

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

DOCKET NO. 2020-0320

ROBERT ST. ONGE

V.

OBERTEN, LLC

MANDATORY APPEAL

FROM A FINAL DECISION OF THE

9th CIRCUIT COURT-MANCHESTER

BRIEF OF PLAINTIFF/APPELLANT

ROBERT ST. ONGE

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QUESTIONS PRESENTED FOR REVIEW

- I. Whether a recovery house or sober home is a group home within the meaning of RSA 540:1-a, IV(c). (Preserved in Plaintiff's Motion to Reconsider)

- II. Whether Emergency Order 4 issued by Governor Sununu prohibited the Defendant from evicting the Plaintiff on May 12, 2020. (Preserved in Plaintiff's Motion to Reconsider)

STATUTES AND ORDERS INVOLVED IN THE CASE

RSA 540:1-a Definitions.

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(c) [Repealed.]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.
- (h) Occupancies in which the occupant is hired to provide care or assistance for a person with disabilities. In such cases, if the person with disabilities or his or her legal guardian no longer wishes the assistance of the caregiver, he or she may order the caregiver to vacate the premises without legal process required as a tenant under this chapter, provided:
 - (1) There is a written agreement specifying that care or assistance authorizes summary ejection of the caregiver; and
 - (2) The caregiver is given written notice directing him or her to vacate the premises in not less than 72 hours; and
 - (3) If the agreement between the parties provides for compensation for the care provider beyond free housing, prior to the time the caregiver vacates the premises, the person with disabilities or the legal guardian pays the caregiver any money due under the agreement for services rendered.

Source. 1985, 249:1. 2001, 277:1. 2006, 312:2, eff. Jan. 1, 2007. 2010, 203:3, eff. Jan. 1, 2011. 2013, 61:3, eff. June 6, 2013; 253:1, eff. July 24, 2013. 2014, 93:1, eff. Aug. 10, 2014. 2018, 189:1, eff. Aug. 7, 2018.

RSA 540-A:1 Definitions. –

As used in this subdivision:

- I. "Landlord" means an owner, lessor or agent thereof who rents or leases residential premises including manufactured housing or space in a manufactured housing park to another person.
- II. "Tenant" means a person to whom a landlord rents or leases residential premises, including manufactured housing or a space in a manufactured housing park.
- III. "Premises" means the part of the landlord's property to which the tenant is entitled exclusive access for living or storage as a result of the rental or lease agreement.

Source. 1979, 305:1. 1985, 100:3, eff. July 9, 1985.

RSA 540-A:2 General Prohibition. – No landlord shall willfully violate a tenant's right to quiet enjoyment of his tenancy or attempt to circumvent lawful procedures for eviction pursuant to RSA 540. No tenant shall willfully damage the property of the landlord or prevent completion of necessary repairs or willfully deny tenants their right to quiet enjoyment of their tenancies.

Source. 1979, 305:1, eff. Aug. 21, 1979.

RSA 540-A:3 Certain Specific Acts Prohibited.

II. No landlord shall willfully seize, hold, or otherwise directly or indirectly deny a tenant access to and possession of such tenant's rented or leased premises, other than through proper judicial process.

Source. 1979, 305:1. 1991, 373:2, eff. Jan. 1, 1992. 1998, 25:8. 2001, 277:2. 2003, 271:1, eff. Jan. 1, 2004. 2011, 247:1, eff. Jan. 1, 2012. 2013, 48:4, 5, eff. Jan. 1, 2014. 2015, 225:1, eff. Jan. 1, 2016.

STATE OF NEW HAMPSHIRE

BY HIS EXCELLENCY

CHRISTOPHER T. SUNUNU, GOVERNOR

Emergency Order #4 Pursuant to Executive Order 2020-04

Temporary prohibition on evictions and foreclosures

Pursuant to Section 18 of Executive Order 2020-04 it is hereby ordered, effective immediately, that:

1. No owner of non-restricted property or restricted property, as those terms are defined in RSA 540:1-a, may initiate eviction proceedings under RSA 540 during the State of Emergency declared in Executive Order 2020-04 and no eviction order shall be issued or enforced during the State of Emergency declared in Executive Order 2020-04. All applicable provisions of RSA 540 or any law, rule or other regulation which would allow for the initiation of eviction proceedings or the issuance of an eviction order are hereby suspended for the duration of the State of Emergency declared in Executive Order 2020-04.
2. Any violation of Section 1 this Order by a landlord, as that term is defined in RSA 540-A:1, shall be considered a prohibited act under and a violation of RSA 540-A:3.
3. All judicial and non-judicial foreclosure actions under RSA 479 or any other applicable law, rule or regulation are hereby prohibited during the State of Emergency declared in Executive Order 2020-04, and all applicable provisions of any law, rule, or other regulation which would allow for the initiation of foreclosure proceedings are hereby suspended for the duration of the State of Emergency declared in Executive Order 2020-04.
4. No provision in this Order shall be construed as relieving an individual of their obligations to pay rent, make mortgage payments, or any other obligation which an individual may have under a tenancy or mortgage.

5. The Attorney General shall have the authority to enforce the provisions of this Order through any methods provided by current law.

Given under my hand and seal at the Executive Chambers in Concord, this 17th day of March, in the year of Our Lord, two thousand and twenty, and the independence of the United States of America, two hundred and forty-four.


GOVERNOR OF NEW HAMPSHIRE

STATE OF NEW HAMPSHIRE

BY HIS EXCELLENCY

CHRISTOPHER T. SUNUNU, GOVERNOR

**Emergency Order # 51 Pursuant to Executive Order 2020-04 as Extended by
Executive**

Orders 2020-05, 2020-08, 2020-09 and 2020-10

An order terminating Emergency Orders #4 and #24

WHEREAS, on March 17, 2020, the Governor issued Emergency Order #4, which among other things, (1) prohibited owners of non-restricted property and restricted property from initiating eviction proceedings under RSA 540, (2) suspended applicable provisions of RSA 540 or any law, rule, or other regulation which would allow for the initiation of eviction proceedings or the issuance of an eviction order, (3) prohibited judicial and non-judicial foreclosure actions under RSA 479 or any other applicable law, rule or regulation, and (4) suspended all applicable provisions of any law, rule or other regulation which would allow for the initiation of foreclosure proceedings; and

WHEREAS, on April 3, 2020, the Governor issued Emergency Order #24, which provided, among other things, that the provisions of Emergency Order #4 shall not apply to (1) eviction proceedings initiated against an individual for violations of a lease or violations of law which result in either (i) substantial damage to the premises by the individual or members of the individual's household, or (ii) a substantial adverse impact on the health or safety of the other persons and (2) eviction proceedings initiated against an individual in cases of the individual's abandonment of his or her rental unit or space; and

WHEREAS, Emergency Orders 4 and 24 made clear that nothing within those Orders relieved or should be construed to relieve individuals of their obligations to make rent or mortgage payments or to otherwise comply with the provisions of a lease or other contract; and

WHEREAS, the State has instituted a number of programs designed to ease the economic challenges resulting from the COVID-19 pandemic, including, but not limited to, (1) expanding unemployment benefits through Emergency Order #5, (2) establishing the COVID-19 Emergency Healthcare System Relief Fund through Emergency Order #9, (3) allowing municipalities to grant blanket abatement of interest for late property tax payments through Emergency Order #25, (4) establishing the COVID-19 Long-Term Care Stabilization Program through Emergency Order #31, (5) establishing the First Responder Stipend Program, and (6) establishing the Main Street Relief Program to provide \$400 million in relief to New Hampshire small businesses; and

WHEREAS, in addition to other relief programs, the Governor has authorized \$35 million from the CARES Act Coronavirus Relief Fund to support individuals and families needing assistance to maintain their housing as a result of COVID-19; and

WHEREAS, based on consultation with the Court system, State Government housing experts, and housing advocates, the Governor has determined that lifting the eviction moratorium, extending the "cure" period for evictions, and providing assistance to those in need is the best way to resume normal landlord/tenant processes while ensuring that tenants do not fall too far behind on rent have access to necessary assistance.

Now therefore, pursuant to Section 18 of Executive Order 2020-04 as extended by Executive Orders 2020-05, 2020-08, 2020-09, and 2020-10, it is hereby ordered, effective immediately, that:

1. Emergency Orders 4 and 24 shall terminate on July 1, 2020.
2. For every eviction notice issued by the owner of restricted or non-restricted property that is based in whole or in part on nonpayment of rent that became due and payable between March 17, 2020 and the date of this Order, the minimum 7 day notice period required in RSA 540:3 is hereby extended to 30 days. Therefore, every such eviction notice shall provide that the tenant must vacate the premises no less than 30 days from the date of service of the eviction notice. For purposes of this Order, the terms "restricted property" and "non-restricted property" shall have the meanings assigned to those terms in RSA 540:1-a. This Paragraph shall not apply to eviction notices issued before March 17, 2020.
- 3.

Given under my hand and seal at the Executive Chambers in Concord, this 11th day of June, in the year of Our Lord, two thousand and twenty, and the independence of the United States of America, two hundred and forty-four.



GOVERNOR OF NEW HAMPSHIRE

STATEMENT OF THE CASE

On May 15, 2020 Plaintiff Robert St. Onge filed an RSA 540-A petition with the 9th Circuit-District Division-Manchester alleging that the Defendant used self-help to evict him from a recovery house during the eviction moratorium created by Governor Sununu's Emergency Order #4. The Court issued an ex-parte temporary order which mandated that the Defendant provide the Plaintiff with immediate access to Plaintiff's premises forthwith. The Defendant did not comply with the temporary order, rather, it filed a Motion to Vacate Temporary Order, to Dismiss, and to Immediately Schedule Emergency Hearing. The Court held a telephonic hearing on May 22, 2020 to address the Defendant's motion.

For the purpose of the hearing on the Defendant's Motion to Dismiss, the Plaintiff did not contest the factual allegations contained in the Motion because in a self-help eviction case, whether the landlord had good cause to evict the tenant is not legally relevant. The Defendant's primary legal argument was that it operates a group home which is exempt from the requirement to file an eviction action pursuant to RSA 540. The definition of tenant or tenancy contained in RSA 540:1-a, IV(c) excludes "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."

The Defendant operates many sober homes throughout New Hampshire under the trade name Live Free Structured Sober Living. The Plaintiff was a resident in the home located on Rimmon Street, in Manchester, New Hampshire. When the Plaintiff moved into the Rimmon Street home on March 29, 2020, there were 12 residents. All residents sign a contract and must agree to follow a set of program rules. The rules are quite clear that a resident cannot use, possess, or seek any alcohol or drugs. Prescription medications must be turned over to the live-in staff member who provides each dose to the resident when needed. The rules indicate that the home is a "zero-tolerance home" and that

violations of the rules could result in immediate expulsion from the program and the sober residence.

On May 12, 2020 the Defendant alleged that the Plaintiff violated the rules by failing to turn over all his prescription medication, abusing the prescription medication, and failing to pay the required monthly fee. The Plaintiff was summarily evicted from the home.

The underlying court agreed with the Defendant's analysis and granted the Motion to Dismiss the RSA 540-A petition finding that the Defendant was operating a group home within the meaning of RSA 540:1-a, IV(c) and therefore was not required to file an eviction action under RSA 540. The Court did not address the additional argument that even if the Defendant was a group home, Emergency Order #4 prohibited any eviction actions during the eviction moratorium (March 17 through July 1, 2020).

The Plaintiff filed a Motion to Reconsider arguing that the term group home is defined in RSA 47:11-b as an institution or home which is supervised and licensed pursuant to the provisions of RSA 161:2, IV, and provides residential and counseling services to persons under the age of 21. The Plaintiff further argued that the services being provided by the Defendant are described in RSA 151:2(e)(1) which requires a license for the following facilities:

(e) residential care facilities, whether or not they are private homes or other structures built or adapted the purpose of providing residential care, offering services beyond room and board to two or more individuals who may or may not be elderly or suffering from illness, injury, deformity, infirmity or other permanent or temporary physical or mental disability. Such facilities include those:

(1) offering residents home like living arrangements and social or health services including, but not limited to, providing supervision, medical monitoring, assistance in daily living, protective care or monitoring and supervision of medications;

The Plaintiff's Motion to Reconsider also addressed the Defendant's argument that the Plaintiff agreed to the rules which included an agreement that because there was no lease agreement signed, residents of Live Free Structured Sober Living have no tenant rights. RSA 540:28 prohibits a landlord from creating rules or rental agreements which contain a provision which a tenant waives any of the rights under RSA 540.

The Plaintiff also argued that when the court is faced with an ambiguous term in a statute, it must consider the public policy behind New Hampshire's requirement of good cause for eviction and procedural due process through an eviction action under RSA 540. Allowing an unlicensed and unsupervised facility to confiscate medications and thereafter distribute those medications to a resident, and have the power to unilaterally put a vulnerable person recovering from addiction on the street is not what the legislature intended when it used the term group home.

The Circuit Court denied the Plaintiff's Motion to Reconsider and this appeal followed.

SUMMARY OF ARGUMENT

This is a case of statutory construction. The Appellee is an unlicensed sober home that rents rooms to recovering addicts and seeks the benefit of not being held accountable to anyone by calling itself a "group home" that is exempt from the requirements of judicial oversight before a resident is summarily evicted through self-help. The precise issue is whether the Appellee meets the definition of "group homes" within the meaning of RSA 540:1-a, IV (c) which exempts certain entities from the requirement of processing an eviction action under RSA 540.

Group homes has a specific meaning when used by the legislature. A group home is licensed by the Department of Health and Human Services (DHHS) under RSA 161:2 IV and provides housing for children in need of services. While the common usage of the

term group home may be applied to other homes for disabled adults, which are also licensed by the state, it is clear that the legislature uses this term to apply to licensed group homes for children. Group home has an acquired and peculiar meaning in law and RSA 21:2 requires the court to apply the meaning attributed to this term by the legislature when performing its statutory construction analysis.

Even if the Court determines that the sober home operated by the Appellant is a group home and therefore not required to use the summary process eviction under RSA 540, the May 12, 2020 order for the Appellant to vacate the sober home violated the eviction prohibition under Emergency Order #4. Like other residential landlords that are exempt from the requirements of filing an eviction under 540, Emergency Order #4 applied to all landlords, whether restricted or non-restricted. The order prohibited the involuntary disruption of all tenancies in order to reduce the spread of COVID 19, and the penalty for residential landlords who violate Emergency Order #4 is the ability of the tenant to seek redress through RSA 540-A.

ARGUMENT

I. A group home is a child care agency supervised and licensed under RSA 161:2, IV which provides specialized care for children who can benefit from residential living on a short term or long term basis.

This is a case of first impression that calls upon the court to interpret the meaning of "group homes" found in RSA 540:1-a, IV(c). "Statutory interpretation is a question of law that we review de novo." **EnergyNorth Natural Gas v. City of Concord**, 164 N.H. 14, 16, 48 A.3d 960 (2012). "We are the final arbiter of the intent of the legislature as expressed in the words of a statute considered as a whole." Id. "In interpreting a statute, we first look to the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning." Id. "Furthermore, we interpret statutes in the context of the overall statutory scheme and not in isolation." Id. "This enables us to

better discern the legislature's intent and to interpret statutory language in light of the policy or purpose sought to be advanced by the statutory scheme." Petition of Eskeland, 166 N.H. 554, 558, 101 A.3d 11 (2014) (quotation omitted). "We interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include." Eaton v. Eaton, 165 N.H. 742, 745, 82 A.3d 1284 (2013) (quotation omitted).

The term "group home" is not defined in RSA 540. One canon of statutory construction provides that when a term is not defined in the statute, the court will look to its common usage, using the dictionary for guidance. However, in this case the dictionary is not particularly helpful ("a residence for persons requiring care or supervision" *Webster's Third New International Dictionary*). In a zoning case involving the state placing developmentally-impaired adults into community living facilities (see RSA 126-A) this court observed that "group homes or other shared living arrangements may be called many things" Region 10 Client Management, Inc. v. Town of Hampstead, 120 N.H. 885, 887 (1980). Common usage is also prescribed in RSA 21:2, but with a caveat that "technical words or phrases that have acquired a peculiar and appropriate meaning in law, shall be construed and understood according to such peculiar and appropriate meaning."

When RSA 540 was first enacted in 1985, and the term "group homes" was used by the legislature, there was a peculiar and appropriate meaning for the term group home. A group home is/was a residential facility either run or supported by the State for developmentally or mentally disabled adults (RSA 126-A), or for children in need of services that can not live at home either temporarily, or permanently. The DHHS website has a section that describes the role of the group home in the continuum of services provided to children in need of services: "General Group Homes – Provide the lowest service intensity for youth. Residents in general group homes attend schools in the community, work in the community, but still require additional structure in their lives that

is met by the general group home.” (DHHS Home>Division for Children, Youth & Families>Juvenile Justice Services: Residential Care).

A 1983 case cited by the Appellee in its Memorandum of Law in support of the Motion to Dismiss illustrates the common usage of the term “group home” in the context of homes for children, and the continuum of care provided by the State:

This appeal from an order of the superior court on a petition for declaratory judgment requires us to determine which school district is liable for special education expenses, and which district must develop an individualized education plan, for Gary B., an educationally handicapped child. Upon the recommendation of the Master (David H. Bradley, Esq.), the Superior Court (Souter, J.) approved an order placing all responsibility for the child's educational expenses and program on the Hampton School District. We affirm. Gary was born in December 1966. After living with his parents in Concord and then with his mother in Penacook, he lived in a series of hospitals, foster homes, and group care homes from April 1967 until December 1979. During that time, both of his parents relinquished their parental rights, and the Concord District Court in 1971 awarded legal custody to the New Hampshire Division of Welfare in accordance with RSA chapter 169. From 1971 until December 1979, Gary lived in a foster family group home in Epsom. On December 22, 1979, the division of welfare placed him with a married couple in Hampton who wished to adopt him. The Rockingham County Probate Court granted the couple's petition to adopt Gary on February 26, 1980, the decree to become final on December 17, 1980. The couple acquired legal custody of Gary on March 26, 1980, when the Concord District Court rescinded its 1971 order granting custody to the division of welfare. The couple did not obtain a license under RSA chapter 170-E, and their home therefore did not qualify as a "home for children" under RSA 193:27, I (Supp.1981). [466 A.2d 931] Page 31 After serious difficulties arose in the couple's relationship with Gary, the Rockingham County Probate Court dismissed the petition for adoption at the couple's request on October 27, 1980, before the decree had become final. Legal custody returned to the division of welfare in November 1980. In December 1980, Gary became a patient at the New Hampshire Hospital. He later returned to the group home in Epsom where he had lived from 1971 to 1979. Finally, on May 27, 1981, the division of welfare placed him at the Cardinal Cushing School and Training Center in Hanover, Massachusetts.

In re Gary B., 124 N.H. 28,30 (1983).

A global search of the RSA's for the term "group home" reveals that the term has been used by the legislature to exclusively refer to child services (RSA 169-B,C, and D), the financial responsibility for school services for a child in a state sponsored group home (RSA 193, RSA 195-D), or the licensing of child day care, residential care, and child placing agencies (RSA 170-E).

The same global search reveals that the legislature has defined "group home" in two statutes, RSA 170-E, and RSA 47:11-b:

RSA 170-E:25 Definitions. II (b) "Group home" means a child care agency which regularly provides specialized care for at least 5 but no more than 12 children who can benefit from residential living either on a short-term or long-term basis.

RSA 47:11-b Group Homes. – The city councils may appropriate money to support or aid group homes. For the purposes of this section, a group home is an institution or home which is supervised and licensed pursuant to the provisions of RSA 161:2, IV, and provides residential and counseling services to persons under the age of 21.

RSA 170-E was part of a major overhaul of state sponsored child-care services in New Hampshire and became effective in 1990. RSA 47:11-b was enacted in 1974. As previously stated, the use of the term group home in RSA 540:1-a, IV (c), the statute in need of this court's interpretation, was enacted in 1985. Beginning in 1980 with the passage of The Mental Health Systems Act of 1980, the United States public policy towards the delivery of mental health services began to evolve, and a number of technical words and phrases that had a peculiar and appropriate meaning in the law (RSA 21:2) likewise evolved. The terms asylums and group homes used in RSA 540:1-a, IV(c), are no longer commonly used, but the task for this court is to determine what the term meant in 1985 when the legislature used the term "group homes" as an exception to the requirement that an eviction action must be filed to eject someone from their home. During this evolving time period there were over 40 group homes for children in

New Hampshire, whereas in 2017 when other major changes were made to services provided at the Sununu Youth Center, only 21 remained.

Even with the evolution of the terminology that is commonly used in the mental health and child services communities, the legislature has continued to use “group home” in a very specific way, to describe a licensed facility providing state sponsored services. For example, RSA 540-1-a, IV (c) also excludes “any other facilities licensed under RSA 151, or certified under RSA 126-A.” RSA 126-A is the statute that allows the public expenditure for residential services to developmentally and mentally disabled adults. This statute was enacted in 1995 and the adult homes are referred to as “community living facilities”:

RSA 126-A:19 Community Living Facilities. – The commissioner shall develop a statewide program of community living facilities for persons with developmental disabilities or mental illnesses. The commissioner shall be responsible for the selection, certification, and monitoring of such community living facilities in accordance with rules adopted by the commissioner pursuant to RSA 541-A. The commissioner shall also be responsible for prior approval of all individual residential placements and shall adopt rules relative to monitoring the care, treatment, and habilitation provided to all residents of community living facilities. Rates for enhanced family care residents shall be set according to the severity of the resident's disability. Placements of children shall be consistent with RSA 170-A, 170-C, and 170-E, as appropriate. Approval by the commissioner of an individual for placement in a community living facility shall be based on a finding by the commissioner that the community living facility is the least restrictive environment appropriate to the needs of the individual. "Least restrictive environment" means the facility, program, or service which least inhibits a person's freedom of movement, freedom of choice, and participation in the community, while achieving the purposes of habilitation and treatment.

Source. 1995, 310:1, eff. Nov. 1, 1995.

RSA 126-A:19 specifically distinguishes the adult facilities with the “placement of children consistent with RSA 170-A, 170-C, and 170-E”. Recall the definition of “group home” above in RSA 170-E:25, which specifically refers to residential living for children.

The other exception, facilities licensed under RSA 151, is the statute that requires licenses for residential and health care facilities such as hospitals, nursing homes, assisted living, and other facilities in which medical, nursing or other remedial care are rendered. The definition of residence in RSA 151:42, VII, enacted in 2016 is instructive:

RSA 151:42 Definitions. –

In this subdivision:

VII. "Residence" means a dwelling that the patient considers to be his or her home. A "residence" shall not include any licensed rehabilitation facility, hospital, nursing home, assisted living facility, or group home.

Source. 2015, 44:2, eff. Jan. 1, 2016.

The term group home is used by the legislature in 2015 very specifically to capture group homes, which are licensed by the DHHS as referred to in RSA 47:11-b above: "supervised and licensed pursuant to the provisions of RSA 161:2, IV, and provides residential and counseling services to persons under the age of 21." All of the entities referred to in the definition of residence are licensed facilities.

The Defendant/Appellee in this case is not a licensed facility. The State of New Hampshire does not require a license for a recovery house. There have been recent and persistent attempts to pass legislation for the licensing and regulation of New Hampshire's sober homes, but those efforts have failed and presently New Hampshire law allows for a voluntary certification process under RSA 172-B:2, V(a):

RSA 172-B:2 Provision of Services; Acceptance Into Treatment. –

V. (a) The commissioner shall adopt rules, pursuant to RSA 541-A, relative to establishing and providing for the administration of a voluntary registration program for operators of certified recovery housing seeking registration in the state of New Hampshire. The rules developed for the administration of the registration program shall include:

- (1) A process for receiving complaints against certified recovery housing operators.
- (2) Certification based on national standards including, but not limited to, documents to show the recovery house meets minimum safety and recovery standards including, but not limited to health, building, zoning, and fire inspection approvals, proof of insurance, resident agreement, emergency

procedures, and policies and procedures addressing grievances, non-discrimination, code of ethics, and safe storage of medication.

(3) Criteria by which the department may exclude a residence from the list if the frequency or severity of complaints received supports a determination that the recovery housing at issue does not maintain standards or provide an environment that appropriately supports recovery.

Source. 1979, 378:2. 1995, 310:177, 183. 2013, 144:107, eff. July 1, 2013. 2018, 307:2, eff. June 30, 2019. 2020, 37:148-150, eff. July 29, 2020.

Only certified recovery houses will benefit from referrals from the state maintained list. But quite notable is that these facilities are not referred to by the legislature as group homes.

A. Allowing unrestricted authority to use self help for eviction is not consistent with public policy.

The Defendant/Appellee ignores the historical use of the term “group homes” by the legislature and instead is relying on the common use of the term “group home” from a dictionary point of view. The next canon of statutory construction is to interpret the term group homes in the context of the overall statutory scheme of RSA 540, and not in isolation. “This enables us to better discern the legislature's intent and to interpret statutory language in light of the policy or purpose sought to be advanced by the statutory scheme.” Petition of Eskeland, 166 N.H. 554, 558, 101 A.3d 11 (2014) (quotation omitted).

In AIMCO Properties, LLC d/b/a Royal Crest Estates v. Kasha Dziewisz, 152 N.H. 587 (2005) this court discussed the inclusion of the good cause for eviction requirement that was the cornerstone of the 1985 enactment of RSA 540. “It was described as giving greater flexibility to landlords to evict tenants for any good cause and at the same time protecting tenants from arbitrarily and/or ill motivated evictions”. Id., at 590. The protection of tenants from arbitrarily being rendered homeless is likewise evidenced in RSA 540:28 which indicates that a tenant can not waive any of the rights under RSA 540.

The exceptions found in RSA 540:1-a, IV (c) (student dormitories, nursing homes, hospitals, licensed facilities under RSA 151 or RSA 126-A, convents, monasteries, asylums, or group homes) all have a common thread that the “tenant” in those facilities would have some protection outside of RSA 540 that would prohibit arbitrary or ill motivated actions against them. The Appellee advocates for an interpretation of RSA 540 which would allow its sober home to be free from any licensing authority or any safeguard whatsoever against arbitrary or ill motivated evictions.

The Appellee operates its unlicensed sober home in a three-family home located in Manchester. At the time the Appellant became a resident, there were 12 people living in the residence and participating in the program, all recovering from addiction. This business model takes advantage of the ambiguous phrase “group homes” in order to allow for immediate expulsion from the home, if in the opinion of the person hired by the Appellant to live in the group home (no requirement of education/training/competency), the program participant has violated a rule. This level of unbridled discretion and power over rendering someone homeless is not consistent with the protections provided by the legislature to residential tenants under RSA 540. A person recovering from alcohol or drug addiction is especially vulnerable and it is not a reasonable interpretation of New Hampshire law that a business can simply decide it is a group home in order to reap the economic advantages of housing numerous unrelated individuals in a residential home, and not be burdened by the requirements of New Hampshire landlord-tenant law or any other licensing or oversight by any governmental authority.

II. Emergency Order 4 prohibited all evictions with no exceptions.

On March 17, 2020, pursuant to the emergency powers granted the Governor by the legislature under RSA 4:45 et. seq, Governor Sununu issued Emergency Order #4 relative to a temporary prohibition on evictions and foreclosures. It prohibited owners of non-restricted or restricted property, as those terms are defined in RSA 540:1-a, from

initiating eviction proceedings, or enforcing an eviction order, under RSA 540 “ or any law, rule or other regulation.”

This language is sweeping in its scope, and does not include the exclusion of RSA 540:1-a, IV (c) relied upon by the Appellant. The order uses the definition of landlord, whereas RSA 540:1-a, IV (c) excludes various categories from the definition of tenant and indicates that RSA 540 does not apply to those excluded categories. The owner of non-restricted or restricted property as defined in RSA 540:1-a includes all landlords because the definition encompasses the entire universe of both residential and non-residential property:

RSA 540:1-a Definitions. –

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.

Paragraph 2 of the order indicates that if a residential landlord, as defined in RSA 540-A:1, proceeds with a prohibited eviction, that would constitute a violation of RSA 540-A:3. The Appellee meets the definition of a residential landlord because it rents residential premises:

RSA 540-A:1 Definitions. –

As used in this subdivision:

I. "Landlord" means an owner, lessor or agent thereof who rents or leases residential premises including manufactured housing or space in a manufactured housing park to another person.

II. "Tenant" means a person to whom a landlord rents or leases residential premises, including manufactured housing or a space in a manufactured housing

park.

III. "Premises" means the part of the landlord's property to which the tenant is entitled exclusive access for living or storage as a result of the rental or lease agreement.

Source. 1979, 305:1. 1985, 100:3, eff. July 9, 1985.

The Appellee argues that the Emergency Order only prohibited evictions pursuant to RSA 540, and because it is a group home excluded from the eviction requirement of RSA 540 and RSA 540-A, the order does not apply to the summary self help eviction of the Appellant on May 12, 2020. That interpretation ignores the scope of the order that goes beyond evictions under RSA 540 and includes "or any law, rule or other regulation which would allow for the initiation of eviction proceedings or the issuance of an eviction order are hereby suspended."

The May 12, 2020 letter was an eviction order within the meaning of the Emergency Order. It is similar to processing an eviction under the shared facility law, RSA 540-B, which requires a written notice of termination to the tenant, but no requirement of filing an eviction action under RSA 540. Under the shared facility law, once the required time frame contained in the notice of termination expires, the owner is allowed to simply lock the doors and ask law enforcement for assistance if required to avoid a breach of the peace. RSA 540-B:6. In the case of a rooming house where a tenant has not resided in the facility for 90 days, the rooming house owner demands the tenant to leave, and can request the assistance of the Police because if the tenant fails to leave he/she is guilty of criminal trespass.

The Emergency Order was widely viewed as an economic order to alleviate the financial ruin wrought by the COVID 19 stay at home orders. But that economic motive may actually exceed the emergency powers granted to the Governor under RSA 4:45. The Emergency Order #4 finds its legality in the health and safety aspect of the prohibition from requiring people to leave their residences, and move to another residence, or homeless shelter, thereby spreading the virus. In that light, it can easily be

determined that Emergency Order #4 captured shared facilities, rooming houses, and even group homes.

CONCLUSION

The legislature sought to protect tenant's from arbitrary and ill motivated disruption of the tenant's right to quiet enjoyment by the enactment of a good cause eviction requirement in RSA 540, and in the case of residential tenancies, the prohibited practices remedies under RSA 540-A. Self-help evictions are not allowed in New Hampshire. The few exceptions to the requirement that a tenant benefit from judicial oversight before possession of the rented premises is turned over to the landlord have a common denominator that the excluded entity is either regulated under the law, or otherwise has applicable rules that protect the tenant from arbitrary or ill motivated summary evictions.

The Appellee runs a business that is unregulated and is attempting to call itself something that it is not, a group home, in order to avoid judicial scrutiny when it unilaterally terminates a vulnerable resident's right of occupancy thereby rendering the resident homeless. This is contrary to the protections afforded residential tenants under the public policy of New Hampshire which prohibits self help evictions, and requires judicial determination of good cause under RSA 540.

DECISION BELOW THAT IS BEING APPEALED

Appellant respectfully requests that this Court review the decision of the Manchester District Court. I hereby certify that this decision is in writing and is appended to this Brief.

Respectfully submitted,
Robert St. Onge
By and through its attorneys,
Shaughnessy Raiche, PLLC

January 4, 2021

/s/ Brian C. Shaughnessy
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REQUEST FOR ORAL ARGUMENT AND CERTIFICATIONS

Attorney Brian Shaughnessy will present the oral argument on behalf of the Appellant. Fifteen minutes is requested. This is a case of first impression and oral argument will assist the Court to explore matters of public policy.

Pursuant to Rule 26(7), I certify that this Brief contains 7149 words and is in compliance with Rule 16 (11).

I hereby certify that a copy of the foregoing has been delivered through the electronic filing system on January 4, 2021 to Craig S. Donais, Esquire and to Stephen N. Zaharias, Esquire.

January 4, 2021

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The State of New Hampshire

HILLSBOROUGH, SS. 9TH CIRCUIT – DISTRICT DIVISION – MANCHESTER

Robert St. Onge v. Oberten, LLC

Docket # 456-2020-LT-262



ORDER

On May 22, 2020, the Court held a hearing on the defendant's Motion to Dismiss in the above captioned matter. The Court took the matter under advisement.

In light of all the arguments and authorities submitted by the parties, this Court finds that the defendant is a Group Home. In consequence, the defendant is exempt from RSA 540:A.

Motion to Dismiss is granted. Temporary Order issued on May 15, 2020 is vacated.

Date May 29, 2020

A handwritten signature in black ink, appearing to be "L. St. Onge", written over a horizontal line.

Presiding Judge

cc: Brian C. Shaughnessy, ESQ.; Craig Donais, ESQ.; Stephen Zaharias, ESQ.

MAILED MAY 29 2020

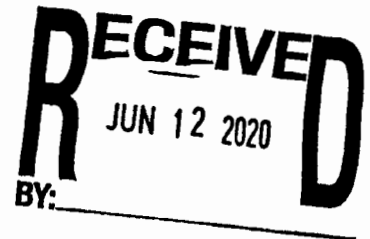
**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
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June 11, 2020

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Case Name: **Robert St. Onge v. Oberten LLC**
Case Number: **456-2020-LT-00262**

On June 10, 2020 Judge William H. Lyons made the following decision on:

PLAINTIFF'S MOTION TO RECONSIDER - "DENIED"

Mary A. Barton
Clerk of Court

(1035)

C: Stephen N. Zaharias, ESQ