New Hampshire Supreme Court

Case: 459-2009-SC-00453

Ann Brady

vs.

John Lehoullier

Brief of Plaintiff:

Ann Brady

36J Bay Ridge Drive

Nashua, New Hampshire 03062

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Statement of the Case

Ann Brady intended to rent a home from John Lehoullier. Just a few days before the lease commencement, she learned that she would be denied access. Ann Brady argues that John Lehoullier acted in violation of New Hampshire Law 540 A "Prohibited Practices and Security Deposits", 540-A:3 "Certain Specific Acts Prohibited" which state:

> 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.

Upon learning that the landlord, John Lehoullier was going to deny access to the property without judicial process, she acted to prevent her family from being homeless. The only property available to her in the area at that time was not equivalent. She asks the New Hampshire courts hold John Lehoullier accountable for his actions and find damages for the Plaintiff, Ann Brady.

Ann Brady signed a "Null and Void" document because she felt this was the only way to get a return of her security deposit and she needed that money for another security deposit. John Lehoullier presented the "Null and Void" to Ann when she went to pick up the return of her security deposit. She had no prior knowledge of this document. In the Nashua Court, John Lehoullier testified that Ann asked for the "Null and Void". Page 2, paragraph 3 of the defendants brief states that the plaintiff requested to anull the lease. This is impossible because John Lehoullier did not speak with the plaintiff, Ann Brady until she arrived for the security deposit, at which point the document had already been drawn up. John Lehoullier spoke only to her husband, Shawn, who was not on the contract.

At the time the plaintiff signed the document she was not aware that it meant she could not pursue John Lehoullier for damages. She believed that it meant she would not owe rent on a property

she was not allowed to move in to, and thus John Lehoullier could not take legal action against her for non-payment. She acted to protect her ability to continue to rent properties. She believed that John Lehoullier had broken the contract and owed her damages at the time she signed the "Null and Void". However, she had a more pressing issue of finding a place to live with only a few days. If Ann Brady was not time or financially constrained, had a background in real estate, or had time to research the meaning of "Null and Void" she would not have signed. The plaintiff asks the court to recognize that the "Null and Void" was signed under duress and without the understanding that the defendant claims she had.

After learning that we would be denied access to Pennichuck St. Shawn Brady informed John Lehoullier that he had broken the lease and the law, and that he wanted his money back.

John Lehoullier returned both the security deposit and the non-refundable fee. The reason that Shawn Brady, Ann Brady's husband, requested the non-refundable application fee be returned is because the plaintiff would never have applied to rent the property at 61A Pennichuck if it was not available April 1, 2009. John Lehoullier wanted to move the lease start date to May, he told Shawn "while you guys figure out what to do".

With only a few days to look, several vehicles and a large dog, there was only one property in Nashua that could be found that would rent to us. One property is not a choice. Had John Lehoullier recognized his mistake earlier, the Brady's might have been able to make other arrangements.

In conclusion, Ann Brady had no intention of releasing John Lehoullier from accountability. The properties are not equivalent. Ann Brady will continue to be penalized for John Lehoullier's mistake until April 2010 when she moves again. Please find for the Plantiff, all damages.

Explanation of Claim

Ann Brady's original small claim was for two items. The first item is the cost to rent two storage boxes to hold household items that did not fit into the small apartment we rented. The Nashua District Court awarded this amount to the plaintiff.

The second amount was for the lease break. It is typical that when one party breaks a lease, they owe the other party two months rent or rent until a suitable tenant can be found. Ann Brady thought it would be simpler to request two months rent than to itemize all costs including those that had not yet been incurred. Ann Brady also recognized that some costs could not be itemized like unhappiness, and stress.

In response to not being awarded a lease break fee and the defendants request for total damages, an appendix has been attached that shows damages that can be itemized. The properties are not equivalent. As a result, the plaintiff continues to suffer damages and has to move again in April 2010. Ann Brady asks that the Supreme court to consider total damages of $8,372.88.

Comparison of Properties

At the time of renting from John Lehoullier, Ann and Shawn Brady were living in a spacious town home and were looking for as good or better space in Nashua. Ann and Shawn owned their own washer, dryer and refrigerator which we would have used at Pennichuck but are unable to use at Bay Ridge. Use of the lower quality appliances provided by Bay Ridge has damaged Ann's clothing.

Shawn has multiple sclerosis and has a walking handicap recognized by the state of New Hampshire. The property at Pennichuck street had ground level access and Shawn would only have to climb a full set of stairs in the evening to go to bed. At Bay Ridge, Shawn has to climb three sets of stairs each time he wants to leave and re-enter the apartment. This is a source of difficulty for Shawn because he cannot leave the house when he is not feeling strong. Shawn's role in the family is home-maker. At Bay Ridge, he cannot perform the household shopping because he cannot carry groceries up the stairs. This puts additional strain on Ann who both works full-time and attends school full-time.

Compare a four-room, one-level, third-floor, walk-up apartment (Appendix C) to a six-room, two-story with full basement, detached condo. John Lehoullier argues that we came out ahead because the rent is lower. The rent is lower, but the total cost is higher and the two properties are far from equivalent. Please see Appendix B for a complete listing of costs.

Comparison	**Pennichuck**	**Bay Ridge**
Bedrooms	3	2
Bathrooms	2	2
Garage	Attached 2 car garage.	No
Finished Basement	Yes	No
Yard	Yes	No
Square Footage	Not listed.	1030
Monthly Rent	$1600	$1309

Appendix A: Timeline of Events

Date	Event
February 17, 2009	Ann Brady and John Lehoullier signed lease for property at 61A Pennichuck to commence on April 1, 2009.
February 2009	Ann and Shawn call John to determine if the property will be available March 31, 2009.
March 2009	Shawn Brady sets up utilities for 61A Pennichuck.
March 24, 2009 8PM	John Lehoullier calls Shawn Brady on his cell phone to inform him that the property is not available until April 30, 2009 because he has current tenants with a valid lease.
March 24, 2009 9PM	Shawn Brady calls John Lehoullier back and requests a refund because John has violated the New Hampshire Law 540 A:3 II by denying a tenant access to rented property without judicial process.
March 25, 2009	John Lehoullier had Ann Brady sign a Null and Void agreement in order to get a return on her security deposit.

Appendix B: Total Cost

Cost	Description
$1610.70*	SmartBox. Cost to store additional household goods that do not fit in the smaller apartment. 2 units x $61.95 per unit x 12 months = $1486.80 2 delivery fees x $61.95 = $123.90 $1486.80 + $123.90 = $1610.70
$3200.00*	Lease Break Penalty. Two months rent. The amount prescribed in the lease. $1600 x 2 months = $3200
$1000.00	Moving costs. The current apartment is insufficient, so we must move again. This cost is approximate and rounded down because we could not find the receipt paid to Gentle Giant paid in April 2009.
$405.00	Extra Space Storage. Winter Storage of Motorcycles. $135 x 6 months = $810 / 2 = $405 because splitting unit. 61A Pennichuck has a garage, so we would not have needed to rent winter storage.
$613.18	Storage Cabinets. The current apartment is insufficient, so we had to purchase additional storage furniture for the kitchen.
$350.00	Non-refundable pet fee. This fee would not have been paid at 61A Pennichuck.
$114.00	Non-refundable application fee. This fee would not have been paid at 61A Pennichuck.
$480.00	Monthly Pet Rent. $40 x 12 months = $480 This fee would not have been paid at 61A Pennichuck.
$600.00	Monthly Parking Fee. $50 x 12 months = $600 This fee would not have been paid at 61A Pennichuck.
$8372.88	**Total**

* Indicates original small claim item.

Appendix C: Floor plan at Bay Ridge