The State of New Hampshire
Supreme Court

No. 2018-0141

Jacqueline Lane v. Antonio Barletta

RULE 7 APPEAL FROM THE

6th Circuit – District Division- Hillsborough

BRIEF OF THE APPELLANT, ANTONIO BARLETTA

Antonio Barletta, Appellant

By his attorney,
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Oral Argument by Deb Bess Urbaitis

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QUESTIONS PRESENTED

1. Did the Court err in holding the Landlord liable for damages even though he provided an alternate heat source to the tenant?

2. Did the Court err in awarding damages to the Tenant when the Court did not explicitly find that the Landlord willfully violated NH RSA 540-A:3?

3. Did the Court err in awarding double damages to the Tenant?

4. Did the Court abuse its discretion when it refused to admit the Landlord's exhibits into evidence?

TEXT OF RELEVANT AUTHORITIES

358-A:10, I. Private Actions

Any person injured by another's use of any method, act or practice declared unlawful under this chapter may bring an action for damages and for such equitable relief, including an injunction, as the court deems necessary and proper. If the court finds for the plaintiff, recovery shall be in the amount of actual damages or $1,000, whichever is greater. If the court finds that the use of the method of competition or the act or practice was a willful or knowing violation of this chapter, it shall award as much as 3 times, but not less than 2 times, such amount. In addition, a prevailing plaintiff shall be awarded the costs of the suit and reasonable attorney's fees, as determined by the court. Any attempted waiver of the right to the damages set forth in this paragraph shall be void and unenforceable. Injunctive relief shall be available to private individuals under this chapter without bond, subject to the discretion of the court.

540-A:3, I. Certain Specific Acts Prohibited

No landlord shall willfully cause, directly or indirectly, the interruption or termination of any utility service being supplied to the tenant including, but not limited to water, heat, light, electricity, gas, telephone, sewerage, elevator or refrigeration, whether or not the utility service is under the control of the landlord, except for such temporary interruption as may be necessary while actual repairs are in process or during temporary emergencies.

540-A:4, IX (a). Remedies

Any landlord or tenant who violates RSA 540-A:2 or any provision of RSA 540-A:3 shall be subject to the civil remedies set forth

in RSA 358-A:10 for the initial violation, including costs and reasonable attorney's fees incurred in the proceedings. Each day that a violation continues after issuance of a temporary order shall constitute a separate violation.

STATEMENT OF THE CASE AND FACTS

Antonio Barletta (landlord) owns a three-unit property located at 44 Hall Avenue in Henniker, New Hampshire. Jacquelyn Lane (tenant) rented Apartment 3 in that building from Mr. Barletta. *December1, 2017 Trn.* at 5. Ms. Lane moved into the apartment at the end of August 2016. *December1, 2017 Trn.* at 6. The apartment has one bedroom, a living room/kitchen area, and a bathroom on the third floor of the subject property. *December1, 2017 Trn.* at 21, 25, and 26. The landlord testified that the apartment is approximately 500 square feet. *December1, 2017 Trn.* at 21.

The parties did not sign a lease. *December 1, 2017 Trn.* at 20. The utilities were not included in the rent. Ms. Lane was responsible for covering the cost of heating fuel. *December 1, 2017 Trn.* at 13. Ms. Lane noted that there was an issue with the propane heating system soon after moving in. *December 1, 2017 Trn.* at 6. The landlord told her the system worked but might need propane. *December 1, 2017 Trn.* at 7. He also told her to call the property manager if there were any issues. *December 1, 2017 Trn.* at 6. This communication occurred in 2016 through text messages. *December1, 2017 Trn.* at 6 and 7. *App* at 20.

In November 2016, the landlord provided the tenant with a portable electric heater to supplement the heating system, referred to in the transcript as a space heater. *December 1, 2017 Trn.* at 9. The tenant paid her rent during this time period. *December 1, 2017 Trn.* at 20. Near the end of the summer of 2017, the tenant was behind

on her rent. *December 1, 2017 Trn.* at 42. She began to complain to the landlord again about the heat not working. *December 1, 2017 Trn.* at 9 and 10. Mr. Barletta believed the heating system to be in working order. *December 1, 2017 Trn.* at 25. Mr. Barletta directed the tenant to call Ayer and Goss to fill the tank. *December 1, 2017 Trn.* at 24. The landlord testified that he told Ms. Lane that Ayer and Goss would service the system, if, in fact, repair was necessary. *December 1, 2017 Trn.* at 24. Any repairs needed would be paid for by Mr. Barletta. *December 1, 2017* Trn. at 33. Ms. Lane did not contact Ayer and Goss and did not fill the propane tank. *December 1, 2017 Trn.* at 24.

The tenant called the Henniker Health Inspector who came to the apartment on two occasions. *December 1, 2017 Trn.* at 11. The space heater was turned on at 5:00 p.m. and the temperature in the apartment was between 61 and 63 degrees according to Ms. Lane. *December 1, 2017 Trn.* at 11.

Ms. Lane filed her landlord-tenant petition on November 3, 2017. *December 1, 2017 Trn.* at 23. *App.* at 3. Mr. Barletta did not receive a copy of the Temporary Orders in this matter until November 26, 2017. *December 1, 2017 Trn.* at 41.

On November 3, 2017, Mr. Barletta had Ayer and Goss go to the apartment house to check on the heating system. *December 1, 2017 Trn.* at 27. At the December 1, 2017 hearing, Mr. Barletta submitted the invoice from AGS Services as his Exhibit A. *App.* at 19. The invoice notes that the propane tank was empty. *December1, 2017 Trn.* at 36.

Mr. Barletta also referred to paperwork he had to prove that he had been in communication with Ayer & Goss. *December 1, 2017 Trn.* at 30. At that point, the Trial Judge interrupted his testimony. *December 1, 2017 Trn.* at 30. Mr. Barletta then handed the Court correspondence from Carloyn at Ayer and Goss that showed that he was cooperating with the tenant and Ayer and Goss to remedy this situation. *December 1, 2017 Trn.* at 31. Mr. Barletta further testified that the tenant told him he wasn't allowed access to the apartment unit without her being present. *December 1, 2017 Trn.* at 31. He also stated that she refused him entry multiple times. *December 1, 2017 Trn.* at 33. On cross-examination Mr. Barletta stated that AGS Services (Ayer and Goss's technician services) was refused access to the unit. *December1, 2017 Trn.* at 35.

The landlord did not have the opportunity to testify about the heater or the reason it was provided as the court interrupted him to say that apartments cannot be heated with a space heater in New Hampshire. *December 1, 2017 Trn.* at 22. The court further stated that space heaters cannot provide adequate heat. *December 1, 2017 Trn.* at 22. The court interjected stating that Mr. Barletta was testifying about things that had no bearing on the court's decision. *December 1, 2017 Trn.* at 23. Mr. Barletta did not have a chance to rebut that statement from the Judge or enter the letter he referenced from the Henniker Fire Captain. *December 1, 2017 Trn.* at 21 and 23.

At the conclusion of Mr. Barletta's testimony, he attempted to remind the court about his Exhibit from Mr. Costello, the Henniker Fire Captain, and the email from Carolyn at Ayer & Goss. *December1, 2017 Trn.* at 36. Mr. Barletta attempted to explain why

these documents were needed. *December 1, 2017 Trn.* at 36. The trial Judge removed a number of documents, rejecting them, and admitted only the Ayer & Goss invoice as Respondent's Exhibit A. *December 1, 2017 Trn.* at 37. The court denied entry of the Fire Captain's email. *December 1, 2017 Trn.* at 38. Mr. Barletta asserted that the email stated that the heaters were a sufficient heat source. *December 1, 2017 Trn.* at 38. The court stated the evidence wasn't relevant. *December1, 2017 Trn.* at 38.

At the conclusion of the December 1, 2017 hearing, the trial court questioned whether Ms. Lane denied Mr. Barletta access to the apartment. *December 1, 2017 Trn.* at 45. Ms. Lane does not directly answer the question. *December 1, 2017 Trn.* at 45. Further, at the end of the hearing, the court told the parties that it wanted to know the following three things: whether the heating system worked or needed repairs; if it was operational, did it just need fuel; and, was the heating system sufficient or not. *December 1, 2017 Trn.* at 50. The hearing ended and a further hearing was scheduled for January 12, 2018.

At the January 12, 2018 hearing, Mr. Barletta testified that the propane tank was filled on December 6, 2017 at his expense. *January 12, 2018 Trn.* at 4 and 5. Both parties subsequently scheduled repairmen to come assess the heating system. *Trn* at 2 and 3. Ms. Lane's technician inspected the system on December 20, 2017. *January 12, 2018 Trn.* at 3. *App* at 21. According to the invoice from SpaceKraft, the technician did not actually test the heating system. *January12, 2018 Trn.* at 3. *App.* at 21. The invoice notes that the heating unit was off and the gas was turned off with

the regulator removed. *App*. at 21. The technician stated that the gas lines needed to be brought to code prior to a function test. On December 21, 2017, Mr. Barletta's technician arrived and attempted to get the unit working. *January 12, 2018 Trn*. at 3. The technician believed the unit needed a new valve. *January 12, 2018 Trn*. at 3. Neither party testified as to why the unit was not fixed at this point in time or why service technicians didn't get to the home until December 20th and 21st. *Jan 12, 2018 Trn.* at 2- 8. Ms. Lane moved out January 1, 2018. *Jan 12, 2018 Trn*. at 3.

The court conducted hearings on December 1, 2017 and January 12, 2018. The court ruled that there was no heat for thirty-three (33) days. See, *Order* herein at 25. The Court awarded double damages to Ms. Lane in the amount of $66,000. The landlord appealed. See, *Order* herein at 25.

Ms. Lane filed a Motion to Reconsider on March 14, 2018 asking the court to recalculate the days that she was without heat. *App*. at 6. Mr. Barletta objected to the Motion as untimely. *App*. at 10. The court conducted a hearing on October 12, 2018. The Trial Court denied the Motion to Reconsider stating that is was untimely. *App*. at 12. The tenant cross appealed.

SUMMARY OF THE ARGUMENT

Mr. Barletta asserts that he provided an adequate heat source to Ms. Lane. Further, he asserts that he had evidence of that fact available to him at the first two hearings in this matter, but the trial court was unwilling to let him speak on this topic or submit evidence to support his position. If he had been able to submit his evidence, it would have supported his position that he had provided an adequate heating source. The evidence would have further demonstrated that he had taken reasonable steps to ensure the unit had heat. The Court's refusal to enter the landlord's relevant evidence on these assertions is an abuse of discretion.

The landlord argues that he did not willfully cause the interruption in the tenant's utilities. Ms. Lane did not have propane in the tank, and it was not Mr. Barletta's responsibility to provide the propane. Mr. Barletta offered to have the system serviced, if that was needed, after the tank was filled. Given this, the Court should have found that the landlord did not interrupt the tenant's utility service in violation of NH RSA 540-A:3, I. Mr. Barletta also asserts that the court did not explicitly find that he willfully violated NH RSA 540-A:3 and, therefore, should not have awarded damages in the first place much less the double damages of $66,000 that he was ordered to pay the Tenant. While not conceding this point, Mr. Barletta asserts that damages, if any awarded, should have been calculated at $1,000 per day, not $2,000.

ARGUMENT

I. The Landlord Provided an Adequate Alternate Heat Source.

The landlord provided a propane heating system and an electric space heater for the subject apartment unit. *December 1, 2017 Trn.* at 9, 25. The landlord asserts that the space heater he provided was an adequate, alternative heat source. *December 1, 2017 Trn.* at 21. He attempted to tell the court about the heater and its capabilities but was cut-off by the trial court. *December 1, 2017 Trn.* at 22. The trial court stated that a space heater could never be considered an adequate heat source. *December 1, 2017 Trn.* at 22. The evidence that Mr. Barletta was trying to present could have demonstrated the heater's capabilities, usage requirements, and specifications. He did not get the opportunity to present that evidence to the court. The landlord argues that the type of space heater he provided could be an adequate, alternative heat source. As he asserts that he provided an adequate, alternative heat source, he could not be found to have willfully caused an interruption of a utility service as contemplated by NH RSA 540-A:3,I. Further, no damages should have been awarded because there was an adequate source of heat in the apartment.

Mr. Barletta ensured that the apartment unit was not without a heating source. He acknowledges that the tenant was complaining about the heating system, but the reliable evidence he had was that the propane tank was empty. Given this understanding it is reasonable for him to assume that the problem could be remedied at

the complete control of the tenant. She needed to fill the tank. Only after the tank had fuel could the system be assessed for any malfunction. The landlord testified that he would certainly cover the cost of any repair needed. *December 1, 2017 Trn.* at 24,33. In essence, the first step had to be taken by the tenant.

II. The Tenant Must Prove a Period of Willful Interruption for Damages to be Awarded.

New Hampshire RSA 540-A:3, I states:

> No landlord shall willfully *cause*, directly or indirectly, the interruption or termination of any utility service being supplied to the tenant including….heat…. (emphasis added).

The Petition in this matter was filed on November 3, 2017. *App.* at 3. On the same day, by coincidence, Mr. Barletta had Ayer and Goss, a local heating company, check Ms. Lane's residence because she had previously told Mr. Barletta that she had no heat from the propane unit in her apartment. *December 1, 2017 Trn.* at 27. Ayer and Goss discovered that there was no propane in the tank. *App.* at 19. Mr. Barletta was not responsible to provide propane, so he did not fill the tank himself. It was reasonable for him to assume that the propane system was not working since it didn't have any propane with which to work. He did not pursue any other remedy because no propane was delivered.

Mr. Barletta received the Court's Temporary Orders on November 26, 2017. *December 1, 2017 Trn.* at 41. He could reasonably still

believe that the issue was easily remedied by Ms. Lane getting propane delivered. She did not order any propane but continued to insist that the system didn't work, and the space heater was inadequate. This position is unreasonable. Without putting propane in the tank, there was no way to test the system to even determine if there was a problem. The lack of propane was not caused by the landlord. The tenant was responsible for providing the heating fuel. *December 1, 2017 Trn.* at 13.

The term " willfully" in RSA 540-A:3, I, denotes a voluntary and intentional act, and not a mistaken or accidental act. *See Rood v. Moore,* 148 N.H. 378, 379 (2002), *Wass v. Fuller*, 158 NH 280,283 (2009). This landlord's action in the instant case differ significantly from the landlord's actions in the *Wass* case. The landlord in that case took an affirmative step to interrupt the heating fuel supply by locking the gas tanks. *Id.* The damages in *Wass* were $1,000 per day for the twenty-seven-day duration of the condition. *Id.* at 282; See NH RSA 540-A:4, IX(a); NH RSA 358-A:10.

The term willful is a word of many meanings depending on the context in which it is used." *Rood v. Moore,* 148 N.H. 378, 379 (2002) *Citing, Appeal of Morgan,* 144 N.H. 44,52 (1999). The Rood decision further states, "We have, however, usually interpreted the term to exclude an act committed under a mistaken belief of the operative facts." *Id. See, e.g.*, *id.*; *Hynes v. Whitehouse*, 120 N.H. 417, 420, 415 A.2d 876 (1980); *R.J. Berke & Co. v. J.P. Griffin, Inc.,* 116 N.H. 760, 764-65, 367 A.2d 583 (1976). Thus, for instance, in *Ives v. Manchester Subaru, Inc.,* 126 N.H. 796, 801, 498 A.2d 297 (1985) (citation omitted), the court stated, "A willful act is a voluntary act

committed with an intent to cause its results. It is not, by contrast, an accident or an act committed on the basis of a mistake of fact." *Rood* at 379. Mr. Barletta's actions were not willful.

Mr. Barletta did not *cause* any interruption in Ms. Lane's heating supply. He testified that he would cover the cost of a repair if it were needed. *December 1, 2017 Trn.* at 33. He instructed the tenant to call Ayer and Goss, which he asserts she did not do. *December 1, 2017 Trn.* at 24. He also had another source of heat in the apartment. His actions show that he did not intend for the tenant to be without heat. He provided a path forward to ensuring that the heat would be restored.

The damages calculated from the time of the Temporary Order until there was heating fuel in the system on December 6, 2017 should be vacated since the landlord did not willfully cause the interruption of the heat. See, *January 12, 2018 Trn.* at 4.

Admittedly, the calculation of damages, if any, from the time of the propane fill until the time the tenant vacated the residence, could be at issue except for the fact that the trial court only awarded damages to December 6, 2017, and the Motion to Reconsider filed by the tenant on this issue was denied as untimely. *App* at 12.

III. The Trial Court Erred When It Awarded Double Damages.

This Honorable Court in the *Wass* and *Randall* cases upheld statutory damages of $1,000 per day of violation. *Wass* at 280; *Randall v. Abounaja,* 164 N.H. 506, 511 (2011). In both instances, the Court found that the landlords willfully violated the statute and

awarded the tenants $1,000 per day of the violation. In this matter, the District Court did not explicitly find that the landlord willfully violated the statute but still awarded not $1,000 per day, but $2,000 per day. The landlord asserts that doubling the penalty was an abuse of discretion. The penalty is certainly draconian. It put the damages awarded by the District Court over and above the jurisdictional limit of $50,000.

The landlord asserts that the district court should not have awarded any penalties at all because the disruption in service was not willful. Further, even if the court did decide that the landlord was responsible for the lack of heat, the damages should not have been doubled.

This Court, in *Randall,* gave specific instructions to the trial court on remand as to the method it should use to calculate damages. *Randall* at 511. The Court directed the trial court to determine whether or not the landlord willfully violated NH RSA 540-A:3, I, and if so, the court was directed to award $1,000 per day that the landlord's violation continued. *Id.* If the court finds the landlord did not willfully violate the statute after the Temporary Order, the court shall not award continuing violation damages. *Id.*

In the *Wass* case, this Honorable Court affirmed damages of $1,000 per day while finding that the landlord in that case took an affirmative step to disrupt the tenant's heat. *Wass* at 284. The Court did not award double damages. This Honorable Court in *Wass* stated that "a violation of RSA 540-A:3, I, entitles the tenant to a separate award of actual damages or $1,000, whichever is greater, for each day that the condition continues." *See* RSA 540-A:4, IX(a); RSA 358-

A: 10, I; *Simpson v. Young,* 153 N.H. 471, 474-75, 478 (2006). *Wass a*t 282.

If the trial court utilized the *Randall* case instructions in this case, the damages could be calculated in two ways. First, if the court finds Mr. Barletta did not willfully violate the RSA, then no damages should be awarded to Ms. Lane. If the court finds that Mr. Barletta did willfully violate the RSA, then damages should be awarded at $1,000 per day that the violation continued. Under no circumstance should the damages in this case be $2,000 per day.

CONCLUSION

For the foregoing reasons, Mr. Barletta respectfully requests that this Honorable Court reverse the holding of the Hillsborough District Court's Order and vacate the award of all damages.

Statement Regarding Oral Argument

Mr. Barletta requests a fifteen-minute oral argument.

Certification Regarding the Appealed Decision

A copy of the decision from the 6th Circuit- District Division – Hillsborough is in writing and appended hereto.

Respectfully submitted,
Antonio Barletta
By his attorney,
Courteous Law, PC

May 9, 2019

By:/s/ *Deb Bess Urbaitis*
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Rule 26(7) Certificate of Service

I, Deb Bess Urbaitis, Esq., Attorney for Appellant Antonio Barletta, hereby certify under the pains and penalties of perjury that, on this date, I electronically served copies of this Brief of the Appellant, along with Appendix, upon Attorney Kyle McDonald.

May 9, 2019

By:/s/ *Deb Bess Urbaitis*
Deb Bess Urbaitis, Esq.

Certification as to Compliance with Word Limit

I hereby certify that the within document complies with the required word limit for opening briefs and contains 3966 words.

May 9, 2019 By:/s/ *Deb Bess Urbaitis*
Deb Bess Urbaitis, Esq.

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

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February 22, 2018

ANTONIO BARLETTA
PO BOX 346
SALEM MA 01970

Case Name: **Jacquelyn Lane v. Antonio Barletta**
Case Number: **444-2017-LT-00045**

Attached please find Final Order Under RSA 540-A:4 and Court Order for the above referenced matter.

Nancy E. Ringland
Clerk of Court

(768)

C: Kyle A. H. McDonald, ESQ

THE STATE OF NEW HAMPSHIRE
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FINAL ORDER
(Pursuant to RSA 540-A:4)

FILE COPY

Case Name: **Jacquelyn Lane v. Antonio Barletta**
Case Number: **444-2017-LT-00045**

On January 12, 2018, a hearing was held on the above entitled matter at said Court.
Defendant ☒ was present ☐ was not present.
After hearing the evidence presented, the Court,

☒ Finds that the Defendant has violated RSA 540-A: 3(I)

☒ Orders the defendant to restore and maintain all utility services provided as part of the rental agreement with the plaintiff until such time as the rental agreement is lawfully modified or the plaintiff's tenancy is lawfully terminated.

☐ Orders the defendant not to interfere directly or indirectly with plaintiff's access to or use and enjoyment of the premises rented by the plaintiff (or any part thereof) without prior judicial authorization.

☐ Orders the defendant not to interfere directly or indirectly with plaintiff's access to a possession of his/her personal property without prior judicial authorization.

☐ Orders the defendant not to enter the premises rented by the plaintiff without permission from the plaintiff or a court of competent jurisdiction, except to make emergency repairs which include the formulation of a plan for remediation of, or to engage in emergency remediation of, an infestation of insects, including bed bugs or rodents.

☐ Orders the defendant not to interfere with the quiet enjoyment of the premises by the plaintiff or members of his/her household.

☐ Orders the defendant not to damage or permit any damage to any part of the premises he/she is renting from the plaintiff.

☐ Orders the defendant to permit the plaintiff to have access to the premises at reasonable times with reasonable prior notice in order to make necessary repairs.

☐ Orders the defendant to permit the plaintiff to have access to the premises at reasonable times with reasonable prior notice in order to evaluate whether bed bugs are present.

☐ Orders the defendant to comply with reasonable written instructions to prepare the dwelling unit for remediation of an infestation of insects or rodents, including bed bugs.

☐ Orders the defendant to investigate the plaintiff's report of an infestation of insects, including bed bugs or rodents.

Case Name: Jacquelyn Lane v. Antonio Barletta
Case Number: 444-2017-LT-00045
FINAL ORDER PURSUANT TO RSA 540-A:4

☐ Orders the defendant to immediately take reasonable measures to remediate an infestation of insects, including bed bugs or rodents.

☒ Orders ☐ plaintiff ☒ defendant to pay damages to the ☒ plaintiff ☐ defendant in the amount of $ 66,000

☐ Orders ☐ plaintiff ☐ defendant to pay attorney's fees in the amount of $ TBD see attached order to the ☐ plaintiff ☐ defendant

☒ Other orders: See attached order

☐ Orders ☐ plaintiff ☐ defendant to pay the following fees to the sheriff/police:
Service: _____ $ _____ Travel: _____ $ _____
Other: _____ $ _____ **TOTAL** _____ $ _____

WILLFUL VIOLATION OF THIS ORDER CONSTITUTES CONTEMPT OF COURT AND MAY RESULT IN THE IMPOSITION OF CIVIL PENALTIES, FINES AND/OR IMPRISONMENT.

Date 2/14/18

Signature of Judge

Edward B. Tenney
Printed Name of Judge

(768)
C: Antonio Barletta; Kyle A. H. McDonald, ESQ

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

6th Circuit - District Division - Hillsborough
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NOTICE OF APPELLATE RIGHTS

Case Name: **Jacquelyn Lane v. Antonio Barletta**
Case Number: **444-2017-LT-00045**

CIVIL CASES

*Small Claims, Landlord/Tenant Matters, Domestic Violence, Civil Stalking, Civil Writs

If you receive an adverse decision in the District Court or Family Division in any one of these cases, you have the right to appeal the decision of the District Court or Family Division by filing an appeal in the New Hampshire Supreme Court. This is an appeal only on questions of law. In other words, the Supreme Court will not redetermine questions of fact already decided by the District Court or Family Division. You must file your appeal with the Supreme Court within thirty days of the date on the District Court or Family Division's written notice of the decision. In landlord/tenant cases, you must notify the District Court or Family Division within seven days of the Notice of Judgment date of your intent to file an appeal in the Supreme Court.

IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHT OF APPEAL, PLEASE SPEAK WITH THE CLERK OF THIS COURT.

☒ Copy mailed to Pro Se Litigant

February 22, 2018

Nancy Ringland
Nancy E. Ringland, Clerk of Court

☐ My signature below attests that I have received a copy of this Notice of Appellate Rights.

Date

Pro Se Litigant

THE STATE OF NEW HAMPSHIRE

JUDICIAL BRANCH

NH CIRCUIT COURT

MERRIMACK COUNTY — 6TH CIRCUIT – DISTRICT DIVISION – HILLSBOROUGH

Jacquelyn Lane v. Antonio Barletta

Case No. 444-2017-LT-00045

ORDER

This matter came before the Court for the second of two hearings on January 12, 2018. Both parties appeared. Ms. Lane was represented by Kyle McDonald, Esquire.

The tenant alleges in this 540-A action that the landlord failed to provide heat to her apartment since the summer of 2016. She notified him of the problem numerous times and provided heat for herself through a space heater.

She finally brought a 540-A Petition on November 3, 2017. The Court issued Temporary *Ex Parte* Orders the same day, requiring the landlord to take necessary steps to provide heat to the apartment. The landlord failed to do so until December 6, 2017. The landlord maintained for a long period of time that the unit in the building was working properly and just needed propane. However, subsequent inspections by heating contractors hired by both the tenant and the landlord conclusively showed that the heating unit was not working and the heating system was, in fact, defective. The heating system was finally repaired on December 6, 2017 by Ayer & Goss, who was paid to do so by the landlord.

The Court finds a violation of RSA 540-A: 3, (I) and the damages are assessed in accordance with the RSA 540-A: 4, IV, (a) and also RSA 358-A: 10. The remedy for this violation is $1,000.00 a day for each separate day the violation occurs after Temporary Order was issued. The Order to restore heat to the apartment was issued in this matter on November 3, 2017. The heating unit was not fixed and put in working order until December 6, 2017. This is a period of 33 days. Under RSA 540-A: IV, IV and RSA 358-A: 10, the damages shall be doubled **at a minimum**. Under RSA 540-A: IV, attorney's fees may also be ordered.

Damages in this case are assessed in the amount of $66,000.00 ($1,000.00 a day times 33 days times two).

Ms. Lane shall submit an Affidavit with specific requests for attorney's fees within 10 days of the date of this Order. Mr. Barletta shall have 10 days to file a written response regarding the attorney's fees. The Court will then issue a further written order on attorney's fee without further hearing.

So Ordered.

February 20, 2018
Date

Hon. Edward B. Tenney, Presiding Judge