

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

Case Number: 2018-0490

Mark DiMinico  
Plaintiff-Appellee

v.

Centennial Estates Cooperative, Inc.  
Defendant-Appellant

Rule 7 Appeal from Decision of the Rockingham County Superior Court

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**ANSWERING BRIEF OF DEFENDANT/APELLANT,  
CENTENNIAL ESTATES COOPERATIVE, INC.**

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On the Brief:

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## ANSWER

On Page 7 of the Brief filed by Mark DiMinico, the Plaintiff/Appellee raises for the first time a claim pursuant to RSA 540-A:2, entitled “General Prohibition” and a claim for damages pursuant to RSA 540-A:4, IX (a), entitled “Remedies”. These claims were never pled in the underlying case before the Superior Court. Mr. DiMinico did not make any RSA 540-A claim, either in the Petition for Declaratory and Injunctive Relief filed with the Rockingham County Superior Court or during the trial for this case. As such, this Court cannot consider these claims. *See LaMontagne Builders v. Brooks*, 154 N.H. 252, 258, 910 A.2d 1162 (2006) (“We have long held that ‘we will not consider issues raised on appeal that were not presented in the lower court.’”)

On Page 12 of the Brief filed by Mr. DiMinico, reference is made to a statutory right given to tenants under RSA 540-A:2 whereby a landlord shall not willfully violate a tenant’s right to quiet enjoyment. Again, this issue was not argued nor pled in the Superior Court by Mr. DiMinico. *Id.*

On Page 13 of the Brief filed by Mr. DiMinico, Mr. DiMinico again claims that the matter should have been decided under RSA 540-A. *Id.*

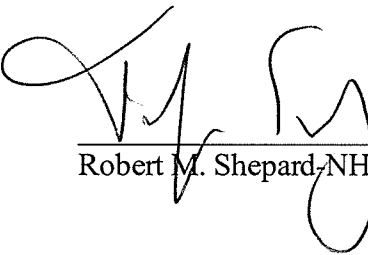
On Page 19 of the Brief filed by Mr. DiMinico, Mr. DiMinico argues that the Lease entitled him to a certain quality of leasehold; the Cooperative unreasonably trespassed on that right in bad faith. Bad faith was not alleged in the underlying pleadings in this matter. *Id.*

On Page 20 of the Brief filed by Mr. DiMinico, Mr. DiMinico argues that the actual work performed by the Cooperative was abusive. Again, this was not pled in the underlying action. *Id.*

Finally, on Page 26 of the Brief filed by Mr. DiMinico, he argues that attorney's fees should have been awarded pursuant to RSA 540-A. This statute was never pled by the Mr. DiMinico in this matter. As such, no claim can be made under this statute. *Id.*

**CERTIFICATE OF SERVICE**

I, Robert M. Shepard, Esquire hereby certify that the Answering Brief on behalf of the Defendant/Appellant, Centennial Estates Cooperative, Inc., was electronically served this 28<sup>th</sup> day of May, 2019 to William B. Parnell, Esquire, opposing counsel.

  
Robert M. Shepard-NH Bar #2326 #21216 For