

IN THE
NEW HAMPSHIRE SUPREME COURT

CASE NO. 2021-0258

Melissa Natal
APPELLEE

v.

GMPM Company & 479 Maple Street, LLC
APPELLANT

Appeal of Judgment
9th Circuit – District Division - Manchester
Melissa Natal v. GMPM Company & 479 Maple Street, LLC
Case No. 456-2021-LT-00279

BRIEF FOR THE APPELLANT

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Power of Attorney for Appellant

BRIEF FOR THE APPELLANT
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Case Name: Melissa Natal v. GMPM Company & 479 Maple Street, LLC
Original Case Number: 456-2021-LT-00279
Court Appealed from: 9th Circuit – District Division – Manchester
Date of Judgment: 5/17/2021

Issues:

- (A) Does the Definition of a Shared Facility require that the owner occupy the Shared Facility?
- (B) Does the Appellee’s unit meet the definition of a Shared Facility?

Holdings:

- (A) No portion of RSA 540-B:1 states that the owner must occupy the Shared Facility. Per RSA 540-B:1 (I) ‘A "shared facility" means real property rented for residential purposes which has separate sleeping areas for each occupant and in which each occupant has access to and shares with the owner of the facility one or more significant portions of the facility in common, such as kitchen, dining area, bathroom, or bathing area, for which the occupant has no rented right of sole personal use.’
- (B) The first paragraph of the Appellee’s “Individual Lease” states “As an occupant at this dwelling you will be living in common with other occupants in a single dwelling unit as a shared facility per NH RSA 540-B and as a single housekeeping unit. GMPM IS NOT A ROOMING HOUSE. Access to the shared areas in the dwelling unit of which you are an occupant will be shared with and limited to the other occupants of that dwelling unit as well as the owner.” These “shared areas” refer to the unit’s kitchen and bathroom. This meets the relevant criteria laid out in RSA 540-B:1.

Facts:

The Plaintiff moved into 479 Maple Street #3, Manchester, NH 03104 on 12/10/2020. Her rental agreement clearly stated that she would be sharing a unit owned by 479 Maple Street, LLC with the owner and other roommates (2) as a Shared Facility per RSA 540-B. On 4/9/2021 the Plaintiff was given a notice that

she would be subject to ejection if she continued to break the rules of her rental agreement. On 5/4/2021 the defendant was given a 72 hour notice that she would need to move out and return her keys or be subject to ejection for material breach of her rental agreement in accordance with RSA 540-B:3 III, which states that "The owner or agent of the owner of a shared facility may terminate any tenancy for damage to the premises, or behavior of the occupant or guest of any family member of the occupant which adversely affects the health or safety of the other occupants or the owner or the agent of the owner, or material breach of any rental agreement. A written 72-hour notice of termination shall be required." On 5/7/2021 the Plaintiff was removed from the property by the Manchester Police In accordance with RSA 540-B:8, which states "The owner or agent of the owner of a shared facility may take possession of the separated areas used by the occupant at the end of the notice period. The owner or agent of the owner may request law enforcement intervention as necessary." The Appellee immediately filed a 540-A petition with the 9th Circuit – District Division – Manchester court and was allowed back into the unit that same day. During the hearing on 5/14/2021 the Appellant testified that the owner or owner's agent routinely used, monitored, cleaned, showed, and conducted maintenance in the Shared Facility that the Appellee resided in. No notice was ever given or expected, as the Rental Agreement made it clear that the owner had full access and use of shared portions of said "Shared Facility". During the Hearing the Plaintiff's Attorney argued that because the owner did not sleep in/occupy the unit, it could not be considered a "Shared Facility". On 5/17/2021 the District Court ruled that the Defendant had violated RSA 540-A:3, II. The court stated that "the fact that the owner does not occupy the premises takes the premises out of RSA 540:B and the property is not a rooming house in that it is rented for more than 90 days".

On several occasions either by phone, email or in person, the Defendant/Appellant has offered to settle this case and withdraw the appeal. Each time the Defendant/Appellant has offered to pay the Plaintiff/Appellee \$1000 if she would be willing to request a nonsuit from the District Court. She has refused to accept these terms and has been very argumentative if and when she can be reached.

Summary of Argument:

The original judgment was based on whether the Appellant/owner occupied the Shared Facility. There is no basis in RSA 540-B to assume that an owner must occupy a Shared Facility. Therefore, this point is moot.

It was made clear in the Appellee's "Individual Lease" as well as her "Shared Facility Waiver" that her occupancy was in a Shared Facility and not a "Rooming House."

Shared Facilities are excluded from the provisions of RSA 540 along with several other types of occupancies which are relevant and should be considered.

The term "owner or agent of the owner" is prevalent in RSA 540-B.

Argument:

The District Court's ruling was based on whether the Appellant/owner occupies the premises. However, there is no prerequisite in RSA 540-B that the owner of a Shared Facility sleep in or occupy the Shared Facility, only that he shares portions of the Shared Facility with the occupants. Therefore, the owner's occupancy should have no bearing on the ruling. Keith Duperron, power of attorney for the Appellant, also made it clear in the initial hearing that the owner or owner's agent regularly shares, uses, cleans, monitors, and conducts repairs in the Shared Facility. This meets the key criteria to be considered a Shared Facility under RSA 540-B:1.

In the Appellees "Individual Lease" and "Shared Facility Waiver" it is spelled out on several occasions that the occupancy is in fact a Shared Facility and falls under RSA 540-B. At no time before the Appellee was ejected did she ever question her type of occupancy. The Appellee eventually claimed in her 540-A petition that the building was a "Rooming House". The building is not and has never been portrayed as a "Rooming House". As a fully functioning housekeeping unit with cooking facilities, it does not meet the city of Manchester's Zoning Ordinance definition. Per the City Ordinance's definition, a "Rooming House" does not have cooking facilities. Furthermore, it is spelled out in her "Individual Lease" that "GMPM IS NOT A ROOMING HOUSE". GMPM is a DBA or trade name for 479 Maple Street, LLC. If for any reason, the Appellee's unit shall not be considered a "shared facility", it should be considered a "group home", also excluding it from the provisions of Chapter 540 per RSA 540:1-a, IV (c).

RSA 540:1-a, IV excludes Residential real estate under RSA 540-B from the provisions of Chapter 540 along with "Rooming Houses", "Group Homes", and several other types of occupancy. RSA 540:1-a, IV (e) references "Residential real estate under RSA 540-B". It should be noted that immediately above it there is a

similar type of occupancy. RSA 540:1-a, IV (d) A single-family home in which the occupant has no lease, which is the primary and usual residence of the owner. This clearly defines that it must be the “primary and usual residence of the owner”, however, no language in RSA 540-B makes any mention of such criteria.

On 11 occasions, RSA 540-B mentions “owner or agent of the owner”. The prevalence of this term, and the assumption that the owner may be represented by an agent, implies that it does not need to be the permanent occupancy of the owner. If the “agent of the owner” may give occupants notices, contact law enforcement, take possession, store occupant’s personal possession, and collect security deposits, it cannot be assumed that the owner must be an occupant.

Conclusion:

Without RSA 540-B explicitly stating that an owner must be an occupant in order to meet the criteria of a “Shared Facility”, along with the fact that the Appellee agreed that her occupancy was in a “Shared Facility” and not in fact a “Rooming House” in her “Individual Lease” and “Shared Facility Waiver”, there is no basis to deny that the Appellees occupancy is in fact a Shared Facility. As such, the Appellee was legally ejected in accordance with RSA 540-B:3 III and RSA 540-B:8, and the Appellant did not violate RSA 540-A:3, II.


The Appellant requests that The New Hampshire Supreme Court overturn the ruling of Case No. 456-2021-LT-00279 in the 9th Circuit – District Division – Manchester and rule in favor of the Defendant/Appellant.

Oral Argument:

The Appellant waives oral argument in CASE NO. 2021-0258

Keith Duperron, Power of Attorney for the Appellant, certifies that the copy of Appealed decision contained in this brief was obtained by the 9th Circuit – District Division – Manchester Court.


Keith Duperron – Power of Attorney


Date

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THE STATE OF NEW HAMPSHIRE
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Court Name: 9th Circuit - District Division - Manchester

Case Name: Melissa Natal v. GMPM Company & 479 Maple Street, LLC

Case Number: 456-2021-LT-00279 - E

FINAL ORDER ON TENANT'S PETITION UNDER RSA 540-A:4

On , a hearing was held on the above entitled matter.

The tenant was was not present. The landlord was was not present.

FINDINGS OF FACT

After hearing the evidence presented, the Court finds that:

- The tenant has not proven the landlord engaged in prohibited practices. CASE DISMISSED.
- The landlord has violated:
 - RSA 540-A:2 (willfully violating tenant's right to quiet enjoyment)
 - RSA 540-A:2 (willfully attempting to circumvent lawful eviction procedures)
 - RSA 540-A:3, I (willfully interrupting utility service, except for temporary interruptions necessary while actual repairs are in process or during temporary emergencies)
 - RSA 540-A:3, II (willfully denying tenant access to or possession of rented/leased premises without prior court order)
 - RSA 540-A:3, III (willfully seizing or denying access to, or possession of, tenant's property without prior court order)
 - RSA 540-A:3, IV (willfully entering the premises of the tenant without consent, except to make emergency repairs)
 - RSA 540-A:3, V-a (willfully failing to investigate tenant's report of infestation of pests within 7 days of receiving notice or failing to take reasonable measures to remediate infestation)
 - RSA 540-A:3, VII (failing to exercise reasonable care for tenant's personal property for a period of 7 days after the date upon which tenant has vacated the rented/leased premises)

Specifically, the Court finds that (note factual findings supporting each ruling above):

The Plaintiff rents restricted residential property as defined by RSA 540:1-a. She had resided in the property more than 90 days. She was given a 72 hour notice by the landlord's agent to vacate that did not state the reason for the demand that she leave. She was removed by the police/sheriff at the request of the landlord. Testimony indicated that the basis of the self-help eviction was that she had a second person living with her and that violated the lease.

The Plaintiff argues that the property is not a shared facility as defined by RSA 540:3 nor is the property a rooming house. The basis of the argument is that a shared facility requires that the occupant has access to and shares with the owner one or more significant portions of the facility. The owner's testimony was clear that he does not occupy the premises but that he does visit the property to clean and for maintenance. Furthermore, the landlord provides a lease that describes the property and a waiver is contained in the lease that requires the tenant to acknowledge that the property is a shared facility.

The court rules that the fact that the owner does not occupy the premises takes the premises out of RSA 540:3, and the property is not a rooming house in that it is rented for more than 90 days. The tenant is a normal tenant as defined under RSA 540. The waiver is ineffective as that provision in the rental agreement violates RSA 540-A:8,III, depriving the tenant of her rights under RSA 540. The notice given to the tenant that did not state a reason violates RSA 540:2,II

The tenant was readmitted that same day after filing this petition.

Case Name: Melissa Natal v. GMPM Company & 479 Maple Street, LLC

Case Number: 456-2021-LT-00279 - €

FINAL ORDER ON TENANT'S 540-A PETITION

FINAL ORDER ON TENANT'S 540-A PETITION

DAMAGES

Actual Damages: Tenants are entitled to recover any actual damages resulting from the landlord's prohibited practices, as well as damages for any breach of warranty of habitability, breach of the covenant of quiet enjoyment or any other claim arising out of the facts alleged in the tenant's petition.

Statutory Damages: Statutory damages of \$1000 per violation, and \$1,000 per day the violation continues after issuance of a temporary order, are available only for violations of RSA 540-A:2 and RSA 540-A:3, I, II, III, or IV. If the landlord re-lets or has a new tenant in a premises from which the tenant was unlawfully locked out or dispossessed, the Court must award a minimum of \$3000 in damages. The tenant need not plead or prove damages to be entitled to statutory damages.

The Court must award the greater of the tenant's actual damages or statutory damages.

Based on the landlord's violation of RSA 540-A:2 OR RSA 540-A:3, I, II, III or IV, the Court orders the landlord to pay damages to the tenant in the amount of:

\$ 1000.00 for each initial violation; and

\$ 0 for each day that a violation continued after the Court issued a temporary order.

In total, the court orders the landlord to pay the tenant \$ _____ in damages.

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

Recommended:

David L. Kent

May 14, 2021

Date

Signature of Referee/Hearing Officer

David L. Kent, Judicial Referee

Printed Name of Referee/Hearing Officer

So Ordered:

I hereby certify that I have read the recommendation(s) and agree that, to the extent the referee/hearing officer has made factual findings, she/he has applied the correct legal standard to the facts determined by the referee/hearing officer.

5/17/21

Date

William H. Lyons

Signature of Judge

William H. Lyons

Printed Name of Judge