but were instead hotel guests whose occupancy could be more summarily terminated pursuant to the grounds provided under RSA 353:3-c.
2. Whether this appeal is moot, and should be dismissed on that basis, given the following undisputed facts: (a) the sole issue before the lower court was the issue described above; (b) the nature of Plaintiff's claim made during the proceedings before the lower court in January and February of 2017, and subsequently in the Superior Court of Hillsborough County, to the effect that she had a contractual right to remain in the hotel, but *only* through the date of May 31, 2017; (c) that she and Mr. Bisasor, by their pursuits of temporary restraining orders in both the lower court and in the superior court, in fact, were successful in retaining their hotel accommodations through that date; and (d) given the Plaintiff's ongoing pursuit of contractual remedies (and other related claims) in the superior court.

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES OR REGULATIONS INVOLVED IN THE CASE

Attached Appendix at **Tab A**: Actions Against Tenants – RSA 540, *et. seq.*

Attached Appendix at **Tab B**: Hotels, Tourist Cabins, Etc. – RSA 353, *et seq.*

Attached Appendix at **Tab C**: Tax on Meals and Rooms (Definitions) – RSA 78-A:3.

STATEMENT OF THE CASE

I. The Parties

Defendant Homewood Suites by Hilton is a hotel located in Nashua ("Hotel"). The general manager of the Hotel is Defendant Adam Robitaille.

The Plaintiff, Natalie Anderson, along with her husband Andre Bisasor, were guests in the Hotel from November of 2015 through the time of the lower-court litigation at issue here, in the winter of 2017. [1]

On January 6, Mr. Robitaille asked Anderson and Bisasor to vacate the Hotel. His request was prompted by their failure to maintain their daily room-rate payments, as well as by Mr. Bisasor's conduct in the Hotel, which had led to complaints by guests and employees, including a disturbance in the lobby on January 3 that resulted in the Hotel having to call for police intervention.

II. The Proceedings in the Lower Court

Anderson initiated this case, pro se, in the 9th Circuit (District Division) Court on January 9, seeking to delay the decision to remove her and Mr. Bisasor. In so doing, she asserted a claim to tenancy and to the procedures required by RSA 540-A. Upon the filing of her action, the lower court issued an ex parte temporary order, [App-13-15], staying the Hotel's right to remove them pursuant to the state's innkeeper statute, at RSA 353:3-c.

A brief hearing was then held on January 18. Plaintiff, at that point, was represented by counsel. The parties agreed, with the court's approval, to proceed on pleadings and affidavits alone.

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1 All dates referenced in this brief were in 2017, unless otherwise noted.

[App-731; transcript, at p. 21]. Five substantive pleadings in total were submitted, some with attached affidavits and documentary evidence:

1. Defendants' Motion to Dismiss and to Vacate Ex Parte Temporary Order and Memorandum of Law, filed on January 17, with nine exhibits. [App -17-80].
2. Defendants' Supplement to Motion to Dismiss, filed on January 26, with an additional four exhibits, supported by an affidavit verifying the facts stated in the Motion to Dismiss and therein. [App -87-103].
3. Plaintiff's Objection to Motion to Dismiss, filed on February 2, supported by affidavits by Anderson and Bisasor, with exhibits. [App-113-174].
4. Defendants' Reply to Plaintiff's Objection to Defendants' Motion to Dismiss, filed on February 6. [App -184-192].
5. Plaintiff's Sur-Reply, filed on February 10. [App-197-211]. [2]

The parties further agreed to the submission of a *single issue*, as stated in the opening paragraph of the lower court's order on appeal, [App-241]: "[T]he sole issue . . . is whether the Plaintiff . . . and . . . Bisasor are tenants, entitled to the protections set forth in RSA 540-A, or a guest at the Defendant's hotel, whose occupancy can be summarily terminated pursuant to RSA 353:3-c." Defense counsel in the January 18 hearing, consistent with this agreement, acknowledged that those "statements in [the January 17 Motion to Dismiss] setting forth the reasons why we want them removed from the hotel . . . are not germane to the issue of whether they're a tenant versus a hotel guest." [App-731; transcript, at p. 21].

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[2] As shown in section III-C of the Statement of the Case, below, the so-called "Supplemental Exhibits for Plaintiff's Sur-Reply," at App-212-238, which immediately follow the Sur-Reply in the Appendix, at App-197-211, were *never* served on defendants, and were apparently never filed in the lower court. These exhibits, therefore, do not form part of the record in this case, and should be stricken along with the arguments made in reliance.

Those issues, and related issues, are instead currently being litigated in the Superior Court of Hillsborough County.

III. Statement of Material Facts from the Record

Prefatory note: The following statement of the facts, material to the single issue below, is from the verified pleaded facts, [App-17-35 and 87-88], and attached exhibits, [**A** through **N**; App-36-85 & 91-103], in the first two pleadings by Defendants, listed above.

Both pleadings were supported by the affidavit of Defendant Adam Robitaille, [App-89-90], attached to the Supplement to the Motion to Dismiss. Robitaille was the Hotel's general manager during the entirety of the Plaintiff's occupancy. He affirmed his "participat[ion] in the preparation of the Defendants' Motion to Dismiss," and verified the facts therein were based on his "personal knowledge." [3]

A. The Homewood Suites by Hilton in Nashua is a Hotel.

Homewood Suites by Hilton, as indicated by its name, is a branded 'chain' of hotels established and managed – through license agreements with hotel owners and management companies – by Hilton Worldwide, Inc. The hotels are upscale properties designed for business travelers and families who want more than just a room, and do not wish to dine in restaurants at every meal. Nonetheless, like most hotels, a breakfast is served seven days a week, in addition to buffet dinners Mondays through Thursdays, in a large common-area room with table seating which

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[3] Plaintiff has argued the Robitaille affidavit is somehow defective. The affidavit, prepared by Defendants' *pro hac vice* Georgia counsel, was reviewed and executed by the affiant and sworn before and acknowledged by a New Hampshire notary whose original signature and stamp, with expiration date of commission that appears thereon, was thus properly submitted and substantially complies with New Hampshire law. See RSA 456-B:7.

is open and adjacent to the hotel lobby and front desk. All sleeping rooms and suites contain a small kitchenette (refrigerator, sink, dishwasher, microwave and two-burner stove top). **Exhibit A** [App-36-45] is a brochure providing a look at the type and style of the hotel, prepared by Hilton for potential owners & developers. Consistent with the 'hotel' nature of Homewood Suites by Hilton, its marketing line states: "You work hard *on the road*, so we work harder to make you *feel* at home" (emphasis added).

Homewood Suites hotels, in the industry's parlance, are in the "extended-stay segment." While hotels in both extended-stay and other segments can accommodate guests wishing to stay for lengthy periods, Homewood Suites hotels are designed, by the kitchenette, to accommodate the travelers described above. By the same token, Homewood Suites hotels are fully set up to accept, and indeed do accept, purely transient guests for stays of very short duration. In fact, most guest stays at the Nashua property are of quite short, and relatively short, duration (see Robitaille affidavit, ¶ 8 and **Exhibit M**, [App-89-90 & 100-01], showing that the percentage of extended-stay guests, defined as only "five days or more," ranged in 2016 between 26% and 48%).

The Homewood Suites by Hilton in Nashua operates, in all respects, like any other hotel:

- Guests check in at the front desk, inside a traditional lobby that serves as a general reception area.
- Guests are required to provide a credit card and a permanent address.
- Guests are provided a magnetic-strip room key which, as with any hotel, is *not* held exclusively by the guest (all hotels maintain pass keys which can enter any room).
- The rooms are fully furnished, and include wall-hanging art.
- Typical hotel amenities, such as TVs, alarm/clock radios, ice buckets, coffee makers, trash baskets, soap and shampoo, are provided.

- Linens and towels are provided and are laundered and changed on a daily basis (although long-term guests can opt for these services at longer intervals).
- Daily room cleaning is provided (with an option for less frequency by long-term guests); room-cleaning staff can enter the rooms using pass-keys.
- Guests traveling with infants can be provided a crib, as well as high chairs.
- The Hotel has a business center (computer, printer, charging stations and desktop work area), one meeting room, a fitness center and a swimming pool. Ice machines are also available, conveniently located to the guest rooms.
- Guests can join the "Hilton Honors Rewards" points program. Under this program, similar to those offered by most hotel companies, points are earned by staying in Hilton-branded properties, and can be redeemed for free room-nights, room upgrades and other benefits at other Hilton-branded properties (Anderson has taken advantage of this program, and has reached the highest level – "*Diamond*").
- On-site maintenance personnel, who also carry pass keys to the rooms, can enter the rooms for repairs and maintenance.
- On-site security personnel have pass keys also and can enter the rooms as circumstances require.
- All utilities (water, heat, AC, telephone and cable TV services) are provided.
- The Hotel design is fully compliant with the Americans with Disabilities Act, Title II, under the ADA Guidelines designed specifically for hotel properties.

Guests desiring to stay at a Homewood Suites by Hilton can book their rooms through the Hilton Hotels & Resorts website/reservation system, after clicking on the "Homewood Suites by Hilton" link. Room-rates prices are set by the day and billed by the day.

When booking online, guests can make reservations for any length of stay, from a single day up to several months, and even longer. For example, see **Exhibit B** [App-46-48]: a single-night online-booking for January 20, 2017, at $129.00 ("1 KING 1 BEDROOM SUITE"). Or, as shown by **Exhibit C** [App-49-57]: a guest can book a lengthy, multi-night stay. As shown, an online-booking for January 20, 2017 to August 1, 2017, for the same room-type at a daily rate of $114.00 (note, the daily room rate is reduced).

Under the heading "Rules and Restrictions," on the second page of *both* of these website/reservation pages, the following is stated: "At check in, the front desk will verify your check-out date."

B. There is No Lease Agreement and No Security Deposit.

Of greatest importance to the case at bar, guests do not enter into a lease agreement – or into any other type of agreement – which binds the guest to any length of stay. A guest can check out whenever she pleases, just like it says in the pop song, *Hotel California*: "You can check out any time you like." [4]

Concomitantly, a guest is never charged for the nights she does not occupy the room. If a guest has paid for room-nights in advance, the guest will be reimbursed for the nights the room is not occupied, subject only to a 24-hour "Cancellation Policy" (see page 1 of **Exhibits B** and **C**: "If you wish to cancel, please do so 24 hours prior to arrival to avoid cancellation penalties"). The

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[4] The preceding line in the song quotes the hotel's "night man," addressing the singer/protagonist: "We are programmed to receive." Perhaps this line was inserted only to rhyme with the whimsical final line – "but you can never leave" – nonetheless, the idea of a hotel as "programmed to receive" in fact reflects the ancient common law duty of innkeepers to receive all travelers, provided they abide by the innkeeper's rules. See *The Laws of Innkeeping*, by John E. H. Sherry; and see RSA 353:3-bb, which places limits on the innkeepers' common-law duty to accept guests.

same, general 24-hour notice requirement applies *after* arrival as well (though it can be waived at the Hotel's discretion).

All of the afore-described was applicable to *all* Hotel guests, including plaintiff Natalie Anderson and her husband Andre Bisasor, as affirmed by the Defendants' verified Motion to Dismiss. See also, section III-C below.

In addition, unlike a typical lease agreement, guests in the Hotel – including Anderson and Bisasor – were not required to provide a security deposit. The lack of a security deposit is consistent with the fact that hotels do not relinquish full possession of the room, in contrast to leases in which the tenant obtains exclusive possession. See case law in the Argument section, below.

C. Plaintiff Has Presented No Evidence to Support the Claim She Paid a Security Deposit, and Her Improper Attempt on this Appeal to Make that Argument Must Be Struck.

While Plaintiff has attempted an absurdly convoluted argument that she *did* pay a security deposit, this argument was never presented to the lower court, and – more importantly – no evidence in *support* of this argument was ever presented. See App-196-238, which is identified by Plaintiff as "Exhibit 10" in the Appendix, and which includes a copy of the Plaintiff's Sur-Reply that was filed by Plaintiff's counsel at the time, Elliott Berry with New Hampshire Legal Assistance.

The copy of the Sur-Reply in the Appendix, at App-197-211, includes the filed "counter-affidavits" by Bisasor and Anderson, and is then followed by 26 pages, App-213-38, which are referred to as "*supplemental exhibits*" (see App-196 & 212). Neither Mr. Berry's brief nor the two affidavits make any reference to these exhibits. Further, defense counsel state here in their place that Mr. Berry, when serving these pleadings (by email on February 10, 2017), did *not* attach or

reference these exhibits, including the one at App-225-230, labeled and relied upon by Plaintiff as constituting the following: "Emails with Adam Robitaille showing tax refund being used as security deposit."

Moreover, these emails (*only* from Anderson; excluding the ones from Robitaille), refer to the room-rate payment dispute which had developed between the parties, prior to the Hotel's January 6 decision to remove them. As noted above in section II (Proceedings in the Lower Court), the Defendants agreed to remove from the Motion to Dismiss all statements tied to the "reasons why we want them removed from the hotel . . . [as] not germane" to the single issue before the lower court. Plaintiff cannot now rely on that class of evidence to support her bogus claim that she paid a security deposit.

All of these exhibits, at App-213-38, and all argument tied to these exhibits, should be stricken from this appeal, as they were never considered by the lower court, and have been improperly submitted by Plaintiff to this Court.

D. The Evidence Shows that Anderson and Bisasor Were Hotel Guests, Not Tenants

When making the reservation for their stay in the Hotel, in November of 2015, Plaintiffs were required – as are all hotel guests, universally – to provide their permanent home address. As shown on the Hotel's records (**Exhibit D**, page 1 of their folio; App-58-59), Anderson provided the following address: 3000 Presidents Way, Apt. 3413, Dedham, Mass., 02026. This same address appeared on Anderson's Hilton Honor's Reward program guest profile, during the time of the proceedings below. **Exhibit E** (App-60-61).

Plaintiff has asserted multiple times that she "paid rent biweekly or monthly." This is misleading and incorrect. As shown by paragraphs 9-10 and 27-29 of the verified Motion to Dismiss, [App-21-22 & 24-25], "a credit card [was] required for this reservation" [quoting the

Hilton website, at **Exhibits B & C**, App-47 & 50]. The daily room-rate charges were made to the credit card that was placed on file by the Plaintiff. While true, as stated at paragraph 28 of the Motion to Dismiss, that "their credit card" – as matter of convenience – "[was] charged at two-week intervals," that lands far afield from the untrue claim that they "paid rent biweekly or monthly." Moreover, once again, guests are never charged for unused room-nights.

By contrast with the hotel arrangement made here, leases are typically paid on a monthly basis, with the payments made in advance. In addition, tenants under a written agreement – which the Plaintiff has claimed in this case – are bound to pay for the entire, agreed term of the rental, subject only to the usual obligation of the landlord when seeking unpaid rent to mitigate damages by locating a replacement tenant. [5] Defendants have never asserted that Plaintiff was obligated to pay for room-nights she did not use.

Defendant Robitaille affirmed, under oath at paragraph 20 of the Motion to Dismiss, [App-23], that Anderson and Bisasor "do not receive mail at the Hotel." He based this statement on knowledge gained as the Hotel's general manager, over the entire length of their stay. Anderson, however, has asserted to the contrary at several places in her brief. Nonetheless, (1) she admits they maintained a separate address for mailing purposes, with a UPS Store in Chelmsford, Massachusetts, and (2) as supposed proof that they received mail at the Hotel, she attached only copies of five envelopes addressed to them at the Hotel, [App-144-148], at least two of which were

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[5] See, *e.g.*, *RAL Automotive Group., Inc. v. Edwards*, 151 N.H. 497, 500, 861 A.2d 795 (2004), citing to *Novak v. Company*, 84 N.H. 93, 95 & 96, 146 A. 525 (1929) (recognizing that absent intent to surrender a lease, the surrender of which is *accepted* by the landlord, "repossession, and even reletting the premises to a third party, does not terminate the tenant's obligation to pay rent . . . 'The relationship of landlord and tenant and liability on the covenants in a lease are not dependent on each other . . . When there is a special covenant to pay the rent, . . . he will be held to pay the rent *for the full term*'" [emphasis added]).

forwarded from the Chelmsford UPS Store. In addition, (3) the Hotel's address was not used as their address of record in the bankruptcy court action filed by Mr. Bisasor. See the January 20, 2016 Notice of Change of Address, **Exhibit F**, [App-63], filed with the bankruptcy court two months after Plaintiff and Bisasor began occupying the room at the Hotel.

A common indicator of domiciliary status is the location where a person receives mail. Anderson and Bisasor did not use the Hotel *as* their mailing address, which is corroborated by Mr. Robitaille's verification (the fact that those few items of mail escaped his notice is consistent with the fact the couple did not maintain the Hotel as their address or domicile).

Plaintiff claims they had no other place of residence. This is not, however, how they presented themselves to the Hotel. They checked in as residents with an address in Dedham, Massachusetts. See paragraph 18 and **Exhibit D** of Defendants' Motion [App-23 & 59]. Moreover, they were required when checking in, as explained above, to provide a credit card, and they complied. There is no evidence their credit card statements were mailed to the Hotel.

Plaintiffs initially booked the reservation to start on November 22, 2015. They requested a check-out date of three months out, which became the *agreed* check-out date, as reflected in the Hotel's records (Plaintiffs thereafter requested several extensions). [6]

Plaintiff has asserted that long-term arrangements are setup only by contacting the sales office of the Hotel, and thus handled separately from the arrangements made with short-term guests. This is simply incorrect. As shown above, and at paragraphs 9-10 of the Motion to Dismiss, [App-21-22], guests booking online can book an exceptionally long stay. For example, **Exhibit C**

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[6] Defendants acknowledge the folio records submitted by Plaintiff appear to show a check-out date one year out from the check-in date. Those particular folio records, however, were created at some point after the original. It appears, unfortunately, that copies of those earlier folio statements are not in the record of the brief proceedings below.

[App-49-57], shows a reservation for an eight-month stay. As shown also by this Exhibit, in comparison to the one-day reservation at **Exhibit B**, [App-47-48], guests *automatically* receive a more favorable daily room-rate when making a lengthy reservation.

While it is certainly not uncommon for a hotel guest to personally request and negotiate a lower rate, in hopes of leveraging the hotel's opportunity for a longer revenue stream, the mere fact that this opportunity exists does not support the assertion, here, that long-term arrangements are setup *only* through contact with the property sales office. [7]

As discussed in the Argument, below, a key distinction between a hotel guest and a tenant is the acquisition by the latter of exclusive possession and control of the premises. Hotel guests do not acquire such possessory rights. Hotel guests, as is the case here, can be required to relinquish possession in order to allow house cleaners to clean the room, and to allow maintenance and security personnel to perform their functions.

Plaintiff has attempted to argue she never gave up possession, by asserting she only had the room cleaned once, in February of 2016 (after staying in the Hotel a little under three months). Nonetheless, the Hotel's "Brand Standards" policy, prepared by Hilton Worldwide [8], directs hotel management at Homewood Suites to, "at a minimum, alternate full-service housekeeping with light (or stayover) service . . . two times per week." See, **Exhibit G** (App-65-66).

Contrary to Plaintiff's assertion that she only had the room cleaned once, are the statements she and Bisasor made when contacting the Hilton Guest Assistance Line. See **Exhibit H** (App-69-

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[7] In similar fashion, wedding parties and convention groups often request and negotiate more favorable rates, which hotels are willing to grant in exchange for assured business from a "block of rooms."

[8] Noncompliance by a hotel operator with brand standards can impact scores on "quality assurance" testing, conducted by Hilton, and is weighed relative to qualifying to operate a Hilton-branded property.

70; notes by the Guest Assistance representative). Therein, Plaintiff stated they had "an agreement with housekeeping management that the room could be cleaned every two weeks." See, **Exhibit H** (see the top of App-69). This two-page document reflects also the following, from the discussions with Guest Assistance by both Bisasor and Defendant Robitaille on February 10-11, 2016:

- The "GM" (Defendant Adam Robitaille) had explained to Bisasor the weekly cleaning policy;
- The GM explained, further, that Plaintiffs had been uncooperative in allowing access to the room by the cleaning staff, and that Plaintiffs "went over 30 days without room being cleaned";
- Bisasor, however, as of February, confirmed that he wanted the room-cleaning service, and stated that "he requested his room be cleaned more regularly";
- When Plaintiffs finally cooperated in allowing staff in to clean the room, after this 30-day period, it took two housekeepers two hours to clean (Bisasor asserted it took 30 minutes);
- The GM stated the room was "filled with trash," the bathtub had black mildew, and "all linen in room was soiled to the point that everything had to be thrown away."
- A confrontational discussion occurred thereafter between Bisasor and Robitaille: "GM tried for nearly 30 minutes to explain to the guest that the state of his room could be a fire hazard and that we needed to clean it once per week." Bisasor stated "that GM was only saying this because the guest was 'black'." Robitaille denies this assertion, and stated he was "highly insulted" by the assertion.

Since this confrontation, Plaintiffs have refused any further access to their room. This refusal of access constitutes one of the three grounds for the decision by the Defendants – addressed below – to terminate the Plaintiffs' guest stay.

SUMMARY OF ARGUMENT

Hotel Guest vs Tenancy Issue

The lower court did not err in its February 21, 2017 final order, by ruling that Anderson and Bisasor were not tenants under the state's landlord-tenant law, RSA 540, *et. seq.*, subject to the procedures set forth at RSA 540-A, and that they were instead hotel guests whose occupancy could be more summarily terminated pursuant to the grounds provided by RSA 353:3-c.

As the facts above show, the Homewood Suites by Hilton is a hotel, and has all the characteristics of a hotel. Plaintiff checked into the hotel in the usual manner of a hotel guest, by providing a credit card against which the daily room-rate was to be charged, and by providing a permanent home address. She continued to receive mail elsewhere, and never used the hotel as her permanent or mailing address. She was also not required, consistent with the statutorily governed innkeeper/guest relationship, to provide a security deposit, as security against damage to the hotel room. This is consistent with the fact that she did not acquire exclusive possession and control of the hotel room. In addition, she did not have exclusive possession as reflected by the fact the hotel maintains pass-keys to all rooms, which can be entered by housekeeping, maintenance, security and management personnel as circumstances warrant. The fact that she refused, following February 2016, to allow housekeepers into her room does not change the fact that the Hotel held the right of entry. Plaintiff cannot be permitted to convert a hotel-guest relationship through mere violation of the hotel's rules.

Most importantly, inconsistent with a lease agreement – as claimed by Plaintiff – Plaintiff could depart whenever she wanted, without having to pay for unused hotel room-nights. In short, there was no lease agreement for an agreed term of stay which obligated both her and the Hotel.

This case is distinguishable on its facts from this Court's decision in *Evans v. J Four Realty,* 164 N.H. 570, 62 A.3d 869 (2013), as will be shown below, and also as shown below, a holding in Defendants' favor on this issue is well in keeping with decisions from multiple other jurisdictions.

Mootness Issue

This appeal is moot, and should be dismissed, given the following undisputed facts shown below: (a) the sole issue before the lower court was the issue described above; (b) the nature of Plaintiff's claim made during the proceedings before the lower court in January and February of 2017, and subsequently in the Superior Court of Hillsborough County, to the effect that she had a contractual right to remain in the hotel, but *only* through the date of May 31, 2017; (c) that she and Mr. Bisasor, by their pursuits of temporary restraining orders in both the lower court and in the superior court, in fact, were successful in retaining their hotel accommodations through that date; and (d) given the Plaintiff's ongoing pursuit of contractual remedies (and other related claims) in the superior court.

Because the Plaintiff, in the lower court and superior court actions, sought only to stay in the Hotel through May 31, 2017, and because the only issue below was her status as a tenant or hotel guest, a ruling adverse to Defendants, on this latter issue, does not change the fact that this appeal is moot. Even if she is held to have been a tenant, such holding would not change the fact that she was able to remain in the hotel through the date she claimed she was entitled to remain – May 31, 2017. There is, therefore, no need for this Court to rule on the first issue. This case does

not present the type of issue, or an important enough issue, for this Court to issue a decision despite its mootness.

ARGUMENT

I. Plaintiff Was a Hotel Guest, Not a Tenant.

The Plaintiff is not a "tenant" within the meaning of RSA § 540:1-a (IV)(b): "The term 'tenant' or 'tenancy' shall not include occupants or occupancy in the following places and the provisions of this chapter shall not apply to: . . . (b) Rooms in hotels, motels, inns, tourist homes, and other dwellings rented for recreational or vacation use."

RSA § 353 governs "Hotels, Tourist Cabins, etc.," with respect to innkeeper duties and liability, and fraud protection. RSA § 353:7 (III) defines the term "Inn or Hotel" (in the fraud section) broadly, as follows: "shall include all types of establishments offering accommodations for rent either by the day, week or month, or any portion thereof, including but not limited to hotels, motels, apartment houses, rooming house, boardinghouses, trailer parks, restaurants or camping areas."

Plaintiff has pointed in her brief to RSA § 78-A, governing "Tax on Meals and Rooms," and specifically to § 78-A:3 (VII), in the definitional section of this chapter. As stated in the opening sentence in § 78-A:3, however, the definitions therein are applicable *only* "As used in this chapter: . . ." Subsection 78-A:3 (V) defines the term "occupant" – for taxation purposes – as a person staying "in a hotel," but stating further that this "term does not include a permanent resident." Subsection 78-A:3 (VII), in turn, defines a "permanent resident" as "any occupant who has occupied any room in a hotel for at least 185 continuous days."

Plaintiff points to this tax code definition, and on that basis asserts she is not a hotel guest; but is a "permanent resident." The afore-quoted definitions, however, do not constitute or provide

authority for their position that they are tenants as recognized under the different and broader law applicable to the landlord/tenant relationship, with all its attendant rights and duties. It merely defines – and does so merely for tax purposes – the reach of the state's occupancy tax to be paid by a hotel guest in New Hampshire. [9]

As noted above, RSA § 540:1-a (IV)(b) plainly states the term "tenant . . . shall not include occupants . . . [of] [r]ooms in hotels." The statute governing hotels, at RSA § 353:7 (III), as also noted above, does in fact define the term "Inn or Hotel" very broadly. As to the more specific question of whether Plaintiff – under the facts presented – acquired an estate in tenancy, neither the state code nor reported New Hampshire cases provide direct or specific authority (however, see discussion below regarding a 2013 decision by this Court).

A review of case law from other jurisdictions, however, supports plainly the Hotel's position that Plaintiff was not a tenant. One helpful and illustrative case, well supported with citations of authority from numerous jurisdictions and secondary legal sources, is *Ann Arbor Tenants Union v. Ann Arbor YMCA*, 229 Mich.App. 431, 581 N.W.2d 794 (Mich. Ct. of App., 1998) (copy attached at **Exhibit I**; App-71-80). That court stated, 581 N.W.2d at 800, that a "fundamental criteri[on] in distinguishing between a tenant and a guest" turns on whether the individual has "*exclusive* possession and control of the premises – one that lies in the character of the possession [emphasis added]," citing to: "49 Am.Jur.2d, Landlord and Tenant, §§ 21, 22, pp. 64-65; Powell, § 16.02 [3] [ii], pp.16–28 to 16–29; Restatement, § 1.2, p. 10 and Reporter's Note, pp. 12–13. See *Buck v. Del City Apartments, Inc.*, 431 P.2d 360, 363 (Okla. 1967)."

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[9] The Hotel has complied with this statute, and has charged back occupancy taxes that were automatically added to Anderson's account.

The Michigan court explained further, 581 N.W.2d at 800: "A tenant has exclusive legal possession and control of the premises against the owner for the term of his leasehold, whereas a guest is a mere licensee and only has a right to use of the premises he occupies, subject to the proprietor's retention of control and right of access," citing to *Buck*, supra; citing also *Poroznoff v. Alberti,* 161 N.J.Super, 414, 419-423, 391 A.2d 984 (1978), aff'd 168 N.J.Super. 140, 401 A.2d 1124 (1979) (and cases cited therein); *Green v. Watson,* 224 Cal.App.2d 184, 36 Cal. Rptr. 362 (1964); 49 Am.Jur.2d, Landlord and Tenant, §§ 21, 22, pp. 64-65.

The court cited also to the following cases, at 581 N.W.2d at 800, n. 10, which are materially on point: *Sawyer v. Congress Square Hotel Co.*, 157 Me. 111, 170 A.2d 645 (1961) (where furnishings were the property of the hotel, the hotel provided linens, cleaning service, heat, and electricity, and the hotel employees retained keys and access to a room, there was a hotel-guest relationship despite the fact that stay was a long one and that payment for a room was made on a weekly or monthly basis); *Francis v. Trinidad Motel*, 261 N.J.Super. 252, 618 A.2d 873 (1983) (individual who stayed in a hotel room for over two months, where he paid rent on a weekly basis and claimed it as his sole residence, was a "guest" and not a "tenant"); *Buck*, supra (occupant who had no other residence, who stayed for 1–1/2 months, and who paid on a weekly basis was a guest where the place held itself out as a motel, there was a registration area, accommodations were on a daily basis, and maid service was available).

Defendants respectfully submit, under the authority cited, that Plaintiffs are hotel guests, with no rights of tenancy under RSA 540-A. As shown, the Homewood Suites by Hilton has all the characteristics of a hotel providing hotel services – services which the Plaintiffs and her husband have received and used as hotel guests. Andre Bisasor, as shown above by **Exhibit H** (App-69-70), represented to the Hotel that his purpose in staying there was temporary, related to

"a business project in the area." As shown also, upon registration, the Plaintiffs provided a permanent address, and during their stay have never received mail through the Hotel. Anderson has taken advantage of the Hilton Honors Rewards program, achieving top-tier "Diamond" status, and thus, plainly, these two individuals are well aware of their status as hotel guests.

Plaintiffs do not have "exclusive possession and control of the premises," as explained by the court in *Ann Arbor YMCA*, supra (which held that long-terms residents of a YMCA housing facility did not acquire the rights of tenancy). As shown, Plaintiffs do not have exclusive control over keys to their room, which may be accessed by the Hotel's room-cleaning, maintenance and security staffs. Plaintiff were receiving regular room-cleaning services, as shown above (**Exhibit H**; App-69-70) during the first three months of their stay.

Plaintiffs cannot rely on the fact that, following the dispute which arose in February of 2016 – see **Exhibit H**, and facts described above in section III-D of the Statement of the Case – they have refused access to the Hotel to clean the room. This action by them was in violation of the rules of the Hotel, as explained to them by General Manager Adam Robitaille. Indeed, this refusal provides one of the grounds for terminating a guest stay under the Innkeeper statute, at RSA § 353:3-c(d) ("Violates any rule of the hotel ..."). Plaintiff cannot be permitted to convert her hotel-guest status to a tenancy by brazenly refusing the hotel's rule requiring access to cleaning the room.

Consistent also with the absence of exclusive possession and control is the fact, shown above, that Plaintiffs were not required to place a security deposit for their stay in the room. The providing of a security deposit by a tenant, held for the repair of damages exceeding normal wear and tear, reflects the fact that a tenant holds exclusive possession of the premises. This is not the

case with a hotel, including the Homewood Suites, which is set up with pass keys to any room that can be used by housekeeping, maintenance, security and management personnel.

Plaintiff's reliance on *Evans v. J Four Realty,* 164 N.H. 570, 62 A.3d 869 (2013) is misplaced, as the facts are immediately distinguishable. The trial court found, and the "record support[ed]," the following facts:

> The petitioner lived for approximately five years in an apartment with two bedrooms, a kitchen, a living room, and one bathroom, which was part of a resort called "Naturally New Hampshire Healthfully Yours Resort, Inc." *The petitioner's apartment was adjacent to the resort's office and was not part of the hotel portion of the resort.*

164 N.H. at 571, 62 A.3d at 871 (emphasis added).

Plaintiff mischaracterizes the holding in *Evans* when stating that the plaintiff in that case was held to have the rights of tenancy, even though the dwelling unit at issue was indisputably located in a vacation resort. First, as the quoted findings above show, the dwelling was (by any common-sense definition) an *actual* apartment. Second, the apartment was "adjacent to the resort's office," and third and most importantly, the two-bedroom apartment was "*not* part of the hotel portion of the resort" (emphasis added).

Plaintiff also points to the phrase, in subparagraph IV(b) of RSA § 540:1-a, that *excludes* from the definition of tenancy the following: "Rooms in hotels, motels, inns, tourist homes and other dwellings rented for *recreational or vacation purposes*" (emphasis added). Plaintiff then argues that she never rented her unit at Homewood for recreational or vacation use. Plaintiff appears to suggest that this statutory exclusion *only* applies – thereby rendering someone to be deemed *not* a tenant – where the property in question is used for "recreational or vacation purposes."

It is apparent, however, that the final clause in RSA 540:1-a – "recreational or vacation purposes" – was intended by the legislature to modify only the preceding phrase, "other dwellings," and does not modify the terms "Rooms in hotels, motels, inns, [and] tourist homes." Moreover, this Court can take judicial notice that hotel guests pay for hotel rooms for purposes *other than* "recreational or vacation use." The most obvious such 'other' purpose is a business-related purpose (as Bisasor himself stated, noted above). To read the statute the way Plaintiff asserts would yield the absurd result that *all* hotels would be deemed subject to RSA 540, *unless* the hotel was somehow deemed to be exclusively for "recreational or vacation purposes."

Last, Plaintiff points to the innkeeper statute, at RSA § 353:3-c, which governs the right to self-help eviction from hotels and other, similar "rental units." Plaintiff points to the following statutory sentence: "For the purpose of this section, the term 'rental unit' shall include residential property rented for one month or less."

The legislature, by adding this sentence, was *expanding* the categorical scope of hotels and hotel-similar properties entitled to self-help. The legislature had in mind residential homes, in which an individual might rent a room or other space for a temporary (less than one month) period.

It simply does not follow, as Plaintiff attempts to argue, that this statutory provision explicitly limits the hotel owner's right to eject occupants without process to guests who reside therein for no more than a month. There is nothing in the structure and wording of the innkeeper statute, overall, to suggest that the addition of this sentence was done with the intent of applying the no-more-than-one-month qualifier, or limitation, to *all* hotels entitled to use self-help eviction. If that were the case, then even a typical hotel guest in a typical hotel room would acquire the rights of tenancy at the start of the second month of a guest stay. The legislature obviously did not

intend such an odd result, as this would be at total odds with the commercial reality of the hotel industry.

II. The Case Should Dismissed Because Plaintiff Succeeded in Retaining Her Occupancy in the Hotel Through Her Alleged Contract Date, and Her Appeal is Therefore Moot.

A. Introduction

On or about July 12, 2017, Defendants filed with this Court their Motion and Suggestion of Mootness Seeking Dismissal of Appeal. On October 10, 2017, this Court denied the motion "without prejudice," and stated: "The parties may address the mootness issue in their respective briefs."

Defendants rely in part on the facts and developments related to the action filed by Plaintiff and Mr. Bisasor in the Superior Court of Hillsborough County, since the issuance of the February 21, 2017 final decision under review here. Although not a part of the record of this case on review, the relevant facts are not in dispute. Defendants rely on the following pleading and superior court order:

- Statements by Anderson in a pleading filed in *this* Court on May 30, 2017, entitled "Plaintiff/Petitioner's Emergency Motion for Stay of Removal Pending Appeal" (hereinafter, the "Emergency Motion"). This Court, on May 31, denied that Motion.
- A decision issued by the Superior Court of Hillsborough County, on May 18, 2017, denying Anderson's request for a preliminary injunction. A certified copy was attached to the Defendants' July 12 motion to dismiss.

B. Material Undisputed Facts Related to the Issue of Mootness.

Anderson and her husband, Andre Bisasor, checked into the Homewood Suites Hotel in Nashua, New Hampshire (the "Hotel") on November 22, 2015. In paragraph 2 of Anderson's

Emergency Motion in this Court, Anderson asserted she had a "one year contract" with the Hotel, and that the "rate was $84 per day." In paragraph 3, she asserted that in mid-November of 2016 she "requested a 6-month renewal or extension of her contract until May 31, 2017," and that an agreement was reached, "at a slightly higher rate of $89 per day."

As shown above, from the record below, there was no formal written agreement, only an exchange of emails. Defendants acknowledge, nonetheless, the accuracy of the assertions that the room-charge rate through November of 2016 was $84 per day, and was set thereafter at $89 per day. Appellees, further, do not dispute that Anderson requested to stay an additional six months, through May 32, 2017.

The Defendants, while they acknowledge this latter request, agreed simply that Anderson and Bisasor *could* remain, subject to payment at the new $89/day rate. Defendants acknowledge, however, that the $89/day rate could be said to have been 'locked in,' through May 31, 2017. [10]

Nonetheless, as the circuit court below found, no right of tenancy was established through that date, or for any other length of time. The record from the court below is clear that Anderson and Bisasor were paying a daily rate, could depart whenever they wanted (like any other hotel guest), and could do so with no obligation to continue the daily-rate payments following departure, or through May 31 or any other date. The circuit court thus held they could be removed pursuant to RSA 353. The superior court acknowledged this as well (see the certified decision by the superior court, at pp. 4 and 6, n. 4, acknowledging the circuit court's holding that "RSA 353 applied

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[10] As shown above, and as reflected in Hilton's website page for reservations (App-46-57), the Hotel routinely offers a lower daily rate for guests planning a lengthy stay. In those instances where a guest books a long stay, but ends up occupying the room only a few days, the Hotel reserves the right – as stated on the website page – to retroactively adjust the rate. As the record also shows, the Hotel does not, in such instances, charge guests for the days they did not occupy.

to the plaintiff's stay at the hotel," and holding also that "any issues related to their removal [from the Hotel] are governed by RSA 353").

Hence, while the $89/day rate could be said to have locked in through May 31, 2017, the term of the contract itself, with respect to the length of occupancy, was subject to both (a) Anderson and Bisasor's right to check out any time they liked, with no further payment obligation; and (b) an earlier termination as provided under RSA 363:3-b and 363:3-c, also with no further payment obligation.

In sum, the following two facts concerning the proceedings below should be noted:

- The only issue here on review, as shown, is whether the plaintiff was a hotel guest or a tenant.
- The action filed by Anderson in the superior court, by contrast, "did not involve" – as Plaintiff stated in her Emergency Motion filed here (paragraph 9, last sentence) – "any claims under [RSA] 540-A." Instead, Plaintiff's superior court action is "based on a breach of contract claim." Emergency Motion (paragraph 9, first sentence). [11]

Anderson requested, upon the filing of her superior court action, a temporary restraining order to prevent the Hotel from forcibly removing her and her husband. On March 1, as stated at page 4 in the superior court decision, the temporary stay was granted "until the circuit court issue[s] a final order on the plaintiff's 540-A claim." [12] The temporary order was extended twice thereafter,

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[11] The superior court action also asserts a race-based discrimination & retaliation claim under Title II of the 1964 Civil Rights Act and under 42 U.S.C. § 1981. These claims have no bearing on the present motion, and no bearing on the sole issue on appeal.

[12] The February 21 circuit court order denying the 540-A claim had already issued, though the final decision was still pending – as of March 1 – by virtue of Anderson's then pending - motion for reconsideration filed in the circuit court.

as reflected at pages 4-5 in the decision: (i) on April 14, subject to Anderson resuming the payment of the $89/day room charge (which they had ceased paying in late November of 2016); and again (ii) on April 27, at the first day of the hearing on Andersons' motion for preliminary injunction in the superior court, discussed next.

The hearing on the motion for preliminary injunction was held on April 27 and May 8. The superior court, in the certified decision provided to this Court, described the motion as seeking an "injunction prohibiting the defendants from expelling them from their premises" (p. 1). As noted above, the motion was grounded on a contract claim, and thus sought an equitable order for the specific performance of their claimed contractual right to remain in the hotel through May 31, 2017.

Seven witnesses testified in the two-day hearing. The superior court, in its decision (at p. 5), held as follows: "The Court does not find that injunctive relief is warranted because the plaintiffs [13] have failed to demonstrate an *immediate* danger of irreparable harm." (emphasis in original). The court explained:

> On November 22, 2016, the plaintiffs extended their stay at Homewood through May 31, 2017 [internal record citations omitted]. The parties have not reached an agreement extending the plaintiffs' stay past May 31, 2017. Due to the law governing the hotel business and the circuit court's orders, the defendants will be authorized to remove the plaintiffs from the premises as of June 1, 2017. See RSA 363:3-b and 363:3-c. The plaintiffs have been aware since November 22, 2016 that their stay ends on May 31, 2017. In fact, they negotiated this extension with the defendants. The plaintiffs have had ample time (six months) to find alternative accommodations for their family. After May 31, 2017, the plaintiffs will be subject to removal from the hotel under RSA 353:3.

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[13] Bisasor was added as a party, hence the court's reference to "plaintiffs" in the plural. Anderson and Bisasor are named also as defendants-in-counterclaim, pursuant to the Hotel's action for unpaid room charges.

Id. (emphasis added). While the superior court saw no "need to address the other preliminary injunction factors," given the absence of an immediate danger of irreparable harm, the court nonetheless stated in a footnote: "The Court notes that the plaintiffs did not prove a likelihood of success on the merits based on the evidence submitted at the [April 27 and May 8] hearing." **Id.**, p. 6, n. 4.

The superior court stated also, in this footnote, that "the plaintiffs have an adequate remedy at law to address their *contract* and discrimination-based claims" (emphasis added). The pendency of this contract claim provides additional support in the showing of mootness, as will be discussed below.

Defendants, following this decision, could have argued that the superior court, having denied the injunction, should have granted to the Hotel an *immediate* right to remove Anderson and Bisasor, effective as of the date of its decision, May 18, 2017, rather than extending to them the right to remain until May 31, 2017. Indeed, the circuit court, pursuant to *its* final order, had ruled their right to occupancy had *already* been terminated. That court's February 21 order stated, in the past tense, that their "occupancy *was* summarily terminated pursuant to RSA 353:3-c," (emphasis added) – *i.e.*, when general manager Robitaille asked them to vacate on January 6. [App-244; next-to-last paragraph].

Defendants nonetheless refrained, for practical reasons, from petitioning the superior court to remove Anderson and Bisasor in advance of May 31. The couple, in fact, remained there through that date, and vacated their room that afternoon (peacefully, with no need for police involvement).

Immediately prior to this May 31 departure, however, they filed the afore-discussed Emergency Motion in this Court, seeking a stay of their removal "until [this Court] has had an

opportunity to review whether plaintiff is a tenant or a hotel guest." See Emergency Motion, paragraph 15. As noted above, this Motion was denied on May 31.

C. Given the Facts and Circumstances of this Case, this Appeal is Moot.

Anderson and Bisasor fully achieved their objective of remaining in the hotel through May 31, 2017, and for this reason the appeal is moot. As shown, their specific-performance contract action in the superior court sought only enforcement of their claimed contractual right to remain through that date. That request for equitable relief was denied. Nonetheless, they ended up remaining in the Hotel through the date they sought.

As shown also – in the above-quoted explanation by the superior court – there was no agreement in existence between the parties, allowing them to stay *beyond* May 31. Further, in their Emergency Motion to this Court to allow them to remain beyond that date, the couple did not assert any contractual right to remain beyond May 31. They made only a vague request tied to this Court having an "opportunity to review" the proposed appellate issue.

Anderson, in the Emergency Motion, in fact declared she had been victorious in the superior court, stating at paragraph 11, that the court "found in favor of plaintiff regarding her *contract* claims and thus implicitly requiring specific performance." She stated further: "the superior court has ordered that the defendants maintain the *contractual agreement* up to and including the *contract* date of May 31, 2017" (emphasis added).

The law applied by this Court is well established. "[T]he question of mootness is one of convenience and discretion and is not subject to hard-and-fast rules. Generally, however, a matter is moot when it no longer presents a justiciable controversy because issues involved have become

academic or dead." *Londonderry School District v. State of New Hampshire*, 157 N.H. 734, 736, 958 A.2d 930, 932 (2008), quoting *In re JUVENILE 2005–212*, 154 N.H. 763, 765, 917 A.2d 703 (2007). "Usually, unless a pressing public interest is involved, or the question is 'capable of repetition yet evading review,' an issue that has already been resolved is not entitled to judicial intervention." *Appeal of Hinsdale Fed. of Teachers,* 133 N.H. 272, 276, 576 A.2d 1316 (1990) (internal cit. omitted).

Anderson and Bisasor sought to enforce the same alleged right in both of the lower courts – the right to remain in the hotel through May 31, 2017. The only difference lies in the nature of the legal theory pursued: landlord-tenant law in the circuit court, and a contract action in the superior court. Given this, and given the additional facts shown above, the appeal is moot. Specifically:

- The remedy they sought to remain in the Hotel, through their claimed "contract date of May 31," was achieved.
- While the circuit court ruled they were *not* entitled to remain in the Hotel, given its holding they were hotel guests, the superior court, in effect, nullified that decision by granting and then extending the temporary stay, and by allowing them to remain through May 31, even after the denial of injunctive relief on May 18.
- The sole issue on this appeal is the question of whether the plaintiffs had the rights of a tenant in the Hotel. However, under the circumstances presented, resolution either way would not alter their ultimate rights or change their position – with respect to this lone issue – given these undisputed facts: (i) they occupied the hotel room for the full length of the term claimed; (ii) they have now vacated; and (iii) they have not asserted, nor could they, any contractual basis to remain beyond May 31, nor can they assert any

basis to remain under landlord-tenant law (assuming error by the circuit court), *as addressed in the section of this brief to follow.*

- Finally, with respect to their occupancy in the Hotel, "the plaintiffs have an adequate remedy at law" in the superior court, as that court has found, "to address their contract . . . based claims." See the certified copy of that court's decision, at p. 6, n. 4.

D. A Ruling by this Court, Hypothetically, Finding Error in the Decision Below Does Not Change the Fact this Appeal Is Moot.

Assuming for the sake of argument that the circuit court committed error in not granting Anderson and Bisasor the rights of tenancy, their ultimate rights with respect to the use of the Hotel, given the circumstances of this case, would not be affected. The circuit court, had it ruled them to be tenants, presumably would have imposed – at that time, on February 21 – the statutory requirements conditioning the right to evict, such as a right to a particular form of notice, right to cure, *etc.* The fact remains, nonetheless, that Anderson only sought the right to remain in the premises through May 31, and was not in possession of any contractual right to remain there *beyond* May 31. Again, as found by the superior court, the "parties have not reached an agreement extending the plaintiffs' stay past May 31, 2017," and no such right was asserted in the Emergency Motion in this Court.

Equally important is that Anderson and Bisasor, in fact, vacated the Hotel on May 31. They did so on their own volition and, as noted above, they departed peacefully without the need for self-help involving police authority. While it is true they did so in view of the superior court's May 18 ruling, which relied in part on the circuit court's decision (making RSA 353:3-b and 353:3-c available to the Hotel), and did so, also, in view of the denial by this Court of their Emergency Motion, nonetheless, they could have possibly continued their occupancy while claiming the rights of a tenant-at-sufferance, in reliance upon this Court's decision in *Aimco Properties, LLC v.*

Dziewisz, 152 N.H. 587, 883 A.2d 310 (2005). *Aimco* held, first, that a tenant-at-sufferance has the same statutory due process rights of a leasehold tenant, and that with respect to the status for both, the expiration of a lease is not, by itself, a sufficient ground for eviction under RSA 540:2-II(e) (the "other good cause" proviso).

This present appeal had already been lodged in this Court as of May 30, when the Emergency Motion was filed. A claim for an extension of the stay, based on *Aimco,* was therefore potentially available to the Plaintiff. On that basis, she could have sought and might have obtained a further stay of eviction. This is a litigation tactic which Appellants have shown, repeatedly, that they are capable of accomplishing. [14]

However, even if this Court were to rule in the course of this appeal that Anderson and Bisasor were in possession of leasehold rights, and that, therefore, they were *leasehold tenants* through the date of May 31, 2017, they waived any right they might have had, given their departure on May 31, to claim status *as* tenants-at-sufferance. [15]

CONCLUSION

For the reasons stated above, and upon the authority stated above, Defendants ask that this case be dismissed as moot. In the event this Court reaches the initial issue presented, Defendants ask that this Court affirm the lower court.

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[14] Referring, here, to their success in seeking injunctive relief, from both the circuit court and superior court.

[15] Anderson did not assert in the Emergency Motion the rights of a tenant-at-sufferance, and did not argue or invoke the holding in *Aimco*. She asserted only that a stay should be granted pending "review" of their claim, generally, concerning the rights of a tenant.

ORAL ARGUMENT REQUESTED

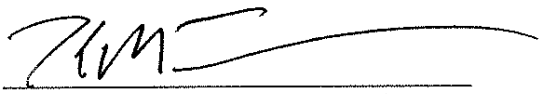
Date: 21 March 2018

APPELLEES/DEFENDANTS

Adam Robitaille & Homewood Suites by Hilton, Nashua, N.H.

by their attorneys,

STOKES WAGNER, ALC



Karl M. Terrell, admitted *pro hac vice*
One Atlantic Center, Suite 2400
1201 W. Peachtree Street
Atlanta, Georgia 30309
(404) 766-2269 (tel)
(404) 766-8823 (fax)

/s/ R. Brian Snow

R. Brian Snow
SNOW LAW OFFICE
The Stabile Center
2 Wellman Avenue
Nashua, New Hampshire 03064
603-882-4000 (Tel)
Email: pmlsnow@aol.com

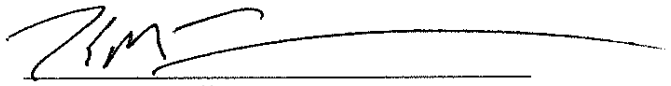
Attorneys for Defendants/Appellees

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing have been mailed by on this date I caused two copies of the foregoing pleading to be delivered Via U.S. Mail and electronic mail on this date to the opposing party:

Natalie Anderson
Andre Bisasor
The UPS Store
1648 Taylor Road
1108
Port Orange, Florida 32127

Dated: March 21, 2018



Karl M. Terrell

APPENDIX: STATUTORY PROVISIONS

Attached Appendix at **Tab A**: Actions Against Tenants – RSA 540, *et. seq.*

Attached Appendix at **Tab B**: Hotels, Tourist Cabins, Etc. – RSA 353, *et seq.*

Attached Appendix at **Tab C**: Tax on Meals and Rooms (Definitions) – RSA 78-A:3

A

Revised Statutes Annotated of the State of New Hampshire
Title LV. Proceedings in Special Cases (Ch. 534 to 546-B)
Chapter 540. Actions Against Tenants (Refs & Annos)

N.H. Rev. Stat. § 540:1

540:1 Tenancies, Nature of.

Currentness

Every tenancy or occupancy shall be deemed to be at will, and the rent payable upon demand, unless a different contract is shown.

Notes of Decisions (7)

N.H. Rev. Stat. § 540:1, NH ST § 540:1
Updated with laws current through Chapter 4 of the 2018 Reg. Sess., not including changes and corrections made by the State of New Hampshire, Office of Legislative Services

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Proposed Legislation

Revised Statutes Annotated of the State of New Hampshire
Title LV. Proceedings in Special Cases (Ch. 534 to 546-B)
Chapter 540. Actions Against Tenants (Refs & Annos)

N.H. Rev. Stat. § 540:1-a

540:1-a Definitions.

Effective: August 10, 2014
Currentness

In this chapter:

I. "Nonrestricted property" means all real property rented for nonresidential purposes and the following real property rented for residential purposes:

(a) Single-family houses, if the owner of such a house does not own more than 3 single-family houses at any one time.

(b) Rental units in an owner-occupied building containing a total of 4 dwelling units or fewer.

(c) [Repealed.]

(d) Single-family houses acquired by banks or other mortgagees through foreclosure.

II. "Restricted property" means all real property rented for residential purposes, except those properties listed in paragraph I.

III. "Rental unit" means a suite of one or more rooms located within a single building rented by the owner to one or more individuals living in common for nontransient residential purposes.

IV. The term "tenant" or "tenancy" shall not include occupants or occupancy in the following places and the provisions of this chapter shall not apply to:

(a) Rooms in rooming or boarding houses which are rented to transient guests for fewer than 90 consecutive days. For purposes of this subparagraph, if the owner of the facility directs the occupant to move from one room to another in the same rooming or boarding house, or directs the occupant to move from one of the owner's rooming or boarding houses to another, the 90-day period for computing consecutive days of occupancy shall not be broken. Consecutive days of occupancy shall not include a

voluntary move from one room to another if the move was made at the request of the occupant after the occupant has been notified of the exemption from tenancy under this subparagraph. Such request shall be in writing and shall include the following statement:

"I request a move from _____ to _____. I have received a copy of RSA 540:1-a, IV(a) and understand that any time I spent in the first room shall not apply toward the 90 consecutive days of occupancy required for tenancy under RSA 540."

(b) Rooms in hotels, motels, inns, tourist homes and other dwellings rented for recreational or vacation use.

(c) Rooms in student dormitories, nursing homes, hospitals and any other facilities licensed under RSA 151 or certified under RSA 126-A, convents, monasteries, asylums, or group homes.

(d) A single-family home in which the occupant has no lease, which is the primary and usual residence of the owner.

(e) Residential real estate under RSA 540-B.

(f) Vacation or recreational rental units under RSA 540-C.

(g) Residential units leased by a member of a fraternal or social organization that provides student housing for a postsecondary institution in a structure owned and operated by the fraternal or social organization.

Notes of Decisions (2)

N.H. Rev. Stat. § 540:1-a, NH ST § 540:1-a
Updated with laws current through Chapter 4 of the 2018 Reg. Sess., not including changes and corrections made by the State of New Hampshire, Office of Legislative Services

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Proposed Legislation

Revised Statutes Annotated of the State of New Hampshire
Title LV. Proceedings in Special Cases (Ch. 534 to 546-B)
Chapter 540. Actions Against Tenants (Refs & Annos)

N.H. Rev. Stat. § 540:2

540:2 Termination of Tenancy.

Effective: January 1, 2014
Currentness

I. The lessor or owner of nonrestricted property may terminate any tenancy by giving to the tenant or occupant a notice in writing to quit the premises in accordance with RSA 540:3 and 5.

II. The lessor or owner of restricted property may terminate any tenancy by giving to the tenant or occupant a notice in writing to quit the premises in accordance with RSA 540:3 and 5, but only for one of the following reasons:

(a) Neglect or refusal to pay rent due and in arrears, upon demand.

(b) Substantial damage to the premises by the tenant, members of his household, or guests.

(c) Failure of the tenant to comply with a material term of the lease.

(d) Behavior of the tenant or members of his family which adversely affects the health or safety of the other tenants or the landlord or his representatives, or failure of the tenant to accept suitable temporary relocation due to lead-based paint hazard abatement, as set forth in RSA 130-A:8-a, I.

(e) Other good cause.

(f) The dwelling unit contains a lead exposure-hazard which the owner will abate by:

(1) Methods other than interim controls or encapsulation;

(2) Any other method which can reasonably be expected to take more than 30 days to perform; or

(3) Removing the dwelling unit from the residential rental market.

(g) Willful failure by the tenant to prepare the unit for remediation of an infestation of insects or rodents, including bed bugs, after receipt of reasonable written notice of the required preparations and reasonable time to complete them.

III. If the grounds for eviction is other good cause as set forth in paragraph II(e) of this section, and such cause is based on the actions or inactions of the tenant, members of his family, or guests, the landlord shall, prior to the issuance of the eviction notice, provide the tenant with written notice stating that in the future such actions or inactions would constitute grounds for eviction. Such notice shall be served in accordance with RSA 540:5 or by certified mail.

IV. A tenant's refusal to agree to a change in the existing rental agreement calling for an increase in the amount of rent shall constitute good cause for eviction under paragraph II(e) of this section, provided that the landlord provided the tenant with written notice of the amount and effective date of the rent increase at least 30 days prior to the effective date of the increase.

V. "Other good cause" as set forth in paragraph II(e) of this section includes, but is not limited to, any legitimate business or economic reason and need not be based on the action or inaction of the tenant, members of his family, or guests.

VI. No tenancy shall be terminated for nonpayment of rent if:

(a) The tenant was forced to take over the landlord's utility payments in order to prevent utility services, which the landlord agreed to provide, from being terminated;

(b) The amount of rent which the tenant is in arrears does not exceed the amount paid by the tenant to maintain utility service to the tenant's premises; and

(c) The tenant has receipts from the utility company or other proof of payment of the amount paid to maintain utility service.

VII. (a) No lessor or owner of restricted property shall terminate a tenancy solely based on a tenant or a household member of a tenant having been a victim of domestic violence as defined in RSA 173-B, sexual assault as defined in RSA 632-A, or stalking as defined in RSA 633:3-a, provided that the tenant or household member of a tenant who is the victim provides the lessor or owner with written verification that the tenant or household member of a tenant who is the victim has obtained a valid protective order against the perpetrator of the domestic violence, sexual assault, or stalking.

(b) A tenant who has obtained a protective order from a court of competent jurisdiction granting him or her possession of a dwelling to the exclusion of one or more other tenants or household members may request that a lock be replaced or configured for a new key at the tenant's expense. The lessor or owner shall, if provided a copy of the protective order, comply with the request and shall not give copies of the new keys to the tenant or household member restrained or excluded by the protective order.

(c) A lessor or owner who replaces a lock or configures a lock for a new key in accordance with subparagraph (b) shall not be liable for any damages that result directly from the lock replacement or reconfiguration.

(d) If, after a hearing in the possessory action, the court finds that there are grounds under this section to evict the tenant or household member accused of the domestic violence, sexual assault, or stalking, it may issue a judgment in favor of the lessor or owner of the property against the person accused, and allow the tenancy of the remainder of the residents to continue undisturbed. The lessor or owner of the rental unit at issue in the possessory action shall have the right to bar the person accused of the domestic violence, sexual assault, or stalking from the unit and from the lessor's or owner's property once judgment in the possessory action becomes final against such person. Thereafter, and notwithstanding RSA 635:2, the person's entry upon the lessor's or owner's property after being notified in writing that he or she has been barred from the property shall constitute a trespass.

(e) Nothing in this section shall preclude eviction for nonpayment of rent. A landlord may evict on any grounds set forth in RSA 540:2, II which are unrelated to domestic violence, sexual assault, or stalking.

(f) The defense set forth in subparagraph VII(a) shall be an affirmative defense to possessory actions brought pursuant to subparagraph II(b), (c), (d), or (e) of this section.

Notes of Decisions (33)

N.H. Rev. Stat. § 540:2, NH ST § 540:2
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Revised Statutes Annotated of the State of New Hampshire
Title LV. Proceedings in Special Cases (Ch. 534 to 546-B)
Chapter 540. Actions Against Tenants (Refs & Annos)

N.H. Rev. Stat. § 540:3

540:3 Eviction Notice.

Effective: January 1, 2007
Currentness

I. If a nonresidential tenant neglects or refuses to pay rent due and in arrears, upon demand, 7 days' notice shall be sufficient; if the rent is payable more frequently than once in 3 months, whether such rent is due or not, a notice equal to the rent period shall be sufficient, and 3 months' notice shall be sufficient in all cases.

II. For all residential tenancies, 30 days' notice shall be sufficient in all cases; provided, however, that 7 days' notice shall be sufficient if the reason for the termination is as set forth in RSA 540:2, II(a), (b), or (d).

III. The eviction notice shall state with specificity the reason for the eviction.

IV. If the eviction notice is based on nonpayment of rent, the notice shall inform the tenant of his or her right, if any, to avoid the eviction by payment of the arrearages and liquidated damages in accordance with RSA 540:9.

V. For the purpose of interpreting or enforcing any lease or rental agreement for residential tenants in effect on July 1, 2006, a notice to quit shall be deemed an eviction notice under this section.

Notes of Decisions (25)

N.H. Rev. Stat. § 540:3, NH ST § 540:3
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Chapter 540. Actions Against Tenants (Refs & Annos)

N.H. Rev. Stat. § 540:4

540:4 Demand.

Effective: January 1, 2007
Currentness

Such demand shall be sufficient if made upon the tenant or occupant at any time after the rent becomes due and prior to or simultaneously with the service of such eviction notice.

Notes of Decisions (1)

N.H. Rev. Stat. § 540:4, NH ST § 540:4
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Chapter 540. Actions Against Tenants (Refs & Annos)

N.H. Rev. Stat. § 540:5

540:5 Service of Demand and Eviction Notice.

Effective: August 19, 2013
Currentness

I. Any notice of a demand for rent or an eviction notice may be served by any person and may be served upon the tenant personally or left at his or her last and usual place of abode. In the case of commercial rental property, service of process may be made at such property provided that a copy of the demand for rent or eviction notice shall be sent by certified mail to the commercial tenant at his or her last known legal address or, for non-residents, by certified mail to the tenant's registered agent if there is a registered agent for the tenant duly registered with the New Hampshire secretary of state or, if there is no such registered agent, by certified mail to the tenant's last known legal address. Proof of service must be shown by a true and attested copy of the notice accompanied by an affidavit of service, but the affidavit need not be sworn under oath. A notice of a demand for rent shall be sufficient if served upon the tenant at any time after the rent becomes due and prior to or simultaneously with the service of an eviction notice.

II. The district court shall provide forms for a demand for rent and eviction notice in the district court clerks' offices and on the New Hampshire judicial branch website. Although a landlord shall not be required to use the forms, a valid demand for rent or eviction notice shall include the same information as is requested and provided on such forms.

Notes of Decisions (2)

N.H. Rev. Stat. § 540:5, NH ST § 540:5
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N.H. Rev. Stat. § 540:7

540:7 Demand of Rent.

Currentness

Where, to constitute a forfeiture for a violation of the condition of a written lease, a demand of rent is required such demand may be made as provided RSA 540:5.

Notes of Decisions (1)

N.H. Rev. Stat. § 540:7, NH ST § 540:7
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Title LV. Proceedings in Special Cases (Ch. 534 to 546-B)
Chapter 540. Actions Against Tenants (Refs & Annos)

N.H. Rev. Stat. § 540:13

540:13 Writ; Service; Discovery; Record; Default.

Currentness

I. A writ of summons may be issued, returnable before a district court, setting forth in substance that the plaintiff is entitled to the possession of the demanded premises, and that the defendant is in possession thereof without right, after notice in writing, to quit the same at a day named therein.

II. The writ shall be accompanied by a notice from the district court, printed in no smaller than 12-point type, informing the tenant that:

(a) If the tenant wishes to contest the eviction, he must file an appearance in the district court no later than the return day appearing on the writ.

(b) The tenant shall not be evicted unless the court so orders; however, such an order may be granted if the tenant does not file an appearance.

(c) At the time the tenant files his appearance, he may request that the court make a sound recording of the eviction hearing by checking an appropriate box on the appearance form.

(d) If the tenant wishes to appeal the district court's decision, he must:

(1) File a notice of intent to appeal with the district court within 7 days of the notice of the district's decision; and

(2) File a notice of appeal in the supreme court within 30 days of the notice of the district court's decision; and

(3) Pay all rent, as it comes due, between the date of the notice of intent to appeal the district court's decision and the final disposition of the appeal.

III. The writ of summons and the notice provided in paragraph II shall be returnable 7 days from the date of service of the writ by the sheriff. The writ of summons shall provide an opportunity for the landlord, at

the landlord's option, to make a claim for an award of unpaid rent. If the landlord elects to make a claim for unpaid rent, the court shall consider any defense, claim, or counterclaim by the tenant which offsets or reduces the amount owed to the plaintiff. If the court finds that the landlord is entitled to possession on the ground of nonpayment of rent, it shall also award the landlord a money judgment. If the court determines that the amount owed by the landlord to the tenant, as a result of set-off or counterclaim exceeds or equals the amount of rent and other lawful charges owed by the tenant to the landlord, judgment in the possessory action shall be granted in favor of the tenant. If the court finds that the tenant's counterclaim exceeds the amount of the nonpayment, a money judgment shall issue in favor of the tenant. Any decision rendered by the court related to a money judgment, shall be limited to a maximum of $1,500 and shall not preclude either party from making a subsequent claim in a court of competent jurisdiction to recover any additional amounts not covered by the $1,500 judgment.

IV. Both parties shall have a right to engage in discovery prior to the hearing on the merits within such time frame as may be established for eviction actions by the Rules of the District Court.

V. If the tenant files an appearance, a hearing shall be scheduled to occur within 10 days after such filing, with allowance for additional time pursuant to paragraph IV, with notice of the hearing mailed to the parties no fewer than 6 days prior to the hearing. If the tenant fails to file an appearance or fails to appear at the hearing on the merits, the court shall mail a notice of default to the address set forth on the summons at least 3 days prior to the issuance of the writ of possession.

VI. In deciding any contested hearing, the court shall issue a written decision setting forth the basis for its decision.

VII. In the case of nonpayment of rent, while the possessory action is pending, the landlord may accept payment of the rental arrearage without creating a new tenancy, provided that the landlord informs the tenant in writing of the landlord's intention to proceed with the eviction in spite of the landlord's acceptance of the payment. The landlord may choose not to accept payment and to proceed with the eviction.

Notes of Decisions (7)

N.H. Rev. Stat. § 540:13, NH ST § 540:13
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Revised Statutes Annotated of the State of New Hampshire
Title XXXI. Trade and Commerce (Ch. 333 to 359-P) (Refs & Annos)
Chapter 353. Hotels, Tourist Cabins, Etc. (Refs & Annos)
Generally

N.H. Rev. Stat. § 353:1

353:1 Liability for Losses.

Currentness

No hotel keeper, innkeeper, operator of overnight cabins, motor courts, or similar establishments (hereinafter referred to as hotel keeper), shall be liable to a guest for the loss of wearing apparel or baggage belonging to such guest where it shall appear that such loss takes place from the room or rooms assigned to such guest and provided such hotel keeper proves affirmatively that such loss was not caused or contributed to by his negligence or fault, or was caused solely by the negligence of such guest; and, in no case shall recovery for such loss exceed the sum of $300. A hotel keeper shall provide a suitable safe in his hotel for the safekeeping of money, jewelry, precious stones, watches, negotiable securities and other valuables belonging to the guests of such hotel; and, if such hotel keeper gives notice thereof by posting in the rooms of such guests and in the office of the hotel, in a conspicuous manner, a notice containing a copy of this section and stating therein the fact that such safe is provided in which such property may be deposited, such hotel keeper shall not be liable to any guest for the loss by theft, or otherwise, of any such property not delivered, or offered to be delivered, to the person in charge of the office of such hotel for deposit in such safe, provided such hotel keeper proves affirmatively that such loss was not caused or contributed to by his negligence or fault, or was caused solely by the negligence of such guest, and such hotel keeper shall not be liable to any guest for any sum in excess of $1,000 on account of the loss by theft, or otherwise, of any such property received for deposit, except by special contract in writing stating the kind and value of the property received and the kind and extent of the liability of the hotel keeper. Nor shall such hotel keeper be liable in any sum for the loss of other property, including wearing apparel and personal baggage, belonging to any guest and not within the room or rooms assigned to him, unless the same is specially entrusted to the care and custody of such hotel keeper or agents or servants.

N.H. Rev. Stat. § 353:1, NH ST § 353:1
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N.H. Rev. Stat. § 353:2

353:2 Fire Losses.

Currentness

No hotel keeper shall be liable for losses of goods or property sustained by his employees or guests, caused by a fire, unless such fire shall be caused by his negligence.

N.H. Rev. Stat. § 353:2, NH ST § 353:2
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N.H. Rev. Stat. § 353:2-a

353:2-a Child Care Referrals.

Currentness

No hotelkeeper or innkeeper shall be liable for losses of goods or property or other damages sustained by a guest or other visitor based solely upon the furnishing by the hotelkeeper or innkeeper of a name or names of persons available to provide child care services for such guest or other visitor, provided the hotelkeeper or innkeeper has no knowledge of any adverse information relating to the person or persons providing the child care services, the hotelkeeper or innkeeper receives no compensation for furnishing the information or the services provided, and the hotelkeeper or innkeeper has given written notice to the guest or visitor that the child care service providers have not been evaluated by the hotelkeeper or innkeeper. No such liability shall arise from furnishing the name of an employee of the hotelkeeper or innkeeper, provided the hotelkeeper or innkeeper does not recommend or compensate any such employee for the provision of such child care services and the employee is not acting within the scope of employment for the hotelkeeper or innkeeper when providing such child care services.

N.H. Rev. Stat. § 353:2-a, NH ST § 353:2-a
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Generally

N.H. Rev. Stat. § 353:3

353:3 Register, Open to Inspection.

Currentness

All hotel keepers and all persons keeping public lodging houses, tourist camps, or cabins shall keep a book or card system and cause each guest to sign therein his own legal name or name by which he is commonly known. Said book or card system shall at all times be open to the inspection of the sheriff or his deputies and to any police officer. The term "public lodging house" as here used shall mean a lodging house where more than 2 rooms are habitually let for less than a week at a time for the accommodation of transients. Whoever violates any provision of this section shall be guilty of a misdemeanor.

N.H. Rev. Stat. § 353:3, NH ST § 353:3
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Generally

N.H. Rev. Stat. § 353:3-a

353:3-a Posting of Rental Rates.

Currentness

All hotel keepers and all persons keeping public lodging houses, tourist camps or cabins shall post in each guest room and at the registration desk a notice listing the minimum and maximum room rental fees on a daily or weekly basis or both if applicable. The notice shall specify the dates when the maximum rates are in effect.

N.H. Rev. Stat. § 353:3-a, NH ST § 353:3-a
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Generally

N.H. Rev. Stat. § 353:3-b

353:3-b Registered Departure Date.

Currentness

All hotel keepers and all persons keeping public lodging houses, tourist camps, or cabins shall, upon the registration of each guest, cause an entry to be made in the book or card system required by RSA 353:3 which shall record the guest's agreed upon departure time and date. No guest shall, without the consent of the hotel keeper or such person keeping a public lodging house, tourist camp, or cabin remain in a rental unit beyond the departure time and date so recorded at registration.

N.H. Rev. Stat. § 353:3-b, NH ST § 353:3-b
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Generally

N.H. Rev. Stat. § 353:3-bb

353:3-bb Refusal or Denial of Accommodations.

Currentness

I. A hotel keeper, including any person keeping public lodging houses, tourist camps, or cabins, may refuse or deny any accommodations, facilities, or privileges of a hotel, lodging house, or campground to:

(a) Any person who is unwilling or unable to pay for accommodations and services of the hotel, lodging house, or campground. The hotel keeper may require the prospective guest to demonstrate the ability to pay by cash, valid credit card, or a validated check.

(b) Any person under the age of 18 who does not present a signed notification from a parent or legal guardian that the parent or legal guardian accepts liability of the guest room or campground site costs, taxes, all charges by the guest, and any damages to the hotel, lodging house, campground, guest room, or its furnishings or to the campground site caused by the minor guest while at the hotel, lodging house, or campground to the extent that such costs, taxes, damages, or charges exceed the amount of cash or credit card deposit already provided by the guest.

(c) Any person or persons, if admitting that person or those persons would cause the limit on the number of persons who may occupy any particular guest room in the hotel or lodging house or a site in the campground to be exceeded. For purposes of this subparagraph, the limit represents the number permitted by local ordinances or reasonable standards of the hotel, lodging house, or campground relating to health, safety, or sanitation.

II. Nothing in this section authorizes any hotel keeper to violate the state law against discrimination, RSA 354-A.

N.H. Rev. Stat. § 353:3-bb, NH ST § 353:3-bb
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Chapter 353. Hotels, Tourist Cabins, Etc. (Refs & Annos)
Generally

N.H. Rev. Stat. § 353:3-c

353:3-c Ejection of Guests.

Currentness

I. All hotel keepers and all persons keeping public lodging houses or cabins may remove or cause to be removed from such establishment any guest remaining in a rental unit in violation of RSA 353:3-b or RSA 353:3-bb by notifying such guest that the establishment no longer desires to entertain him or her and requesting that the guest immediately leave. Any guest who remains or attempts to remain in a rental unit after being so requested to leave shall be guilty of a violation. For the purpose of this section, the term "rental unit" shall include residential property rented for one month or less.

II. All hotel keepers and persons keeping public lodging houses, cabins, or any rental unit may immediately remove or cause to be immediately removed by any law enforcement officer of this state, any guest who willfully denies other guests their right to quiet enjoyment of their tenancies, including but not limited to any guest who:

(a) Disturbs, threatens, or endangers other guests;

(b) Is less than 21 years of age and possesses alcohol;

(c) Possesses illegal drugs;

(d) Violates any rule of the hotel, lodging house, or campground that is posted in a conspicuous place and manner at the guest registration desk and in each guest room; or

(e) Violates any local or state law.

II-a. The right to remove, or cause to be removed, shall arise after the hotel keeper or person keeping a public lodging house, or cabin, or their agents makes a reasonable attempt to verbally warn said guest to cease and desist said breach of quiet enjoyment or violation of local or state law. Upon such immediate eviction, the guest shall be refunded the unused portion of his or her pre-paid rental fee less damage charges for his or her actions. For the purpose of this section, the term "rental unit" shall include residential property rented for one month or less.

III. Any law enforcement officer of this state, upon request of a hotel keeper, or person keeping a public lodging house, or cabin, shall place under arrest and take into custody any guest who violates this section in the presence of the officer. Upon arrest, the guest shall be deemed to have abandoned his right of occupancy of the rental unit and the operator of the establishment may then make such unit available to other guests. The operator of said establishment shall employ all reasonable means to protect any personal property left on the premises by such guest.

N.H. Rev. Stat. § 353:3-c, NH ST § 353:3-c
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Proposed Legislation

Revised Statutes Annotated of the State of New Hampshire
Title V. Taxation (Ch. 71 to 90) (Refs & Annos)
Chapter 78-a. Tax on Meals and Rooms (Refs & Annos)

N.H. Rev. Stat. § 78-A:3

78-A:3 Definitions.

Effective: July 1, 2017
Currentness

As used in this chapter:

I. "Commissioner" means the commissioner of revenue administration.

II. "Person" means any individual, combination of individuals, firm, partnership, society, association, joint stock company, corporation, or any of the foregoing acting in a fiduciary or representative capacity, whether appointed by court or otherwise.

III. "Hotel" means an establishment which holds itself out to the public by offering sleeping accommodations for rent, whether or not the major portion of its operating receipts is derived from sleeping accommodations. The term includes, but is not limited to, inns, motels, tourist homes and cabins, ski dormitories, ski lodges, lodging homes, rooming houses, furnished room houses, boarding houses, private clubs, hostels, cottages, camps, chalets, barracks, dormitories, and apartments. The term does not include the following:

(a) A hospital licensed under RSA 151, or a sanitarium, convalescent home, nursing home, or home for the aged;

(b) Any establishment operated by any state or United States agency or institution, except the New Hampshire department of natural and cultural resources;

(c) An establishment owned by a nonprofit corporation or association operated exclusively for religious or charitable purposes, and which does not offer sleeping accommodations to the general public;

IV. "Operator" means any person operating a hotel, charging for a taxable meal, or receiving gross rental receipts, whether as owner or proprietor or lessee, sublessee, mortgagee, licensee, or otherwise.

V. "Occupant" means any person who, for rent paid, uses, possesses, or has a right to use or possess any room in a hotel under any lease, concession, permit, right of access, license, or agreement. The term does not include a permanent resident.

VI. (a) "Occupancy" means the use or possession, or the right to the use or possession, of any room in a hotel for any purpose, or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of a room.

(b) The term "occupancy" does not include:

(1) Occupancy by a permanent resident, or by an employee of an operator when the occupancy is granted to the employee as pay for his employment, or any occupancy furnished in a seasonal camp for children under the age of 18 years; or

(2) Occupancy at a facility or establishment owned or leased pursuant to a long-term agreement by an organization operated for educational purposes, which organization is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, but only if occupancy at such facility or establishment is provided:

(A) To students regularly attending the organization;

(B) To employees, faculty members or administrative officials of the organization, but only if occupancy at such facility or establishment is provided in connection with responsibilities performed for the organization;

(C) To volunteers providing services in connection with the organization; or

(D) To any person, but only if occupancy at such facility or establishment is provided pursuant to an activity which is related to educational purposes and the sponsor of such activity is an organization exempt from federal income taxation under section 501(c) of the Internal Revenue Code or the federal or state government or an instrumentality thereof. The exemption provided by this subparagraph (b)(2)(D) shall not apply if occupancy at the facility or establishment is offered to the general public on a regular and continuous basis without regard to an activity which is related to educational purposes. For purposes of this subparagraph (b)(2)(D) "educational purposes" means:

(i) The instruction or training of an individual for the purpose of improving or developing the individual's capabilities;

(ii) The instruction of the public on subjects useful to the individual and beneficial to the community; or

(iii) With respect to a specific educational organization, the conduct of alumni, student or athletic functions or events.

VII. "Permanent resident" means any occupant who has occupied any room in a hotel for at least 185 consecutive days.

VIII. "Rent" means:

(a) The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits, and property, or services of any kind or nature, and also any amount for which the occupant is liable for the occupancy without any deduction of any kind; and

(b) Any monies received in payment for time-share rights at the time of purchase. Provided, however, that such money received shall not be considered rent and thus not taxable if a deeded interest is granted to the purchaser for his time-share rights.

(c) The term "rent" does not include:

(1) Rental charges for living quarters, sleeping, or household accommodations to any student necessitated by attendance at a school as defined in this section; or

(2) Rental charges for living quarters, sleeping or household accommodations necessitated by the partial or complete destruction of a person's permanent residence.

IX. "School" means an educational institution which has a regular faculty, curriculum, and organized body of pupils or students in attendance. No part of the earnings of the institution may inure to the benefit of any individual.

X. The following terms have the meaning as stated:

(a) "Meal" means any food or beverage, or both, prepared for human consumption and served by a restaurant, whether the food or beverage is served for consumption on or off the restaurant premises. The term "meal" includes food or beverages sold on a "take out" or "to go" basis, whether or not they are packaged or wrapped and whether or not they are taken from the premises of the restaurant. The term "meal" excludes any food or beverage wholly packaged off the premises except: (1) sandwiches of all kinds; (2) beverages in unsealed containers; and (3) catered meals or meals which are delivered to the location where the meal is consumed. Beverage includes an alcoholic beverage, served with or without food.

(b) "Restaurant" means an eating establishment where food, food products, or beverages including alcoholic beverages are served and for which a charge is made. The term includes, but is not limited to,

a cafe, lunch counter, private or social clubs, cocktail lounges, hotel dining rooms, catering business, tavern, diner, snack bar, dining room, food vending machine, and any other eating place or establishment where meals are served, even if the serving of a meal is not the primary function of the establishment such as but not limited to convenience stores, gas stations, or supermarkets, but only as to the portion of such establishment that serves a "meal" as defined in this chapter. The term includes eating establishments whether stationary or mobile, temporary or permanent.

(c) "Taxable meal" means any meal for which a charge is made that is purchased from a person in the business of operating a restaurant, and which is subject to a tax under RSA 78-A:6. The following are not taxable meals:

(1) Meals served or furnished on the premises of a nonprofit corporation or association organized and operated exclusively for religious or charitable purposes, in furtherance of any of the purposes for which it was organized; with the net proceeds of the meals to be used exclusively for the purposes of the corporation or association;

(2) Meals served or furnished by an organization operated for educational purposes, which organization is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, either directly through facilities owned and operated by such organization or indirectly through a catering or food service enterprise under contract with such organization, but only if such meals are served or furnished:

(A) To students regularly attending the organization;

(B) To employees, faculty members or administrative officers of the organization;

(C) To volunteers providing services in connection with the organization; or

(D) To persons other than individuals described in subparagraphs (c)(2)(A), (c)(2)(B), or (c)(2)(C), but only if the meals are served or furnished pursuant to an activity which is related to educational purposes and the sponsor of such activity is an organization exempt from federal income taxation under section 501(c) of the Internal Revenue Code or the federal or state government of an instrumentality thereof. For purposes of subparagraph (c)(2)(D), "educational purposes" means:

(i) The instruction or training of an individual for the purpose of improving or developing the individual's capabilities;

(ii) The instruction of the public on subjects useful to the individual and beneficial to the community; or

(iii) With respect to a specific educational organization, the conduct of alumni, student or athletic functions or events.

(E) The exemptions provided by subparagraphs (c)(2)(B) and (c)(2)(D) shall not apply if the meals are served or furnished at a location where meals are offered to the general public on a regular and continuous basis without regard to an activity which is related to educational purposes.

(3) Meals served or furnished on the premises of any institution of the state, political subdivision of the state, or of the United States, to inmates and employees of the institutions;

(4) Meals served or furnished on the premises of a hospital and served in any hospital licensed under RSA 151, except for meals sold in any restaurant which offers its accommodations to the public, or of a sanitarium, convalescent home, nursing home, or home for the aged;

(5) Meals furnished by any person while transporting passengers for hire by train, bus, or airplane if furnished on any train, bus, or airplane;

(6) Meals furnished by any person while operating a seasonal camp for children under the age of 18 years, to the campers under the age of 18, and to employees, but to no others;

(7) Meals prepared and sold by nonprofit organizations other than educational institutions. However, if the nonprofit organization is required to have a license issued by the liquor commission other than licenses issued pursuant to RSA 178:22, V(*l*) for 3 or fewer days per year, the meals are taxable meals;

(8) Meals furnished to any employee of an operator as pay for his employment.

(9) Dispensing of a beverage by a single serving beverage machine where not used in conjunction with other food vending machines such as, but not limited to, commissaries. A single serving beverage machine used to dispense a beverage consumed in conjunction with a meal under the definition of restaurant shall, as to the beverage being dispensed, constitute a taxable meal;

(10) In accordance with the Food Security Act of 1985, meals purchased with food stamp coupons issued under the Food Stamp Act of 1977, as amended; provided, however, that when a meal is purchased in part with food stamp coupons, then only that part of the meal purchased with food stamp coupons is not a taxable meal.

XI. [Repealed.]

XII. "Gratuity" means a gift of money in return for a service.

XIII. "Electronic data submission" means the use of either the telephone or computer to transmit information.

XIV. "Motor vehicle" means a self-propelled vehicle designed to transport persons or property on a public highway that is required by law to be registered for operation on public highways.

XV. "Rental agreement" means an agreement by the owner of a motor vehicle to provide, for not longer than 180 days, the exclusive use of that motor vehicle to another for consideration.

XVI. "Gross rental receipts" means value received or promised as consideration to the owner of a motor vehicle for rental of the vehicle, but does not include:

(a) Separately stated charges for insurance;

(b) Charges for damages to the motor vehicle occurring during the rental agreement period;

(c) Separately stated charges for motor fuel sold by the owner of the motor vehicle.

XVII. "Owner of a motor vehicle" means a person named in the certificate of title as the owner of the vehicle or a person who has the exclusive use of a motor vehicle by reason of rental and holds the vehicle for re-rental.

XVIII. "Department" means the department of revenue administration.

XIX. "Renter" means any person who, for consideration paid to another, is provided a vehicle under a rental agreement.

XX. "Short-term rental" means the rental of one or more rooms in a residential unit for occupancy for tourist or transient use for less than 185 consecutive days.

Notes of Decisions (6)

N.H. Rev. Stat. § 78-A:3, NH ST § 78-A:3
Updated with laws current through Chapter 4 of the 2018 Reg. Sess., not including changes and corrections made by the State of New Hampshire, Office of Legislative Services

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