TENNESSEE JUDICIAL ACADEMY

RESIDENTIAL EVICTIONS UPDATE

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Landlord's failure to give tenant adequate notice as required by Tennessee's Landlord and Tenant Act does not deprive the General Sessions Court of subject matter jurisdiction. A landlord's failure to give tenant proper notice may be used by tenant as an affirmative defense but does not deprive a general sessions court of jurisdiction. *Id.*

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Landlord of federally subsidized housing may only evict tenant of the drug related criminal activity of a guest if the tenant know or should have known of the activity and did not take reasonable steps to stop it.

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Section 1

Detainer Warrant Procedure

DETAINER WARRANT PROCEDURE
T.C.A. § 29-18-101 ET SEQ.

T. C. A. § 29-18-101

§ 29-18-101. Unlawful entry

No person shall enter upon any lands, tenements, or other possessions, and detain or hold the same, but where entry is given by law, and then only in a peaceable manner.

Credits

1821 Acts, c. 14, § 1.

Formerly 1858 Code, § 3341; Shannon's Code, § 5090; 1932 Code, § 9244; § 23-1601.

Notes of Decisions (10)

Nature and form of remedy

In view of Shannon's Code, § 5090, the action of unlawful detainer is a substitute for an entry by a landlord to forfeit a lease for nonpayment of rent; the institution of the action having the same effect as an entry. Matthews v. Crofford, 1914, 167 S.W. 695, 129 Tenn. 541.

Where a person enters upon land peaceably, and for himself, without any connection with the owner or tenant, the premises being vacant, he cannot be turned out by an action of unlawful detainer. Bird v. Fannon, 1859, 40 Tenn. 12.

Abstention

Where constitutional issues put forth by tenant who had received notice of termination of lease in federally financed housing depended entirely on interpretation of state forcible entry and detainer statute and tenant's interpretation of the statute was far from being the settled or certain interpretation thereof, abstention was appropriate and case would be dismissed to allow all parties to concentrate first on the proper interpretation of the statute. T.C.A. § 23-1601 et seq. Troupe v. Fairview Apartments, 1979, 464 F.Supp. 234, remanded 642 F.2d 453.

Prior possession of plaintiff

Where plaintiff had possession of disputed strip of land lying immediately west and south of an old truck patch fence, but did not have title to that strip of land, and was deprived of his possession when defendant erected a fence along lines of his own tract, which went beyond fence, plaintiff, who could not sue for disputed strip because he did not have title thereto, could assert his right to possession by obtaining a writ of forcible entry and detainer wherein he set up his more than seven

years adverse possession as a defense to forcible entry made by defendant. T.C.A. §§ 23-1601 et seq., 28-203. Foster v. Hill, 1973, 510 S.W.2d 520.

Trespass

Where lessor was entitled to possession of leased premises but was unable to obtain writ of forcible entry and detainer because not prepared to execute bond, and lessor directed third party to remove part of roof from leased premises, entry on the land and removal of the roof was an actionable "trespass". Code 1932, §§ 9244, 9245, 9257. Price v. Osborne, 1940, 147 S.W.2d 412, 24 Tenn.App. 525.

Weight and sufficiency of evidence

In an action to recover the possession of real estate where plaintiff alleged and proved that he was entitled to possession of real estate and that defendant wrongfully withheld the same, held there was sufficient evidence to sustain the finding for plaintiff. Rhea v. Redus, 1928, 7 Tenn.App. 478.

Judgment

In action in unlawful detainer for possession of property, judgment for rent and damages is incidental to judgment for possession. Code 1932, §§ 9244, 9247, 9257. Nashville Housing Authority v. Kinnard, 1948, 207 S.W.2d 1019, 186 Tenn. 33.

Review

Appeal bond requirements for appealing from general sessions court, in which there is no right to jury in unlawful detainer action, to circuit court, where jury trial is available, do not impose unreasonable or irrational burdens upon jury rights of parties seeking to appeal; in any event, if party is willing to surrender possession pending litigation in higher courts, there is remedy by appeal which may be obtained on pauper oath. T.C.A. §§ 29-15-101 et seq., 29-18-101 et seq., 29-18-128 to 29-18-130; Const. Art. 1, § 6. Newport Housing Authority v. Ballard, 1992, 839 S.W.2d 86.

Where unsuccessful defendant in action for unlawful detainer commenced in general sessions court in Davidson County wished to remain in possession of property while having case reviewed by circuit court, case could be removed to circuit court by petition for writs of certiorari and supersedeas, and dismissal of petition on ground that appeal was proper remedy was error. Code 1932, §§ 9244, 9247, 9257, 9266. Nashville Housing Authority v. Kinnard, 1948, 207 S.W.2d 1019, 186 Tenn. 33.

Proof that judgment for rent in unlawful detainer action commenced in general sessions court in Davidson County was under $50, did not authorize a review of the judgment in circuit court by certiorari under statute providing review by circuit court by certiorari of a judgment of general sessions court in Davidson County not exceeding amount of $50, since the judgment for rent was but incidental to the judgment for possession. Code 1932, §§ 9244, 9247, 9257; Priv.Acts 1937, c. 12, § 6. Nashville Housing Authority v. Kinnard, 1948, 207 S.W.2d 1019, 186 Tenn. 33.

T. C. A. § 29-18-102

§ 29-18-102. Forcible entry and detainer; exceptions

Effective: July 9, 2012

(a) A forcible entry and detainer is where a person, by force or with weapons, or by breaking open the doors, windows, or other parts of the house, whether any person be in it or not, or by any kind of violence whatsoever, enters upon land, tenement, or possession, in the occupation of another, and detains and holds the same; or by threatening to kill, maim, or beat the party in possession; or by such words, circumstances, or actions, as have a natural tendency to excite fear or apprehension of danger; or by putting out of doors or carrying away the goods of the party in possession; or by entering peaceably and then turning or keeping the party out of possession by force or threat or other circumstances of terror.

(b) No action for forcible entry and detainer shall lie against any tenant who has paid all rent due for current occupancy of the premises and who is not in violation of any law nor otherwise in breach of the tenant's written lease, but this subsection (b) shall not apply in any manner to farm property, nor shall this subsection (b) be construed to alter or amend any valid lease agreement in effect on May 31, 1979.

Credits

1821 Acts, c. 14, § 2; 1979 Pub.Acts, c. 421, §§ 1 to 3.

Formerly 1858 Code, § 3342; Shannon's Code, § 5091; 1932 Code, § 9245; § 23-1602.

Notes of Decisions (87)

Nature and elements of forcibly entry and detainer

In Tennessee, the action of unlawful detainer is the legal substitute for personal entry. 94th Aero Squadron of Memphis, Inc. v. Memphis-Shelby County Airport Authority, 2004, 169 S.W.3d 627, appeal denied. Forcible Entry And Detainer 6(1)

Forcible entry and detainer (FED) proceedings serve the function of preventing violence and breaches of the peace that result from the inherent friction caused by repossessing property through self-help; to avoid these conflicts, the party seeking to repossess the land must do so with the aid of a writ of possession issued by the court. 94th Aero Squadron of Memphis, Inc. v. Memphis-Shelby County Airport Authority, 2004, 169 S.W.3d 627, appeal denied. Forcible Entry And Detainer 6(1); Forcible Entry And Detainer 40

Actual violence is not necessary to constitute a forcible entry and detainer; if actual possession of plaintiff is invaded and held under circumstances that indicate it will not be surrendered without a

breach of the peace by one party or the other, it is sufficient entry and detainer to justify the writ. T.C.A. § 23-1601 et seq. Foster v. Hill, 1973, 510 S.W.2d 520. Forcible Entry And Detainer 4; Forcible Entry And Detainer 5

An action of forcible entry and detainer cannot be maintained against defendants, who were put in possession by the sheriff under writs of possession issued by the chancery court. Rook v. Godfrey, 1900, 58 S.W. 850, 105 Tenn. 534, 21 Pickle 534. Forcible Entry And Detainer 4

To constitute a forcible entry and detainer, it is not necessary that actual force and physical violence should be used. Gale's St. p. 313. Cleage v. Hyden, 1871, 53 Tenn. 73. Forcible Entry And Detainer 4

An action of forcible entry and detainer will lie for taking actual possession of a belt of land entirely surrounding a lot occupied by the plaintiff, and inclosing said belt by a fence. Gass v. Newman, 1858, 38 Tenn. 136. Forcible Entry And Detainer 4

In order to maintain the action of forcible entry and detainer, it is not necessary that actual force should be shown. The law implies force in every unauthorized entry upon the premises of which another is in the peaceable possession, and in every unauthorized obstruction of such possession. Thus, the action may be maintained where it appeared that the plaintiff was in the peaceable possession of the premises and had erected an enclosure thereon, and the defendant, against the will, and in spite of the remonstrances of the plaintiff, came upon the premises and erected an enclosure around that of the plaintiff, although he did not remove any part of the plaintiff's enclosure, or otherwise disturb the same. Gass v. Newman, 1858, 38 Tenn. 136. Forcible Entry And Detainer 4

The process of forcible entry and detainer is not available against one who is in possession of premises under a decree of a court of chancery, though the plaintiff may have been wrongfully dispossessed. His remedy must be by petition for reinstatement, or by ejectment, to enforce his paramount title. Scott v. Newsom, 1857, 36 Tenn. 457. Forcible Entry And Detainer 4

In order to constitute such a forcible entry as will sustain the proces of forcible entry and detainer, there must be either actual violence or circumstances tending to excite fear of such violence, either to the person or to goods, houses, or inclosures. Taking possession of an abandoned house and farm is not sufficient. Hopkins v. Calloway, 1855, 35 Tenn. 11. Forcible Entry And Detainer 4

To maintain the action of forcible entry and detainer, it must appear that there were acts of force, or appearances tending to inspire apprehension of violent acts to the person, goods, or inclosures, in the manner in which the plaintiff was deprived of the possession. Hopkins v. Calloway, 1855, 35 Tenn. 11. Forcible Entry And Detainer 5

The plaintiff left his house locked, with the intention of returning. It was broken open and so left. The defendant, having no connection with the trespassers, entered, and was held not guilty of a forcible entry. Greer v. Wroe, 1853, 33 Tenn. 246. Forcible Entry And Detainer 4

A house was occupied as a schoolhouse by consent of Story, who claimed the right to the possession of the land on which it was situated. Before the termination of the school, Vanhook took possession of the house, declaring that if any person attempted to dispossess him, he would shoot him: Held, that this was a forcible entry and detainer; and if held after the termination of the school, it was a forcible detainer of the premises of Story, for which the writ lies. Vanhook v. Story, 1843, 23 Tenn. 59. Forcible Entry And Detainer 4

Vanhook forcibly took possession of a schoolhouse. Story who claimed the right to the possession, and who was forcibly dispossessed, said if Vanhook had Carter's right, he had a right to the possession, but that he did not believe that he had Carter's right. Vanhook proved that he had Carter's right: Held, that these facts did not establish the assent of Story's mind to Vanhook taking possession; and if the possession was taken without such assent, it was forcible and unlawful. Vanhook v. Story, 1843, 23 Tenn. 59. Forcible Entry And Detainer 4; Forcible Entry And Detainer 29(4)

Acts, not of violence or outrage upon the person or property, but tending to produce a breach of the peace, will constitute the injury. Turner v. Lumbrick, 1838, 19 Tenn. 7. Forcible Entry And Detainer 4

To constitute a forcible entry and detainer, it is not necessary that violence and outrage upon person or property should be resorted to. If the actual possession of another be taken and held under circumstances which show that it will not be surrendered without a breach of the peace, it is forcible entry and detainer. Childress v. Black, 1836, 17 Tenn. 317. Forcible Entry And Detainer 4

A. took possession of a house and premises by locking the door and closing the windows, and B. applied to his agent and demanded possession, which was refused. B. was afterwards found in possession of the house, claiming under an adverse title to A. Held, that it was to be inferred that be obtained possession by breaking the doors or windows open, and that this constituted a forcible entry, within the meaning of Acts 1821, c. 14, § 2. Davidson v. Phillips, 1836, 17 Tenn. 93, 30 Am.Dec. 393. Forcible Entry And Detainer 4

In an action to recover the possession of a theater where the plaintiff was in possession and the defendant had forced his way into the theater and changed the locks and taken possession thereof, held that the plaintiff's action for forcible entry and detainer would lie, although the defendant was entitled to possession if he had proceeded according to law. Cutshaw v. Campbell, 1925, 3 Tenn.App. 666. Forcible Entry And Detainer 10

Scope of proceeding

Action of forcible entry and detainer is designed to determine the right of possession to land to which parties have conflicting claims; title to property is not inquired into, and only questions to be determined are whether plaintiff was in possession and whether he lost possession by defendant's act of forcible entry and detainer. T.C.A. § 23-1601 et seq. Foster v. Hill, 1973, 510 S.W.2d 520. Forcible Entry And Detainer 6(2)

In forcible entry and detainer, title can be inquired into in equity. Brown v. Grayson, 1930, 24 S.W.2d 894, 160 Tenn. 374. Forcible Entry And Detainer 6(2)

The action of forcible entry and detainer is a mere possessory action, can not be substituted for ejectment to try titles, and must be in the name of the tenant if he is wrongfully ousted of his possession, and not in the name of the landlord. Elliott v. Lawless, 1871, 53 Tenn. 123. Forcible Entry And Detainer 6(1); Forcible Entry And Detainer 18

Forcible entry and detainer is a mere possessory action and not proper for trying titles. White v. Suttle, 1851, 31 Tenn. 169. Forcible Entry And Detainer 6(2)

The act of 1821, ch. 14, sec. 20, expressly excludes any inquiry into questions pertaining to the title, upon the trial of the action of forcible entry and detainer, and this exclusion is not repealed by the act of 1842, ch. 86. White v. Suttle, 1851, 31 Tenn. 169. Forcible Entry And Detainer 6(2)

The landlord cannot successfully prosecute a forcible entry and detainer suit in the case of dispute of title. It is not the purpose of forcible entry and detainer action to settle a disputed title or a dispute as to the dividing line between owners. 1This action only lies for the purposes of trying the question of possession and not title. Hunt v. Foley, 1928, 9 Tenn.App. 96. Forcible Entry And Detainer 6(2)

Grounds of action, generally

The tenant can not by agreement and without the consent of his landlord change or limit the nature or extent of the possession delivered to him. Elliott v. Lawless, 1871, 53 Tenn. 123. Landlord And Tenant 518; Landlord And Tenant 519; Landlord And Tenant 658

Where the plaintiff in a proceeding in forcible entry and detainer, had removed from the premises, but indicated by barring the doors of the house that he had no intention of abandoning the place, and afterwards casual trespassers entered by force and held possession for a while, and on leaving the same left the doors open, when the defendant without concert with the trespassers was put in possession under a claim and without force, he is not liable to the summary remedy of forcible entry and detainer, but only to an action by which the strength of title can be tested. Greer v. Wroe, 1853, 33 Tenn. 246. Ejectment 19; Forcible Entry And Detainer 15(1)

The possession of lands, obtained in violation of the prohibitions of an injunction is an unlawful possession, and though the court of chancery issuing the injunction could in such case relieve the person entitled to the possession, still he may resort to the action of forcible entry and detainer. Farnsworth v. Fowler, 1851, 31 Tenn. 1, 55 Am.Dec. 718. Forcible Entry And Detainer 7; Injunction 1763

Assignment and subletting

If a party take possession of the land of another, as a sub-tenant, he would occupy the place of the tenant, and be liable to an action of unlawful detainer. So, if he entered as a trespasser the action would lie; but if he entered peaceably and for himself, without any connection with the owner or

tenant, the premises being vacant, he could not be turned out of possession by this action. Bird v. Fannon, 1859, 40 Tenn. 12. Landlord And Tenant 795; Landlord And Tenant 1795(3)

Where a person takes possession of the land of another as a subtenant, he occupies the place of the tenant, and is liable to an action of unlawful detainer. Bird v. Fannon, 1859, 40 Tenn. 12. Landlord And Tenant 1795(3)

Farm property

A landlord could obtain possession of house against tenant's will only by a forcible entry and detainer proceeding where tenant had been permitted to occupy house during employment on landlord's farm and remained in house a short time after being discharged from employment. Code 1932, §§ 9244, 9245, 9257. Schumpert v. Moore, 1940, 149 S.W.2d 471, 24 Tenn.App. 695. Assault And Battery 618

By an instrument of writing, the plaintiffs in error specified certain services to be performed by the defendant for which he was "to have the house rent, use of garden, fire-wood, and pasturage for what cows you keep for family use. Mr. A.J. Hall to hold possession until 25th of December, 1859, and said Hall to have entire control of the premises as agent for Ariand E. Colcord." Held: that Hall was not a mere agent, but took an interest in the premises as the lessee of A.E. Colcord, and was entitled to the possession until the 25th December, 1859, and if wrongfully turned out of possession, could maintain an action of forcible entry and detainer to be restored to the same. Colcord v. Hall, 1859, 40 Tenn. 625. Landlord And Tenant 1785; Principal And Agent 3(4)

Hold-over tenants

Tenant or someone in collusion with tenant who willfully and without force holds over the possession from the landlord is guilty of unlawful detainer. T.C.A. § 29-18-104. Morrison v. Smith, 1988, 757 S.W.2d 678. Landlord And Tenant 1786

Until tenancy ends, possession belongs to tenant and he is not holding over nor guilty of unlawful detainer. Morrison v. Smith, 1988, 757 S.W.2d 678. Landlord And Tenant 1786

No express reservation of a formal right to re-entry by the purchaser under a deed of trust is necessary to enable him to maintain unlawful detainer, where such deed contains a stipulation that a foreclosure thereof shall create the relation of landlord and tenant between the maker and purchaser, and that, if the former refuses to surrender possession, he shall be removable by the writ of unlawful detainer. Griffith v. Brackman, 1896, 37 S.W. 273, 97 Tenn. 387, 13 Pickle 387. Landlord And Tenant 1785

A constructive entry, that enables him to maintain unlawful detainer, attaches as soon as title is acquired by a purchaser at a foreclosure sale made under a deed of trust containing an agreement by the maker that he will become tenant of the purchaser at such sale. Griffith v. Brackman, 1896, 37 S.W. 273, 97 Tenn. 387, 13 Pickle 387. Landlord And Tenant 1786

To make a tenant, who holds over against his landlord, guilty of forcible entry and detainer, under the provisions of Act 1821, there must have existed a contract of lease for a definite period and a holding over after a written notice of surrender. Lane v. Marshall, 1827, 8 Tenn. 255. Landlord And Tenant 1786

To constitute a tenant, who holds over against his landlord, guilty under the provisions of the 5th sec. of said act, there must have existed a contract of rent or lease for a definite period, and the tenant must hold over after receiving written notice to surrender the possession. Lane v. Marshall, 1827, 8 Tenn. 255. Landlord And Tenant 1786

Notice to vacate leased premises

Tenant who received notice to vacate in middle of month had until end of following month to vacate mobile home lot and was not unlawfully detaining premises when unlawful detainer suit was filed 11 days after notice to vacate. Morrison v. Smith, 1988, 757 S.W.2d 678. Landlord And Tenant 2122

Statute providing that no notice to quit need be given by landlord to tenant other than service of warrant dispenses with notice only in case where possession is made unlawful by forcible entry and detainer, forcible detainer, and unlawful detainer, and does not dispense with notice necessary to terminate periodic tenancy. T.C.A. §§ 23-1602, 23-1603, 23-1613. Etheridge v. First Nat. Bank of Jackson, 1964, 387 S.W.2d 835, 54 Tenn.App. 46. Landlord And Tenant 951; Landlord And Tenant 1794(2)

Payment or tender of rent

A landlord could obtain possession of premises, after refusing tenant's tender of rent in advance, only by forcible entry and detainer proceeding. Code 1932, §§ 9244, 9245, 9257. Price v. Osborne, 1940, 147 S.W.2d 412, 24 Tenn.App. 525. Landlord And Tenant 1781

Persons against whom action may be brought

A party who has been put in possession of land by an officer, under a writ of possession, cannot be ousted by forcible entry and detainer. Rook v. Godfrey, 1900, 58 S.W. 850, 105 Tenn. 534, 21 Pickle 534. Forcible Entry And Detainer 15(1)

An action of forcible entry and detainer, will lie against married women and persons under age. Skipwith v. Johnson, 1868, 45 Tenn. 454. Forcible Entry And Detainer 15(1); Infants 1281; Marriage And Cohabitation 703

A mortgage was executed, conveying a tract of land, to secure the payment of certain debts. The mortgagor remained in possession of the land until his death. After the death of the mortgagor, the trustee sold the land to pay the debts secured. After the sale, the wife removed and left the land in the hands of an agent, who leased it, and the lessee took possession. Held, that the transaction being prior to the Act of 1856, the widow had no interest in the land, and the lessee was a mere naked trespasser; and an action of unlawful detainer would not lie at the instance of

the purchaser against the lessee. Kuhn v. Feiser, 1859, 40 Tenn. 82. Forcible Entry And Detainer 15(1)

The action of forcible or unlawful entry and detainer, will not lie in favor of a trustee created by a mortgage, or a purchaser under him, neither of whom has had possession of the premises, against a naked trespasser. In such case there is no privity between the trustee, or purchaser, and the trespasser, and the latter is not the tenant of either. Kuhn v. Feiser, 1859, 40 Tenn. 82. Forcible Entry And Detainer 15(1)

Persons entitled to sue

Where lessor was entitled to possession of leased premises but was unable to obtain writ of forcible entry and detainer because not prepared to execute bond, and lessor directed third party to remove part of roof from leased premises, entry on the land and removal of the roof was an actionable "trespass". Code 1932, §§ 9244, 9245, 9257. Price v. Osborne, 1940, 147 S.W.2d 412, 24 Tenn.App. 525. Landlord And Tenant 1081(1); Landlord And Tenant 1081(2)

A tenant going into possession under A, cannot afterwards, and without A's consent, attorn to B so as to empower B to maintain an action of forcible entry and detainer. Elliott v. Lawless, 1871, 53 Tenn. 123. Forcible Entry And Detainer 14; Forcible Entry And Detainer 18

Where one tenant in possession brings suit, held he may bring an action of forcible entry and detainer, even though other tenants enjoy possession in common with him. Hunt v. Foley, 1928, 9 Tenn.App. 96. Forcible Entry And Detainer 14

Prior possession of plaintiff

Where plaintiff had possession of disputed strip of land lying immediately west and south of an old truck patch fence, but did not have title to that strip of land, and was deprived of his possession when defendant erected a fence along lines of his own tract, which went beyond fence, plaintiff, who could not sue for disputed strip because he did not have title thereto, could assert his right to possession by obtaining a writ of forcible entry and detainer wherein he set up his more than seven years adverse possession as a defense to forcible entry made by defendant. T.C.A. §§ 23-1601 et seq., 28-203. Foster v. Hill, 1973, 510 S.W.2d 520. Forcible Entry And Detainer 9(2)

Where complainant was never in actual possession of disputed property except for few hours when his employee had started a tractor plow and prior to complainant's actions another had done bulldozer work, burned Johnson grass, cut timber and exercised all indicia of ownership, complainant never had such possession of property as to entitle him to prevail in action of forcible entry and unlawful detainer. T.C.A. §§ 23-1602, 23-1603. Hall v. Lane, 1968, 444 S.W.2d 156, 60 Tenn.App. 38. Forcible Entry And Detainer 9(3)

Possession obtained by fraud or stealth cannot be made predicate of an action of forcible entry and detainer. Jones v. Czaza, 1935, 86 S.W.2d 1096, 19 Tenn.App. 327. Forcible Entry And Detainer 9(2)

Action of forcible entry and detainer was created for protection of those who already have actual and peaceable possession, and not for one who has newly acquired a mere foothold or semblance of possession. Jones v. Czaza, 1935, 86 S.W.2d 1096, 19 Tenn.App. 327. Forcible Entry And Detainer 9(3)

Plaintiff need not be in possession for any particular length of time before he can maintain forcible entry and detainer suit, but his possession must be actual, peaceable, exclusive, adverse, and continuous in the sense that it must not be an interrupted or scrambling possession. Jones v. Czaza, 1935, 86 S.W.2d 1096, 19 Tenn.App. 327. Forcible Entry And Detainer 9(3)

One in actual possession under deed defining boundaries when another fenced part of the land could proceed by forcible entry and detainer against such other. Walker v. Davis, 1918, 202 S.W. 78, 139 Tenn. 475. Forcible Entry And Detainer 9(3)

One has a possessory right, sufficient to support forcible entry and detainer, to a tract of land included in a larger tract, the possession of which he has entered into under a deed. Stockley v. Cissna, 1907, 104 S.W. 792, 119 Tenn. 135. Forcible Entry And Detainer 9(7)

Constructive possession is sufficient to authorize an action of unlawful entry and detainer. Mansfield v. Northcut, 1904, 80 S.W. 437, 112 Tenn. 536. Forcible Entry And Detainer 9(2)

Unless plaintiff was in possession at date of defendant's entry on the land, he cannot maintain forcible entry and detainer. Rook v. Godfrey, 1900, 58 S.W. 850, 105 Tenn. 534, 21 Pickle 534. Forcible Entry And Detainer 9(1)

The plaintiff in an action of forcible entry and detainer must show that he was in possession of the land when the defendants entered thereon. Rook v. Godfrey, 1900, 58 S.W. 850, 105 Tenn. 534, 21 Pickle 534. Forcible Entry And Detainer 9(1)

Forcible entry and detainer or unlawful detainer cannot be maintained for lands of which the plaintiff has never had possession otherwise than to stretch a wire across it, making no inclosure. Clay v. Sloan, 1900, 58 S.W. 229, 104 Tenn. 401, 20 Pickle 401. Forcible Entry And Detainer 9(1); Forcible Entry And Detainer 9(6)

Where defendant had fenced in a strip of land, that plaintiff afterwards stretched a single wire around it was not sufficient possession to sustain an action for forcible entry and detainer. Clay v. Sloan, 1900, 58 S.W. 229, 104 Tenn. 401, 20 Pickle 401. Forcible Entry And Detainer 9(6)

A tenant of land under P., yielding to the wrongful demand of J. and the sheriff, without being ejected, attorned to J., supposing that J. was entitled to the possession under a certain writ, which in fact gave him no such right. Held, that J. acquired no possession thereby which would enable him to maintain forcible entry and detainer against P. for taking possession of the land. Beaty v. Jones, 1860, 41 Tenn. 482. Forcible Entry And Detainer 9(3)

Forcible entry and detainer will not lie in favor of a trustee created by a mortgage, or a purchaser under him, neither of whom has had possession of the premises, against a mere trespasser. Kuhn v. Feiser, 1859, 40 Tenn. 82. Forcible Entry And Detainer 9(1)

Actual residence on the premises is not necessary to support the action of forcible entry and detainer. It is enough if it be shown that the premises are not abandoned, by proofs that the enclosures are kept up, and the doors of the houses closed. The use of land enclosed for pasturing or grazing stock, is as much a possession as if it were cultivated. But if the intention to abandon had been evinced by words or actions, the accidental continuance or ranging of stock upon a place will not constitute possession. Hopkins v. Calloway, 1855, 35 Tenn. 11. Forcible Entry And Detainer 9(3); Forcible Entry And Detainer 9(4)

Where an officer serving a writ of possession had only succeeded in placing the tenant's goods in the yard, and was proceeding to eject the tenant, when the sheriff arrived with an injunction staying the execution of the writ, and the tenant thereupon took up his abode in an outbuilding on the premises, such writ of possession was not executed before the service of the injunction, so as to deprive the tenant of possession, and thereby deprive him of his right to maintain forcible entry and detainer against the plaintiff in the writ of restitution. Farnsworth v. Fowler, 1851, 31 Tenn. 1, 55 Am.Dec. 718. Forcible Entry And Detainer 9(3)

Locking the doors of a house, and keeping the keys; closing the windows, and driving a portion of stock upon the premises, constitute evidence of an actual possession of land, which will authorize a recovery in an action for forcible entry and detainer. Davidson v. Phillips, 1836, 17 Tenn. 93, 30 Am.Dec. 393. Forcible Entry And Detainer 9(3); Forcible Entry And Detainer 29(4)

A party, to be guilty of forcible entry and detainer under the act of 1821, must enter into possession of the premises when actually adversely holden. Lane v. Marshall, 1827, 8 Tenn. 255. Forcible Entry And Detainer 9(1)

Tenancy in common

One tenant in common may sue, in forcible entry and detainer, without joining his co-tenant. Turner v. Lumbrick, 1838, 19 Tenn. 7. Property 747

Time to sue and limitations

An action of forcible entry and detainer will not lie against a defendant, who has been in possession of the premises for three years, by himself or tenants. Beaty v. Jones, 1860, 41 Tenn. 482. Forcible Entry And Detainer 17

Parties

A tenant in common may maintain an action of forcible entry without joining his cotenants as plaintiffs. Jones v. Phillips, 1873, 57 Tenn. 562. Forcible Entry And Detainer 18; Property 747

Pleadings

Under Shannon's Code, § 4727, authorizing a writ of possession of specific property, the court in a suit to enjoin an action of forcible entry and detainer against complainant may not, on the dismissal of the bill, award a writ of possession for defendant not filing a cross-bill. Myers v. Northcutt, 1913, 152 S.W. 1034, 127 Tenn. 54. Equity 196; Injunction 1548

A defendant, in a suit to enjoin his prosecution of an action of forcible entry and detainer against complainant, may file a cross-bill to obtain affirmative relief; but, where he fails to do so, he cannot complain because relief is denied him. Myers v. Northcutt, 1913, 152 S.W. 1034, 127 Tenn. 54. Equity 196; Injunction 1548

To make out a case of forcible entry and unlawful detainer it is not necessary to prove the use of actual force. The law implies force in every unauthorized entry or obstruction of possession. Cleage v. Hyden, 1871, 53 Tenn. 73. Forcible Entry And Detainer 28; Forcible Entry And Detainer 29(1)

Defenses

Tenant who fails to abandon premises within reasonable time after conditions constituting constructive eviction occur waives constructive eviction claim. Morrison v. Smith, 1988, 757 S.W.2d 678. Landlord And Tenant 1386

Possession being the foundation of an action of forcible entry and detainer, question of title is incidental, and if complainant proves possession, defects, if any, in his title, are not available to defendant. Round Mountain Lumber & Coal Co. v. Bass, 1917, 191 S.W. 341, 136 Tenn. 687. Forcible Entry And Detainer 12(1)

The action of forcible entry and detainer cannot be maintained to dispossess a party who has been put into possession of land under the authority and by the command of a court of competent jurisdiction. Scott v. Newsom, 1857, 36 Tenn. 457. Forcible Entry And Detainer 12(2); Forcible Entry And Detainer 15(1)

Admissibility of evidence

In unlawful detainer, where defendant claims under one who received possession from railroad, it being claimed that the land in controversy was a part of the right of way, but defendant took a lease from plaintiffs under representations that plaintiffs had title to the land, evidence of the delivery of possession to the defendant by the railroad's lessee held admissible. Smith v. Zwicker, 1916, 188 S.W. 595, 136 Tenn. 77. Forcible Entry And Detainer 29(2); Landlord And Tenant 655

While in general no title papers can be introduced in unlawful detainer except to show boundaries, they may be further introduced to show title, where a tenant has been induced to attorn to a third party, through fraud or mistake. Smith v. Zwicker, 1916, 188 S.W. 595, 136 Tenn. 77. Forcible Entry And Detainer 29(3); Landlord And Tenant 1801(3)

In an action for forcible entry and detainer, the title may be shown in evidence, when bearing on the right of possession. Allison v. Casey, 1874, 63 Tenn. 587. Forcible Entry And Detainer 29(2)

As a general proposition, the right of possession alone is involved in the action of forcible entry or unlawful detainer, but the title may sometimes be shown as evidence bearing on the right of possession. Thus, where a defendant insisted that the tenant from whom he obtained possession of the premises, entered thereon as the tenant of, and by contract with B., and not as the tenant of the plaintiff, and afterward attorned to the plaintiff without the consent of B., it is held that the defendant is not estopped from showing that such attornment was procured by fraud or was the result of mistake, and that the title was in B., and that the deeds were admissible as the best evidence of this fact. Allison v. Casey, 1874, 63 Tenn. 587. Landlord And Tenant 671; Landlord And Tenant 1801(3)

As a general rule, the title cannot be enquired into, in this form of action; yet it is admissible to look to the title to define the boundaries; or, in view of the question of damages, or rents to be recovered in an action brought by a mere intruder against the rightful owner of the land; or, where the claimant by fraud induces another to take a lease, or to enter under him, upon a false representation as to his title. In such cases, and, perhaps, others, the title may be looked to, in the determination of the question, whether the case made out constitutes, in law, a wrongful entry or detainer. Philips v. Sampson, 1859, 39 Tenn. 429. Forcible Entry And Detainer 29(2); Forcible Entry And Detainer 32

In the action of forcible entry and detainer, any evidence of injury committed by the disseisor to the freehold merely, such as waste, &c., is incompetent as indicating the plaintiff's damages; if, however, such evidence be permitted to go to the jury, without objection or without a distinct motion, made during the progress of the trial to exclude it from the jury, it is no ground for the assignment of error. White v. Suttle, 1851, 31 Tenn. 169. Forcible Entry And Detainer 29(2); Forcible Entry And Detainer 33; Forcible Entry And Detainer 43(7)

Presumptions and burden of proof

Where A. takes possession of a house and premises, by locking the door and closing the windows, and B. applies to his agent and demands possession, which is refused, and B. is afterwards found in possession of the house, claiming under an adverse title to A.: Held, that it was to be inferred he got possession by breaking the doors or windows open, and that this constituted a forcible entry, within the meaning of the act of 1821, c. 14, § 2. Davidson v. Phillips, 1836, 17 Tenn. 93, 30 Am.Dec. 393. Forcible Entry And Detainer 29(1)

Questions of law and fact

Where a party is in possession of land, whether he has been ousted of that possession, is a question of fact for the jury. Davidson v. Phillips, 1836, 17 Tenn. 93, 30 Am.Dec. 393. Forcible Entry And Detainer 34

Judgment

Forcible entry and detainer. It appeared on the trial of this case, that the defendant took forcible possession of part of plaintiff's land before the commencement of suit, and part afterwards. It is held, that by this proceeding he could recover only so much of the land as he was dispossessed of before suit brought. White v. Suttle, 1850, 30 Tenn. 449. Forcible Entry And Detainer 38(2)

Execution and enforcement of judgment

The party in peaceable possession of real estate cannot be lawfully dispossessed by writ issued under judgment in forcible entry and detainer suit brought against a few of his numerous employes engaged as common laborers, but not residing, on the premises. Neither can his employes of the same or a higher grade, who are not sued, by dispossessed by such writ. Chamberlin v. Fox Coal & Coke Co., 1892, 20 S.W. 345, 92 Tenn. 13, 8 Pickle 13. Forcible Entry And Detainer 40

Equitable relief from judgment

A bill to quiet the possession of land, by a purchaser in possession under a decree of a court of competent jurisdiction, will lie to prevent the enforcement of unlawful entry and detainer, in which he was not a party, though the person holding the judgment would be entitled to possession upon bringing a proper action to determine his right. Cope v. Payne, 1903, 76 S.W. 820, 111 Tenn. 128, 102 Am.St.Rep. 746. Judgment 452

Conclusiveness of adjudication

Where an action of unlawful entry and detainer was brought against a tenant, in which the landlord was not a party, the landlord is not bound by the judgment, though he knew of the pendency of the action. Cope v. Payne, 1903, 76 S.W. 820, 111 Tenn. 128, 102 Am.St.Rep. 746. Res Judicata 534

Writ of possession

Commercial lessor was required by Tennessee law to seek a writ of possession before reentering the leased premises and padlocking outside gate after it terminated lease due to lessee's failure to cure defaults, even though the lease contained a written right-of-reentry clause. 94th Aero Squadron of Memphis, Inc. v. Memphis-Shelby County Airport Authority, 2004, 169 S.W.3d 627, appeal denied. Landlord And Tenant 1738

Absent abandonment or surrender of the premises by the tenant, a landlord is required by the Tennessee Forcible Entry and Detainer (FED) law to seek a writ of possession before reentering the land. 94th Aero Squadron of Memphis, Inc. v. Memphis-Shelby County Airport Authority, 2004, 169 S.W.3d 627, appeal denied. Landlord And Tenant 1791

T. C. A. § 29-18-103
§ 29-18-103. Forcible detainer

A forcible detainer is where a person enters lawfully or peaceably, and holds unlawfully, and by any of the means enumerated in § 29-18-102 as constituting a forcible entry.

Credits

1821 Acts, c. 14, § 3.

Formerly 1858 Code, § 3343; Shannon's Code, § 5092; 1932 Code, § 9246; § 23-1603.

Notes of Decisions (5)

Nature and elements of forcible detainer

A house was occupied as a schoolhouse by consent of Story, who claimed the right to the possession of the land on which it was situated. Before the termination of the school, Vanhook took possession of the house, declaring that if any person attempted to dispossess him, he would shoot him: Held, that this was a forcible entry and detainer; and if held after the termination of the school, it was a forcible detainer of the premises of Story, for which the writ lies. Vanhook v. Story, 1843, 23 Tenn. 59. Forcible Entry And Detainer 4

The landlord cannot successfully prosecute a forcible entry and detainer suit in the case of dispute of title. It is not the purpose of forcible entry and detainer action to settle a disputed title or a dispute as to the dividing line between owners. This action only lies for the purposes of trying the question of possession and not title. Hunt v. Foley, 1928, 9 Tenn.App. 96. Forcible Entry And Detainer 6(2)

Prior possession of plaintiff

Where complainant was never in actual possession of disputed property except for few hours when his employee had started a tractor plow and prior to complainant's actions another had done bulldozer work, burned Johnson grass, cut timber and exercised all indicia of ownership, complainant never had such possession of property as to entitle him to prevail in action of forcible entry and unlawful detainer. T.C.A. §§ 23-1602, 23-1603. Hall v. Lane, 1968, 444 S.W.2d 156, 60 Tenn.App. 38. Forcible Entry And Detainer 9(3)

Actual residence on the premises is not necessary to support the action of forcible entry and detainer. It is enough if it be shown that the premises are not abandoned, by proofs that the enclosures are kept up, and the doors of the houses closed. The use of land enclosed for pasturing or grazing stock, is as much a possession as if it were cultivated. But if the intention

to abandon had been evinced by words or actions, the accidental continuance or ranging of stock upon a place will not constitute possession. Hopkins v. Calloway, 1855, 35 Tenn. 11. Forcible Entry And Detainer 9(3); Forcible Entry And Detainer 9(4)

Notice to quit

Statute providing that no notice to quit need be given by landlord to tenant other than service of warrant dispenses with notice only in case where possession is made unlawful by forcible entry and detainer, forcible detainer, and unlawful detainer, and does not dispense with notice necessary to terminate periodic tenancy. T.C.A. §§ 23-1602, 23-1603, 23-1613. Etheridge v. First Nat. Bank of Jackson, 1964, 387 S.W.2d 835, 54 Tenn.App. 46. Landlord And Tenant 951; Landlord And Tenant 1794(2)

T. C. A. § 29-18-104
§ 29-18-104. Unlawful detainer
Effective: July 9, 2012

Unlawful detainer is where the defendant enters by contract, either as tenant or as assignee of a tenant, or as personal representative of a tenant, or as subtenant, or by collusion with a tenant, and, in either case, willfully and without force, holds over the possession from the landlord, or the assignee of the remainder or reversion.

Credits

1821 Acts, c. 14, § 5.

Formerly 1858 Code, § 3344; Shannon's Code, § 5093; 1932 Code, § 9247; § 23-1604.

Notes of Decisions (47)

Nature and elements of forcible or other unlawful detainer

Purpose of Tennessee's unlawful detainer statute is to provide basis for relief for landlords against tenants, and there must be an express contract creating landlord-tenant relationship, but it does not apply to other contracts, such as mortgagor and mortgagee or vendor and vendee, where in certain phases relationship becomes assimilated to that of landlord and tenant. In re Connor, 2021, 632 B.R. 506. Landlord and Tenant 1781; Landlord and Tenant 1785; Mortgages and Deeds of Trust 963; Real Property Conveyances 1105

Tennessee's unlawful detainer statute creates a right to bring a cause of action for a writ of possession when a lessee remains on leased property after the lease has been terminated. Federal National Mortgage Association v. Daniels, 2015, 517 S.W.3d 706, appeal dismissed. Landlord and Tenant 1786

Unlawful detainer is statutory action unknown at common law. Johnson v. Hopkins, 2013, 432 S.W.3d 840. Forcible Entry and Detainer 6(1)

Widow of deceased owner of realty could not by contract, deed, or assignment create such an entry on realty of deceased by defendant as would, on a holding over by defendant, give rise to an unlawful detainer action based on contract by remainderman. Code, §§ 7719-7735, 8351-8379, 9247, 9253. Springfield v. Stamper, 1948, 214 S.W.2d 345, 31 Tenn.App. 252. Forcible Entry And Detainer 5

Under Shannon's Code, § 5093, defining unlawful detainer as where the defendant enters by contract, either as tenant or claiming through or under a tenant, the action of unlawful detainer lies only where the defendant entered by contract and as lessee, or under a lessee, and hence that form of action will not lie against one who entered under a conveyance from a tenant by curtesy. Shepperson v. Burnette, 1906, 92 S.W. 762, 116 Tenn. 117. Forcible Entry And Detainer 5

Grounds of action

When a deed of trust establishes that, in the event of a foreclosure, a landlord/tenant relationship is created between the foreclosure sale purchaser and the mortgagor in possession of the property, constructive possession is conferred on the foreclosure sale purchaser upon the passing of title; that constructive possession provides the basis for maintaining the unlawful detainer. Federal National Mortgage Association v. Daniels, 2015, 517 S.W.3d 706, appeal dismissed. Mortgages and Deeds of Trust 2053; Mortgages and Deeds of Trust 2055(5)

Unlawful detainer statute creates right to bring action for writ of possession when lessee remained on leased property after lease has been terminated but does not address problem of lessee who breaches terms of lease which has not by its terms expired. West's Tenn.Code, § 29-18-104. Cain Partnership Ltd. v. Pioneer Inv. Services Co., 1996, 914 S.W.2d 452. Landlord And Tenant 1786

A mortgagor in possession may contract with the trustee in the deed that in the event of a foreclosure the relation of landlord and tenant shall thereby be created between the purchaser and mortgagor, and that upon the mortgagor's default in surrendering possession of the premises he shall be removable by the writ of unlawful detainer. Griffith v. Brackman, 1896, 37 S.W. 273, 97 Tenn. 387, 13 Pickle 387. Forcible Entry And Detainer 7; Landlord And Tenant 1785

The remedy by an action for unlawful detainer is proper where the party in possession of land has obtained his possession under a verbal contract of purchase, and afterwards repudiates the agreement with his vendor and assumes to hold for himself. Beard v. Bricker, 1852, 32 Tenn. 50. Forcible Entry And Detainer 7; Real Property Conveyances 1103; Real Property Conveyances 1105

Persons against whom action may be brought

In an action of unlawful detainer brought by the purchaser at a foreclosure sale to oust a mortgagor whom she had permitted to remain on the premises after the sale until such time as he could find another place to move upon, held that the mortgagor became a tenant at will and the action would lie. Beasley v. Gregory, 1926, 2 Tenn.App. 378. Forcible Entry And Detainer 15(1)

Persons who may maintain action

A deed conveying the fee-simple title carried with it all the rights which grantor had in the property, including the assignment of the reversion within meaning of the unlawful detainer statute, so as to enable grantee to maintain action against tenant for recovery of the property. Code 1932, § 9247. Rabe v. Thrasher, 1946, 197 S.W.2d 1, 29 Tenn.App. 419. Landlord And Tenant 1795(2)

An action of unlawful detainer may be maintained by purchasers or assignees of a reversion, if defendants are in fact guilty of unlawful detainer. Code 1932, §§ 9245-9247. Smith v. Holt, 1945, 193 S.W.2d 100, 29 Tenn.App. 31. Landlord And Tenant 1795(2)

Lessee for term beginning at expiration of prior lease cannot bring unlawful detainer suit against first lessee. Shannon's Code, § 5093. Bloch v. Busch, 1929, 22 S.W.2d 242, 160 Tenn. 21. Landlord And Tenant 1795(2)

Lessee for term beginning at expiration of prior lease was not assignee of reversion authorized to prosecute unlawful detainer suit against prior lessee. Shannon's Code, § 5093. Bloch v. Busch, 1929, 22 S.W.2d 242, 160 Tenn. 21. Landlord And Tenant 1795(2)

Holdover tenants and assignees

Landlord effectively extended commercial lease contract for a second 10-year term period by giving tenant, who remained in possession of property for more than 30 days following expiration of original term, written notice of landlord's election to extend lease, before tenant surrendered lease, as provided in hold-over clause of lease, even though notice was given in response to letter informing landlord of tenant's intent to vacate building within three months. Bilbrey v. Worley, 2004, 165 S.W.3d 607, appeal denied. Landlord And Tenant 854

Tenant or someone in collusion with tenant who willfully and without force holds over the possession from the landlord is guilty of unlawful detainer. T.C.A. § 29-18-104. Morrison v. Smith, 1988, 757 S.W.2d 678. Landlord And Tenant 1786

The words "holds over the possession from the landlord, or assignee", in statute relating to unlawful detainer, mean a holding over after the tenancy has ended, since, until then, the possession belongs to the tenant, and he is not holding over possession from landlord or assignee, and is not guilty of unlawful detainer. Code 1932, §§ 9245-9247. Smith v. Holt, 1945, 193 S.W.2d 100, 29 Tenn.App. 31. Landlord And Tenant 1786

Where tenants under lease for eleven months held over with consent of landlord upon their promise to pay rent at same amount per month as under the lease, holding over created a periodic tenancy of at least from month to month. Smith v. Holt, 1945, 193 S.W.2d 100, 29 Tenn.App. 31. Landlord And Tenant 696(3)

A periodic tenancy resulting from the tenant's holding over with consent of the landlord is a tenancy of indefinite duration, and neither party can terminate it without sufficient notice to the other. Smith v. Holt, 1945, 193 S.W.2d 100, 29 Tenn.App. 31. Landlord And Tenant 951; Landlord And Tenant 970

Where tenant holds over after termination of a lease and landlord continues to accept the rent, a new tenancy is created, and, if the original tenancy was for a year or more, the new tenancy is from year to year; if the original term was for less than a year, as a month or a quarter, the new tenancy is presumably a periodic tenancy measured by such period. Smith v. Holt, 1945, 193 S.W.2d 100, 29 Tenn.App. 31. Landlord And Tenant 694; Landlord And Tenant 695(3)

A landlord could obtain possession of house against tenant's will only by a forcible entry and detainer proceeding where tenant had been permitted to occupy house during employment on landlord's farm and remained in house a short time after being discharged from employment. Code 1932, §§ 9244, 9245, 9257. Schumpert v. Moore, 1940, 149 S.W.2d 471, 24 Tenn.App. 695. Assault And Battery 618

Under Thompson's Shannon's Code, § 5093, landlord may sue to dispossess assignee of tenant holding over, though such landlord had lost control of the reversion by demising the premises to

another for term to commence at expiration of term of holding over tenant. Fine v. Lawless, 1918, 201 S.W. 160, 139 Tenn. 160. Landlord And Tenant 1787

In an action of unlawful detainer where the purchaser at foreclosure sale agreed with the mortgagor that he might remain on the premises for a few days, held to create a tenancy at will. Beasley v. Gregory, 1926, 2 Tenn.App. 378. Landlord And Tenant 705

Mortgagee in default

Under trust deed providing that grantor should retain possession and right to rent "until default" but that trustee or beneficiary should be entitled to rents after default, trustee and beneficiary suing in unlawful detainer after default held entitled to enforce rights by action at law as against contention that trustee sale or bill in equity were only remedies. Code 1932, §§ 8567, 9247. Metropolitan Life Ins. Co. v. Moore, 1934, 72 S.W.2d 1050, 167 Tenn. 620. Mortgages And Deeds Of Trust 1096

No express reservation of a formal right to re-entry by the purchaser under a deed of trust is necessary to enable him to maintain unlawful detainer, where such deed contains a stipulation that a foreclosure thereof shall create the relation of landlord and tenant between the maker and purchaser, and that, if the former refuses to surrender possession, he shall be removable by the writ of unlawful detainer. Griffith v. Brackman, 1896, 37 S.W. 273, 97 Tenn. 387, 13 Pickle 387. Landlord And Tenant 1785

The maker of a deed of trust in possession may contract in such deed with the trustee and beneficiary, that foreclosure of the deed of trust shall create the relation of landlord and tenant between the purchaser and maker, and that, upon the latter's default in surrendering possession, he may be removed by a writ of unlawful detainer. Griffith v. Brackman, 1896, 37 S.W. 273, 97 Tenn. 387, 13 Pickle 387. Landlord And Tenant 1785; Mortgages And Deeds Of Trust 2055(5)

The action of unlawful detainer allowed by Code, § 3344, "where defendant enters by contract either as tenant, or as assignee of a tenant, or as personal representative of a tenant, or as subtenant, or by collusion with a tenant, and in either case, willfully and with force, holds over the possession from the landlord or the assignee of the remainder or assignee," does not lie in favor of a purchaser at a sale under a trust deed against a tenant of the maker of the deed, if the maker has remained in possession of the land up to the sale without disavowing the right of the trustee to possession or holding adversely to him. Ballow v. Motheral, 1875, 64 Tenn. 600. Mortgages And Deeds Of Trust 2055(5)

Title to support action

In an action for unlawful detainer, held that the fact that the legal title was in a trustee and that plaintiff's title was subject to a paramount lien of a deed of trust, does not defeat plaintiff's right to possession. The relation of landlord and tenant does not rest upon landlord's title, but upon the agreement between the parties followed by the possession of the premises by the tenant under the agreement. Beasley v. Gregory, 1926, 2 Tenn.App. 378. Forcible Entry And Detainer 8

Transfer of reversion

The owner of a tract of land which he has leased may sell the reversion of it during the continuance of the lease. Marley v. Rodgers, 1833, 13 Tenn. 217. Landlord And Tenant ⇐ 625

The owner of a tract of land, which he has leased, can sell the remainder or reversion in said land, during the continuance of the lease; and such sale will pass the remainder or reversion to the purchaser. Marley v. Rodgers, 1833, 13 Tenn. 217. Landlord And Tenant ⇐ 625

Where the owner of a tract of land, which he has leased, sells the remainder or reversion of it during the continuance of the lease, the purchaser will acquire the rights of the grantor after the expiration of the term. Marley v. Rodgers, 1833, 13 Tenn. 217. Landlord And Tenant ⇐ 627

The purchaser of the remainder or reversion of a tract of land, which has been leased, may, by virtue of the act of 1821, ch. 14, sec. 4, maintain a forcible entry and detainer after the expiration of the lease, against the tenant or sub-tenant, to obtain possession of the land, in the same manner that his grantor could. Marley v. Rodgers, 1833, 13 Tenn. 217. Landlord And Tenant ⇐ 627

The act of 1821, ch. 14, sec. 5, having limited no time at which a written notice to quit is to be given, before the commencement of proceedings, if demand of the possession be made, and written notice given for the delivery, and the tenant refuse to surrender the possession, the owner may proceed against the tenant at any time after such refusal. Marley v. Rodgers, 1833, 13 Tenn. 217. Landlord And Tenant ⇐ 627

Notice to quit or vacate

A tenant, who did not seek to abate unlawful detainer action on ground that notice required him to vacate the premises four days before the expiration of the lease, and upon further ground that the suit was prematurely brought, waived such defense, particularly where he accepted rebate in rent for the four days. Code 1932, § 9247. Rabe v. Thrasher, 1946, 197 S.W.2d 1, 29 Tenn.App. 419. Landlord And Tenant ⇐ 1787

In order for a notice to vacate leased premises to be sufficient it must in a tenancy from year to year be given six months before end of the year, tenancies of quarter to quarter, month to month, or week to week must be given a quarter, month or week, respectively, before the end of the term. Smith v. Holt, 1945, 193 S.W.2d 100, 29 Tenn.App. 31. Landlord And Tenant ⇐ 954

Cantrell and wife leased to Sloan, premises for five years, at a stipulated rent. In the lease, it was stipulated that, if the lessors, at any time within three years, desired to sell the premises, upon giving S. notice of such desire, he should vacate said premises within a year and surrender the balance of said lease, they paying $2,500; and if the notice should be in the fourth year, he was to vacate within a year, and they to pay him $1,000. Shortly afterwards, the lessors gave the lessee notice to vacate and surrender the premises and lease, stating in the notice that they would pay the price agreed upon in the lease, upon the surrender, etc. Nothing was said in the notice about their desire to sell, nor did they make a tender of the money or pay it. Held, 1st, that the lessee was not guilty of an unlawful detainer, because the notice was not in accordance with the terms of the lease--notice to be given of "a desire to sell,"--and therefore insufficient to terminate the tenancy. 2d, That the stipulation to quit upon the proper notice given, was a covenant, and not a condition or limitation. Sloan v. Cantrell, 1868, 45 Tenn. 571. Landlord And Tenant ⇐ 957

Good faith of landlord

The defense raised by tenant in unlawful detainer action that the deed executed to plaintiff by her mother was not made in good faith, but a subterfuge to enable her to evict tenant, was foreclosed by action of the O.P.A. rent director in issuing certificate of authority to institute the proceedings, which certificate could only be attacked in the Emergency Court of Appeals. Code 1932, § 9247; Emergency Price Control Act of 1942, § 1 et seq., 50 U.S.C.A.App. § 901 et seq. Rabe v. Thrasher, 1946, 197 S.W.2d 1, 29 Tenn.App. 419. Landlord And Tenant 1985; War And National Emergency 1255

Equitable conversion

Doctrine of equitable conversion was not applicable, and thus detainer warrant filed by prospective vendor of real estate alleging forcible entry detainer (FED) or unlawful detainer by prospective purchasers was not barred by executory contract for sale of real estate, where contract had expired and was not extended or renewed. T.C.A. §§ 28-18-102(a), 29-18-104, 29-18-119(c). Lewis v. Muchmore, 2000, 26 S.W.3d 632, appeal denied. Equitable Conversion 110

Bar and estoppel

Doctrine of prior suit pending did not bar detainer warrant brought by prospective vendor of real estate in alleging forcible entry detainer (FED) or unlawful detainer by prospective purchasers, even though prospective purchasers previously filed action for specific performance of real estate contract, which was pending at time detainer action was filed in General Sessions Court, where prospective purchasers alleged that they entered voluntary nonsuit in that action to bring cause before court hearing detainer warrant. T.C.A. §§ 28-18-102(a), 29-18-104. Lewis v. Muchmore, 2000, 26 S.W.3d 632, appeal denied. Abatement And Revival 7

Neither a tenant, nor sub-tenant, can purchase during the continuance of the lease, the title of a third person, and set up the same against his landlord, or the purchaser from his landlord. Marley v. Rodgers, 1833, 13 Tenn. 217. Landlord And Tenant 658

Res judicata

Res judicata did not bar prospective vendor of real estate from filing detainer warrant alleging forcible entry and detainer (FED) or unlawful detainer by prospective purchasers, even though previous such action filed by prospective vendor was dismissed, where no evidence indicated that prior action was decided on merits, and prospective vendor testified that action was dismissed due to lack of requisite notice. T.C.A. §§ 28-18-102(a), 29-18-104, 66-28-512(b). Lewis v. Muchmore, 2000, 26 S.W.3d 632, appeal denied. Res Judicata 128

Pleadings

Where defendant's counterclaim, though involving equitable matters, was essentially a defense against plaintiff's action for recovery of possession of realty, under Tennessee law there was no impropriety in submitting certain decisive issues to jury. 28 U.S.C.A § 1652; T.C.A. §§ 21-1011, 21-1014, 23-1302, 23-1604, 23-1606, 23-1621, 23-1632. Pan-Am Southern Corp. v. Cummins, 1957, 156 F.Supp. 673, remanded 249 F.2d 955. Jury 14.5(4)

Where warrant charged forcible entry, but proof was confined to theory of entry by contract and unlawful detainer without force, plaintiff proceeded under and was confined to an action of unlawful detainer, and entry under contract was of the gravamen of the action. Code, §§ 9247,

9253. Springfield v. Stamper, 1948, 214 S.W.2d 345, 31 Tenn.App. 252. Forcible Entry And Detainer 28

Judgment

Where defendant's counterclaim, though involving equitable matters, was essentially a defense against plaintiff's action for recovery of possession of realty, under Tennessee law there was no impropriety in submitting certain decisive issues to jury. 28 U.S.C.A § 1652; T.C.A. §§ 21-1011, 21-1014, 23-1302, 23-1604, 23-1606, 23-1621, 23-1632. Pan-Am Southern Corp. v. Cummins, 1957, 156 F.Supp. 673, remanded 249 F.2d 955. Jury 14.5(4)

Where warrant charged forcible entry, but proof was confined to theory of entry by contract and unlawful detainer without force, plaintiff proceeded under and was confined to an action of unlawful detainer, and entry under contract was of the gravamen of the action. Code, §§ 9247, 9253. Springfield v. Stamper, 1948, 214 S.W.2d 345, 31 Tenn.App. 252. Forcible Entry And Detainer 28

Review

Remand was required for redetermination, under Restatement principles of mutuality, of landlord's action to regain possession of commercial property based on tenant's failure to pay taxes as required under commercial lease which contained no termination provision. West's Tenn.Code, § 29-18-104; Restatement (Second) of Property § 13.1. Cain Partnership Ltd. v. Pioneer Inv. Services Co., 1996, 914 S.W.2d 452. Landlord And Tenant 1805

Where unsuccessful defendant in action for unlawful detainer commenced in general sessions court in Davidson County wished to remain in possession of property while having case reviewed by circuit court, case could be removed to circuit court by petition for writs of certiorari and supersedeas, and dismissal of petition on ground that appeal was proper remedy was error. Code 1932, §§ 9244, 9247, 9257, 9266. Nashville Housing Authority v. Kinnard, 1948, 207 S.W.2d 1019, 186 Tenn. 33. Landlord And Tenant 1805

Proof that judgment for rent in unlawful detainer action commenced in general sessions court in Davidson County was under $50, did not authorize a review of the judgment in circuit court by certiorari under statute providing review by circuit court by certiorari of a judgment of general sessions court in Davidson County not exceeding amount of $50, since the judgment for rent was but incidental to the judgment for possession. Code 1932, §§ 9244, 9247, 9257; Priv.Acts 1937, c. 12, § 6. Nashville Housing Authority v. Kinnard, 1948, 207 S.W.2d 1019, 186 Tenn. 33. Landlord And Tenant 1805

T. C. A. § 29-18-105

§ 29-18-105. Scope

Sections 29-18-101--29-18-104 extend to and comprehend terms for years, and all estates, whether freehold or less than freehold.

Credits

1821 Acts, c. 14, § 4.

Formerly 1858 Code, § 3345; Shannon's Code, § 5094; 1932 Code, § 9248; § 23-1605.

T. C. A. § 29-18-106
§ 29-18-106. Real estate; recovery; alternatives

Where the action is to recover real property, ejectment, or forcible or unlawful entry or detainer may be brought.

Credits

Formerly 1858 Code, § 2750; Shannon's Code, § 4441; 1932 Code, § 8567; § 23-1606.

Notes of Decisions (1)

In general

Under trust deed providing that grantor should retain possession and right to rent "until default" but that trustee or beneficiary should be entitled to rents after default, trustee and beneficiary suing in unlawful detainer after default held entitled to enforce rights by action at law as against contention that trustee sale or bill in equity were only remedies. Code 1932, §§ 8567, 9247. Metropolitan Life Ins. Co. v. Moore, 1934, 72 S.W.2d 1050, 167 Tenn. 620. Mortgages And Deeds Of Trust ⚷ 1096

T. C. A. § 29-18-107
§ 29-18-107. Jurisdiction; general sessions courts

All cases of forcible entry and detainer, forcible detainer, and unlawful detainer, may be tried before any one (1) judge of the court of general sessions of the county in which the acts are committed, who shall decide the particular case, and all questions of law and fact arising.

Credits

1841-1842 Acts, c. 186, § 1; 1879 Acts, c. 23; impl. am. by 1979 Pub.Acts, c. 68, § 3.

Formerly 1858 Code, § 3346; Shannon's Code, § 5095; 1932 Code, § 9249; § 23-1607.

Notes of Decisions (3)

In general

Tenant could not proceed by statutory writ of certiorari, after circuit court dismissed writ of supersedeas because tenant failed to post the necessary bond, in case in which tenant sought writs to stay writ of possession issued in favor of landlord by general sessions court after landlord filed detainer warrant; writs of certiorari and supersedeas were intended to be used together to enable an unsuccessful defendant to remain in possession of the leased premises while seeking a de novo review, and writ of certiorari was not intended for use as substitute for appeal. Gallatin Housing Authority v. Pelt, 2017, 532 S.W.3d 760, appeal denied. Certiorari 5(1)

Jurisdiction of unlawful detainer action is in Justice of the Peace, Circuit Court, or Chancery Court. T.C.A. §§ 19-301(7), 23-1607, 23-1608. Robinson v. Easter, 1961, 344 S.W.2d 365, 12 McCanless 147, 208 Tenn. 147. Forcible Entry And Detainer 16(.5)

Chancery Court had no jurisdiction of suit in equity by lessee to enjoin unlawful detainer suit before Justice of the Peace, where only basis of bill in equity was lessee's claim of oral lease, which would be legal defense to unlawful detainer action. T.C.A. §§ 19-301(7), 23-1607, 23-1608. Robinson v. Easter, 1961, 344 S.W.2d 365, 12 McCanless 147, 208 Tenn. 147. Injunction 1159

T. C. A. § 29-18-108
§ 29-18-108. Jurisdiction; circuit courts

The action for the recovery of the possession of land, given in this chapter, may also be originally instituted in the circuit court, the same forms being substantially pursued as those prescribed, the process being issued by the clerk, the plaintiff first giving bond and security to answer costs and damages as provided in § 29-18-111.

Credits

1841-1842 Acts, c. 186, § 8.

Formerly 1858 Code, § 3366; Shannon's Code, § 5115; 1932 Code, § 9270; § 23-1608.

Notes of Decisions (2)

In general

Jurisdiction of unlawful detainer action is in Justice of the Peace, Circuit Court, or Chancery Court. T.C.A. §§ 19-301(7), 23-1607, 23-1608. Robinson v. Easter, 1961, 344 S.W.2d 365, 12 McCanless 147, 208 Tenn. 147. Forcible Entry And Detainer ⇐ 16(.5)

Chancery Court had no jurisdiction of suit in equity by lessee to enjoin unlawful detainer suit before Justice of the Peace, where only basis of bill in equity was lessee's claim of oral lease, which would be legal defense to unlawful detainer action. T.C.A. §§ 19-301(7), 23-1607, 23-1608. Robinson v. Easter, 1961, 344 S.W.2d 365, 12 McCanless 147, 208 Tenn. 147. Injunction ⇐ 1159

T. C. A. § 29-18-109
§ 29-18-109. Limitation of actions

The uninterrupted occupation or quiet possession of the premises in controversy by the defendant, for the space of three (3) entire years together, immediately preceding the commencement of the action, is, if the estate of the defendant has not determined within that time, a bar to any proceeding under this chapter.

Credits
1821 Acts, c. 14, § 20.

Formerly 1858 Code, § 3347; Shannon's Code, § 5096; 1932 Code, § 9250; § 23-1609.

Notes on Decisions (11)

Construction and application

Three-year limitation applicable to forceable entry and detainer action could have no application in case that was not a forceable entry and detainer action. T.C.A. § 23-1609. Whitaker v. House, 1963, 372 S.W.2d 194, 17 McCanless 61, 213 Tenn. 61. Forcible Entry And Detainer 17

An action of forcible entry and detainer will not lie against a defendant, who has been in possession of the premises for three years, by himself or tenants. Beaty v. Jones, 1860, 41 Tenn. 482. Forcible Entry And Detainer 17

Uninterrupted possession

The uninterrupted possession of the premises in controversy, by the defendant, continuously, for the space of three years immediately preceding the commencement of the action, is, if the estate of the defendant has not determined within that time, a bar to any proceeding by writ of forcible entry and detainer. Philips v. Sampson, 1859, 39 Tenn. 429. Forcible Entry And Detainer 17; Limitation Of Actions 44(8)

Hostile character of possession

The possession of a trustee is not usually a bar to the cestui que trust, or the possession of a cestui que trust for however long a period, will not, in general, displace the legal title of the trustee for the holding in either case, is not adverse. At law the cestui que trust is regarded as a tenant at will to the trustee, and demand of possession must be made on him before he can be ejected, and until this tenancy is determined, there can be no adverse holding between the parties. If then there be a formal denial or disclaimer of the tenancy by the cestui que trust, or deal with the estate in a manner inconsistent with its subsistence, he may oust the trustee, and acquire an adverse possession upon which the Statute of Limitations will operate. It must always be a difficult

question to determine, whether, and at what time, such adverse possession was actually acquired. Marr's Heirs v. Gilliam, 1860, 41 Tenn. 488. Adverse Possession 61; Trusts 138; Trusts 144

Connected possession of two or more persons

Separate successive disseizins do not aid one another. Where several persons successively enter on land as disseizors without any conveyance from one to another, or any privity of estate between them, other than that derived from mere possession of estate, their several consecutive possessions cannot be tacked, so as to make a continuity of possession of sufficient length of time to bar the true owners of their right of entry. To create such a privity, there must have existed between the disseizors some such relation as ancestor and heirs, grantor and grantee, or devisor and devisee. Therefore, the right of wife to dower in the land of which her husband died seized, would create no sufficient privity of estate between them to enable her to connect his possession with her own. Marr's Heirs v. Gilliam, 1860, 41 Tenn. 488. Adverse Possession 43(1)

The act of 1821, chap. 14, defines forcible entry and detainer, and regulates proceedings in regard thereto. The proviso to the 20th section declares that the act shall not extend to any person who hath had the uninterrupted occupation, or been in the quiet possession of any lands or tenements for the space of three whole years together, immediately preceding such complaint so exhibited, and whose estate therein is not ended and determined, but every such person may plead the same to said complaint. This proviso limits a remedy for possessions obtained or held by wrong, and must be strictly construed. The possession which bars the writ must be the possession of the party pleading it. The law will not unite the possessions of two or more persons to form the bar of the statute. Thompson v. Holt, 1848, 28 Tenn. 407. Forcible Entry And Detainer 2; Forcible Entry And Detainer 17

The possession of three years which will bar a writ of forcible entry and detainer must be the possession of the party pleading it. The law will not unite the possessions of two or more persons to form the bar of the statute. Thompson v. Holt, 1848, 28 Tenn. 407. Limitation Of Actions 44(7)

Heirs and grantees

One who enters on land as a trespasser, and continues to reside upon it, acquires something which he may transfer by deed as well as by descent, if his possession, and those claiming under him, added together, amount to the time limited by the Statute of Limitations, and was adverse to him who had the legal title. The act is a bar to the recovery; and while such a possession or estate might be the subject of alienation or descent, yet a purchaser, under a fi.fa., could acquire no interest or right, which would avail him, either as plaintiff or defendant, or put him in privity in any way, with the tenant, whose interest had been attempted to be subjected. Marr's Heirs v. Gilliam, 1860, 41 Tenn. 488. Adverse Possession 43(3)

The heirs or grantees of a disseisor have such privity of estate that they may unite their possession with his, to take advantage of the statute of limitations. Marr's Heirs v. Gilliam, 1860, 41 Tenn. 488. Adverse Possession 🔑 43(6)

Presumptions and burden of proof

The exclusive and uninterrupted possession, by one tenant in common, of land, for a great number of years, claiming the same as his own, without any account with his co-tenants or claim on their part, they being under no disability to assert their rights, becomes evidence of a title to such sole possession, and the jury are authorized to presume a release, an ouster or other thing necessary to protect the possessor, and the action of ejectment by his co-tenants will be barred. Marr's Heirs v. Gilliam, 1860, 41 Tenn. 488. Property 🔑 372

The exclusive and uninterrupted possession of one tenant in common, of and for a great number of years, say twenty or more, claiming it without accounting to his co-tenants, or claim on their part, they being under no disability, becomes evidence of title to such sole possession; and the jury are authorized to presume a release an ouster, or other thing necessary to protect the possession. This presumption is an inference of fact to be drawn by the jury, to whom the evidence is to be submitted. But it may be rebutted, by the infancy or coverture of the plaintiffs, or the intervention of a particular estate or other facts, showing that the possession was not adverse to the owner. In this class of cases, there is this distinction, that, unlike the Statute of Limitations, disabilities may be allowed to cumulate in order to rebut the presumption. If a subsequent disability of the owner, to sue, arises, the period of the disability is to be deducted from the twenty years, so that the presumption can only have effect by counting the time irrespective of that period. Marr's Heirs v. Gilliam, 1860, 41 Tenn. 488. Property 🔑 799

T. C. A. § 29-18-110
§ 29-18-110. Death; revival

(a) The heir or representative of the person who might have been plaintiff, if alive, may bring the suit after the potential plaintiff's death.

(b) If either party die during the pendency of the suit, it may be revived by or against the heirs or legal representatives of the decedent, in the same manner and to the same extent as real actions.

Credits
1849-1850 Acts, c. 113, § 1.

Formerly 1858 Code, §§ 3368, 3369; Shannon's Code, §§ 5118, 5119; 1932 Code, §§ 9273, 9274; § 23-1610.

Notes of Decisions (2)

Persons required or entitled to continue or revive action
Under Shannon's Code, § 5118, as to revival, where forcible entry and detainer was brought by the owner, and not the tenant, but after the tenant's death his heirs were made parties plaintiff, the action was properly brought. Round Mountain Lumber & Coal Co. v. Bass, 1917, 191 S.W. 341, 136 Tenn. 687. Abatement And Revival 72(7); Forcible Entry And Detainer 18

Death pending review
Where plaintiff suing in unlawful detainer died during pendency of appeal to circuit court, suit could be revived and prosecuted by his administrator under Code 1858, §§ 3368, 3369. Hurt v. Owens, 1876, 1 Tenn.Cas. 631. Abatement And Revival 69

T. C. A. § 29-18-111
§ 29-18-111. Plaintiffs; bonds

The party complaining is required, before the issuance of the writ, to give bond, with good security, to pay all costs and damages which shall accrue to the defendant for the wrongful prosecution of the suit.

Credits

1822 Acts, c. 35, § 1.

Formerly 1858 Code, § 3348; Shannon's Code, § 5097; 1932 Code, § 9251; § 23-1611.

Notes of Decisions (2)

Trespass
Where lessor was entitled to possession of leased premises but was unable to obtain writ of forcible entry and detainer because not prepared to execute bond, and lessor directed third party to remove part of roof from leased premises, entry on the land and removal of the roof was an actionable "trespass". Code 1932, §§ 9244, 9245, 9257. Price v. Osborne, 1940, 147 S.W.2d 412, 24 Tenn.App. 525. Landlord And Tenant 1081(1); Landlord And Tenant 1081(2)

Duties of sheriff
Presuming that the writ of possession has been issued by a court of competent jurisdiction; is regular and valid on its face; and, the plaintiff has given an adequate bond pursuant to § 29-18-111, it is the duty of the sheriff to execute the writ by removing the defendant, with reasonable force if necessary, entirely off the premises and placing the plaintiff in exclusive and quiet possession of said premises. State law provides several possible remedies to a plaintiff in the event that a sheriff refuses to execute a properly issued writ of possession by removing the defendants from the premises at issue. Op.Atty.Gen. No. 98-198, Oct. 12, 1998, 1998 WL 746215.

T. C. A. § 29-18-112
§ 29-18-112. Warrants; form

The warrant may be issued by a single general sessions judge in the following form:

State of Tennessee, To the sheriff or any

_____ County. constable of said county:

Whereas, complaint is made to me by A B, of a certain forcible and unlawful entry and detainer, made by C D, into and of a certain tract or lot of land, situated in the county aforementioned, and bounded [or known and described] as follows [insert boundaries and description], which land A B alleges A B is entitled to the possession of, and C D unlawfully detains from A B: We, therefore, command you to summon C D to appear before some judge of the court of general sessions, in and for such county, to answer the above complaint.

This _____ day of _____, 20___. E F, G.S.J.

Credits

1841-1842 Acts, c. 186, § 1; impl. am. by 1879 Acts, c. 23, § 1; impl. am. by 1979 Pub.Acts, c. 68, § 3.

Formerly 1858 Code, § 3349; Shannon's Code, § 5098; 1932 Code, § 9252; § 23-1612.

Notes of Decisions (7)

Necessary averments

Gravamen of detainer suit was act of defendant in wrongfully detaining realty, and since ascertainment of damages for detention, rents or otherwise, was a statutory incident to proceeding, it was unnecessary for plaintiffs to demand damages in detainer warrant in order to authorize a judgment for same. T.C.A. §§ 23-1612, 23-1614, 23-1627, 23-1633. Craig v. Collins, 1974, 524 S.W.2d 947. Landlord And Tenant ⇐ 1786; Landlord And Tenant ⇐ 1798

Acts 1842, c. 86, regulating the action of forcible entry and detainer, dispenses with the necessity of stating in the writ the plaintiff's interest in the estate. The averment that he is entitled to the possession is sufficient. Rhodes v. Comer, 1854, 34 Tenn. 40. Forcible Entry And Detainer ⇐ 24(2)

Description of property

A description which fairly identifies the premises is sufficient. It is not necessary to give the boundaries. Ladd v. Riggle, 1871, 53 Tenn. 620. Executors And Administrators 64; Landlord And Tenant 1798; Real Property Conveyances 64

In unlawful detainer, the description of the premises in the warrant as "certain land, and the house and improvements on the said lands, where, defendant, now resides, said premises being in said county and state," is sufficient. Ladd v. Riggle, 1871, 53 Tenn. 620. Forcible Entry And Detainer 19(1)

In a warrant for forcible entry and detainer, of a school-house, a description as a school-house in the 10th civil district of Union county, known as Miller's School-House, is sufficiently certain. Butcher v. Palmer, 1870, 48 Tenn. 431. Forcible Entry And Detainer 24(3)

Failure to use form

Any of the species of the action of entry or detainer may be prosecuted under the one form of the warrant set out by statute (Shannon's Code, Section 5098) but if the party does not follow the form prescribed, which is comprehensive, but brings one of the particular actions of entry or detainer defined by the statutes, then by all the rules of pleading he is confined to that particular action and must make out his case. Westmoreland v. Farmer, 1928, 7 Tenn.App. 385. Forcible Entry And Detainer 28

Notice to quit and demand of possession

Statutes providing form of warrant in unlawful entry and detainer cases and providing that no notice to quit need be given by plaintiff to defendant other than service of warrant allowed dispensing with notice only in cases where possession was made unlawful in terms by statute without more, as in case of renters, lessees, and the like, holding over. T.C.A. §§ 23-1612, 23-1613. Etheridge v. First Nat. Bank of Jackson, 1964, 387 S.W.2d 835, 54 Tenn.App. 46. Forcible Entry And Detainer 11(1); Landlord And Tenant 1794(2)

T.C.A. §29-18-112, TN ST §29-18-112

Current with laws from the 2022 Second Regular Sess. of the 112th Tennessee General Assembly, eff. through July 1, 2022. Pursuant to §§ 1-1-110. 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

T. C. A. § 29-18-113
§ 29-18-113. Notice

No notice to quit need be given by the plaintiff to the defendant, other than the service of this warrant.

Credits

1841-1842 Acts, c. 186, § 2.

Formerly 1858 Code, § 3351; Shannon's Code, § 5100; 1932 Code, § 9254; § 23-1613.

Notes of Decisions (12)

Construction and application

Statutes providing form of warrant in unlawful entry and detainer cases and providing that no notice to quit need be given by plaintiff to defendant other than service of warrant allowed dispensing with notice only in cases where possession was made unlawful in terms by statute without more, as in case of renters, lessees, and the like, holding over. T.C.A. §§ 23-1612, 23-1613. Etheridge v. First Nat. Bank of Jackson, 1964, 387 S.W.2d 835, 54 Tenn.App. 46. Forcible Entry And Detainer 11(1); Landlord And Tenant 1794(2)

Where the action of unlawful detainer will lie under the statute, no other notice than the suing out of the writ is necessary. Mallory v. Hananer Oil-Works, 1888, 8 S.W. 396, 86 Tenn. 598, 2 Pickle 598. Forcible Entry And Detainer 11(1); Notice 7

Code, sec. 3351, dispenses with the necessity of a notice to quit other than the warrant in the action, all the cases in which the possession of the premises is made unlawful by the statute. Spillman v. Walt, 1873, 59 Tenn. 574. Forcible Entry And Detainer 11(1)

Necessity of notice

A tenant disclaiming to hold under his landlord forfeits his term, and in such case a notice to quit is not a condition precedent to bringing an action of unlawful detainer. Ladd v. Riggle, 1871, 53 Tenn. 620. Landlord And Tenant 518; Landlord And Tenant 1794(2)
A purchaser in possession under a void sale is not entitled to notice to quit. Chilton v. Niblett, 1842, 22 Tenn. 404. Ejectment 21

Chilton purchased by parol contract land of Niblett. Subsequently he refused payment of the purchase money on the ground, that the sale was void, and retained possession of the property: Held, that a person in by void purchase is not the actual tenant of vendor, and is not entitled to

notice to quit. Chilton v. Niblett, 1842, 22 Tenn. 404. Landlord And Tenant 951; Real Property Conveyances 1106

Periodic tenancies

Statute providing that no notice to quit need be given by landlord to tenant other than service of warrant dispenses with notice only in case where possession is made unlawful by forcible entry and detainer, forcible detainer, and unlawful detainer, and does not dispense with notice necessary to terminate periodic tenancy. T.C.A. §§ 23-1602, 23-1603, 23-1613. Etheridge v. First Nat. Bank of Jackson, 1964, 387 S.W.2d 835, 54 Tenn.App. 46. Landlord And Tenant 951; Landlord And Tenant 1794(2)

The statute providing that no notice to quit need to be given by landlord to tenant other than service of a warrant, dispenses with notice only in case where the possession is made unlawful by forcible entry and detainer, forcible detainer, and unlawful detainer, and does not dispense with the notice necessary to terminate a periodic tenancy. Code 1932, §§ 9245-9247, 9254. Smith v. Holt, 1945, 193 S.W.2d 100, 29 Tenn.App. 31. Landlord And Tenant 951; Landlord And Tenant 1794(2)

Nonpayment of rent

Rule that in absence of a lease provision for forfeiture, nonpayment of rent does not effect a forfeiture and that a tenancy of indefinite duration from month to month requires a full month's notice for termination does not require a demand for rent in any particular manner. T.C.A. § 23-1613. Craig v. Collins, 1974, 524 S.W.2d 947. Landlord And Tenant 922

Time for notice to quit

Acts 1821, c. 14, having limited no time at which a written notice to quit is to be given before the commencement of proceedings, if demand is made by written notice, and the tenant refuses to surrender, he may be proceeded against at any time. Marley v. Rodgers, 1833, 13 Tenn. 217. Landlord And Tenant 1796

The act of 1821, ch. 14, sec. 5, having limited no time at which a written notice to quit is to be given, before the commencement of proceedings, if demand of the possession be made, and written notice given for the delivery, and the tenant refuse to surrender the possession, the owner may proceed against the tenant at any time after such refusal. Marley v. Rodgers, 1833, 13 Tenn. 217. Landlord And Tenant 627

Waiver of forfeiture

Provision of lease that lessors could elect within 15 days after discovery of a breach to enter and take possession of premises implied a waiver of forfeiture by failure to declare a forfeiture for a particular violation within 15 days after discovery of same, but it did not apply to a succession of

violations or to continued violations from day to day or month to month, and since there was no evidence in record as to exact date on which subletting in violation of lease was discovered by lessors, there was no basis for finding a waiver by failing to act within 15 days thereafter. T.C.A. § 23-1613. Craig v. Collins, 1974, 524 S.W.2d 947. Landlord And Tenant 940; Landlord And Tenant 988(1)

T. C. A. § 29-18-114

§ 29-18-114. Defects; amendment

The warrant need not set forth the particular species of entry or detainer, and any defect therein, or in any of the proceedings, may be amended as other process and pleadings in court.

Credits

1841-1842 Acts, c. 186, § 5.

Formerly 1858 Code, § 3350; Shannon's Code, § 5099; 1932 Code, § 9253; § 23-1614.

Notes of Decisions (3)

In general

Where warrant charged forcible entry, but proof was confined to theory of entry by contract and unlawful detainer without force, plaintiff proceeded under and was confined to an action of unlawful detainer, and entry under contract was of the gravamen of the action. Code, §§ 9247, 9253. Springfield v. Stamper, 1948, 214 S.W.2d 345, 31 Tenn.App. 252. Forcible Entry And Detainer 28

Acts 1842, c. 86, regulating the action of forcible entry and detainer, dispenses with the necessity of stating in the writ the plaintiff's interest in the estate. The averment that he is entitled to the possession is sufficient. Rhodes v. Comer, 1854, 34 Tenn. 40. Forcible Entry And Detainer 24(2)

Demand for damages

Gravamen of detainer suit was act of defendant in wrongfully detaining realty, and since ascertainment of damages for detention, rents or otherwise, was a statutory incident to proceeding, it was unnecessary for plaintiffs to demand damages in detainer warrant in order to authorize a judgment for same. T.C.A. §§ 23-1612, 23-1614, 23-1627, 23-1633. Craig v. Collins, 1974, 524 S.W.2d 947. Landlord And Tenant 1786; Landlord And Tenant 1798

T. C. A. § 29-18-115

§ 29-18-115. Summons; service

Effective: April 18, 2019

(a)(1) In commencing an action under this chapter, summons may be served upon any adult person found in possession of the premises, which includes any adult person occupying the premises; and service of process upon such party in possession shall be good and sufficient to enable the landlord to regain possession of such landlord's property. In the event the summons cannot be served upon any adult person found in possession of the premises, personal service of process on the defendant is dispensed with in the following cases:

(A) When the defendant is a nonresident of this state;

(B) When, upon inquiry at the defendant's usual place of abode, the defendant cannot be found, so as to be served with process, and there is just ground to believe that the defendant has gone beyond the limits of the state;

(C) When the summons has been returned "not to be found in my county";

(D) When the name of the defendant is unknown and cannot be ascertained upon diligent inquiry;

(E) When the residence of the defendant is unknown and cannot be ascertained upon diligent inquiry; or

(F) When a domestic corporation has ceased to do business and has no known officers, directors, trustee, or other legal representatives, on whom personal service may be had.

(2) In those cases specified in subdivision (a)(1), where personal service of process on the defendant is dispensed with, the proceeding shall be governed by §§ 21-1-203 -- 21-1-205, and in addition thereto, the plaintiff shall post or cause to be posted on the front door or other front portion of the premises a copy of the publication notice at least fifteen (15) days prior to the date specified therein for the defendant to appear and make a defense.

(3) In addition to the methods set out in subdivisions (a)(1) and (2), in commencing an action under this chapter, summons may be served upon a contractually named party, and

service of process upon such party shall be good and sufficient to enable the landlord to regain possession of the landlord's property.

(b) In commencing an action under this chapter, service of process may be made by the plaintiff, the plaintiff's attorney, or the plaintiff's agent, in lieu of subsection (a), by lodging the original summons and a copy certified by the clerk with the sheriff or constable of the county in which suit is brought, who shall promptly send postage prepaid a certified copy by certified return receipt mail to the individual as follows:

(1) In the case of an individual defendant, to the party named;

(2) In the case of a domestic corporation or a foreign corporation doing business in this state, to an officer or managing agent thereof, or to the chief agent in the county where the action is brought or to any other agent authorized by appointment or by law to receive service on behalf of the corporation; or

(3) In the case of a partnership or an unincorporated association which is a named defendant under a common name, to a partner or managing agent of the partnership or to an officer or managing agent of the association, or to an agent authorized by appointment or by law to receive service on behalf of the partnership or association.

(c) In any case in which such warrant or process is returned undelivered for any reason whatsoever, service of process shall then be made as otherwise provided by law.

(d)(1) The original process, endorsed as indicated below, an affidavit of the appropriate sheriff or constable setting forth the sheriff or constable's compliance with the requirements of the preceding provisions, and the return receipt signed by the defendant shall be attached together and sent to and filed by the clerk of the court of general sessions. There shall be endorsed on the original warrant by the sheriff or constable over the sheriff or constable's signature the date of the sheriff or constable's mailing the certified copy to the defendant; thereupon service of the defendant shall be consummated. An act of a deputy of the sheriff in the sheriff's behalf hereunder shall be deemed the equivalent of the act of the latter.

(2) When service of process by mail is made upon one (1) or more individual defendants, service of process shall not be complete as to any individual unless a return receipt, signed or acknowledged on its face by the individual personally, is returned to the deputy sheriff or constable.

(e)(1) In addition to the methods set out in this section, service of process for an action commenced under this chapter shall be good and sufficient to enable the landlord to regain possession of such landlord's property if a sheriff, sheriff's deputy, constable, or private process server personally serves a copy of the warrant or summons upon any one (1) named defendant who has a contractual or possessory property right in the subject premises.

(2) If, after attempting personal service of process on three (3) different dates and documenting such attempts on the face of the warrant, the sheriff, sheriff's deputy, constable, or private process server is unable to serve any such one (1) named defendant personally, service of process for determining the right of possession of the subject premises as to all who may have a contractual or possessory property right therein may be had by the sheriff, sheriff's deputy, constable, or private process server taking the following actions at least six (6) days prior to the date specified therein for the defendant or defendants to appear and make a defense:

(A) Posting a copy of the warrant or summons on the door of the premises;

(B) Sending by United States postal service first class mail a copy of the warrant or summons to the so named defendant or defendants at the address of the subject premises or the defendants' last known address, if any; and

(C) Making an entry of this action on the face of the warrant or summons filed in the action.

(3) Subdivision (e)(2) shall apply only to service of process to regain possession of real property, and shall not apply to service of process to recover monetary judgment.

Credits

1869-1870 Acts, c. 64, § 6; 1945 Pub.Acts, c. 79, § 1; 1979 Pub.Acts, c. 420, § 1; 1980 Pub.Acts, c. 798, § 1; 1997 Pub.Acts, c. 380, § 1, eff. July 1, 1997; 2010 Pub.Acts, c. 827, § 1, eff. July 1, 2010; 2015 Pub.Acts, c. 160, §§ 1 to 4, eff. April 16, 2015; 2018 Pub.Acts, c. 670, §§ 1, 2, eff. April 12, 2018; 2019 Pub.Acts, c. 160, § 1, eff. April 18, 2019.

Formerly Shannon's Code, § 5127; 1932 Code, § 9282; 1950 Code Supp., § 9282; § 23-1615.

Notes of Decisions (4)

Construction and application

In enacting statute authorizing service of summons in landlord's forcible entry and detainer action on any adult in possession of leased premises, legislature was charged with knowledge that judgment for rent under previous statute then in effect could not be entered against lessees not before court. Code 1932, §§ 9261, 9267, 9282. Woodward v. Ragsdale, 1943, 167 S.W.2d 979, 179 Tenn. 526. Landlord And Tenant 🔑 1782

Return of service

Property owner's filling in of "Posted Dates" blanks on detainer warrant with three separate dates was adequate documentation reflecting that the process server attempted to serve resident personally but was unsuccessful, in action by property owner against resident; statute required three attempts at personal service on three different dates, as well as documentation of those attempts, on the face of the warrant. Scarlett v. AA Properties, GP, 2020, 2020 WL 4192097. Forcible Entry and Detainer 🔑 19(2)

Service of process for General Sessions Court detainer warrant, which as returned by the sheriff bore the notation, "[s]erved adult male on premises who refused to give name," established that landlord had satisfied the requirements for service of process in the unlawful detainer action, even if tenant was not personally served with the detainer warrant. T.C.A. § 29-18-115(a). B & G Const., Inc. v. Polk, 2000, 37 S.W.3d 462, rehearing denied, appeal denied. Landlord And Tenant 🔑 1797

Summons not served

Under statute authorizing service of summons in landlord's forcible entry and detainer action on any adult in possession of leased premises, landlord may recover possession thereof where process cannot be served on tenant, and such proceeding does not preclude recovery of judgment for rents when service can be had. Code 1932, §§ 9261, 9267, 9282. Woodward v. Ragsdale, 1943, 167 S.W.2d 979, 179 Tenn. 526. Landlord And Tenant 🔑 1797; Res Judicata 🔑 384

T. C. A. § 29-18-116

§ 29-18-116. Process; neglect of duty; fines and penalties

Effective: July 9, 2012

Any officer neglecting or refusing to execute any process, under this chapter, shall forfeit two hundred fifty dollars ($250) to the party aggrieved, to be recovered with costs before any tribunal having jurisdiction thereof.

Credits

Formerly 1858 Code, § 3373; Shannon's Code, § 5123; 1932 Code, § 9278; § 23-1616.

T. C. A. § 29-18-117

§ 29-18-117. Trial; notice

The officer serving the warrant shall notify the defendant of the time and place of trial, the time not to be less than six (6) days from the date of service.

Credits

1841-1842 Acts, c. 186, § 2.

Formerly 1858 Code, § 3352; Shannon's Code, § 5101; 1932 Code, § 9255; § 23-1617.

T. C. A. § 29-18-118

§ 29-18-118. Trial; postponement

Effective: April 14, 2022

The general sessions judge may, at the request of either party, and on good reason being assigned, postpone the trial to any time not exceeding fifteen (15) days. The postponement shall not be for a longer period of time unless agreed upon by the parties, no civil court is being conducted, or upon request of the plaintiff, the party making the application for postponement paying the costs. As used in this section, "civil court" includes diversionary courts created for special civil proceedings.

Credits

1821 Acts, c. 14, § 15; impl. am. by 1879 Acts, c. 23, § 1; impl. am. by 1979 Pub.Acts, c. 68, § 3; 2010 Pub.Acts, c. 809, § 1, eff. April 20, 2010; 2022 Pub.Acts, c. 869, § 1, eff. April 14, 2022.

Formerly 1858 Code, § 3355; Shannon's Code, § 5104; 1932 Code, § 9258; § 23-1618.

T. C. A. § 29-18-119
§ 29-18-119. Trial; issues; general sessions courts

(a) The cause shall be tried at the time and place designated, by a single general sessions judge, without the intervention of a jury, and in all respects like other civil suits before the court of general sessions.

(b) The general sessions judge will try every case upon its merits and ascertain whether the plaintiff or defendant is entitled to the possession of the premises agreeably to the laws governing such cases, and give judgment accordingly.

(c) The estate, or merits of the title, shall not be inquired into.

Credits

1821 Acts, c. 14, § 20; 1841-1842 Acts, c. 186, §§ 1, 2; impl. Am. By 1879 Acts, c. 23, § 1; impl. Am. By 1979 Pub.Acts, c. 68, § 3; 1991 Pub.Acts, c. 273, § 40.

Formerly 1858 Code, §§ 3353, 3354; Shannon's Code, §§ 5102, 5103; 1932 Code, §§ 9256, 9257; §§ 23-1619, 23-1620.

Notes of Decisions (13)

Jurisdiction

General sessions court had jurisdiction to consider merits of title when the issue was raised as a defense to a forcible entry and detainer case, as required for res judicata or claim preclusion to be available to bar mortgagors from raising the issue in subsequent action to set aside mortgage foreclosure. Boyce v. LPP Mortgage Ltd., 2013, 435 S.W.3d 758, appeal denied. Judgment 544; Judgment 585(4)

The chancery court, acquiring jurisdiction under supplemental bill in the nature of ejectment to determine rights of parties as respects title to land and consequent right of possession, acquired jurisdiction for all purposes and hence could enjoin further proceedings under forcible entry and detainer case brought by defendant in circuit court. Code 1932, §§ 9118, 9142, 9257. Mathis v. Campbell, 1938, 117 S.W.2d 764, 22 Tenn.App. 40. Equity 39(2); Injunction 1159

Doctrine of prior exclusive jurisdiction did not deprive District Court of jurisdiction over mortgagor's wrongful foreclosure action against mortgagee by virtue of mortgagee's earlier-filed state court forcible entry and detainer action against mortgagor; it did not appear that the forcible entry and detainer action was an in rem or quasi in rem action under Tennessee law and, even if it was, the wrongful foreclosure action was an in personam action, as it sought to enjoin mortgagee from, among other things, evicting mortgagor or from selling or taking possession of the property. Griffin v. Hope Federal Credit Union, 2020, 810 Fed.Appx. 450, 2020 WL 2095982. Courts 493(3)

Questionable title

Forcible entry and detainer actions cannot be resolved in favor of a claimant when title, if bearing directly on his immediate right to possession, is questionable. Boyce v. LPP Mortgage Ltd., 2013, 435 S.W.3d 758, appeal denied. Forcible Entry and Detainer 12(2)

Where title bears directly upon the right of possession, a party may legitimately interpose title issue as defense to forcible entry and detainer action, despite general rule against considering merits of title in those summary proceedings. Boyce v. LPP Mortgage Ltd., 2013, 435 S.W.3d 758, appeal denied. Forcible Entry and Detainer 12(2)

Statute authorizing eviction for unlawful detainer following a non-judicial foreclosure auction did not violate mortgagor's constitutional rights by forbidding inquiry into the merits of the purchaser's title, where mortgagor was free to assert wrongful foreclosure as an affirmative defense to the unlawful detainer action. CitiMortgage, Inc. v. Drake, 2013, 410 S.W.3d 797, appeal denied. Mortgages And Deeds Of Trust 2055(5); Mortgages And Deeds Of Trust 2328(1)

Equitable conversion

Doctrine of equitable conversion was not applicable, and thus detainer warrant filed by prospective vendor of real estate alleging forcible entry detainer (FED) or unlawful detainer by prospective purchasers was not barred by executory contract for sale of real estate, where contract had expired and was not extended or renewed. T.C.A. §§ 28-18-102(a), 29-18-104, 29-18-119(c). Lewis v. Muchmore, 2000, 26 S.W.3d 632, appeal denied. Equitable Conversion 110

Right to trial by jury

Neither party in unlawful detainer action has state constitutional right, common law right, or statutory right to jury trial in general sessions court. T.C.A. §§ 29-18-119, 29-18-119(a); Const. Art. 1, § 6. Newport Housing Authority v. Ballard, 1992, 839 S.W.2d 86. Jury 14(2)

Judgment

In action in unlawful detainer for possession of property, judgment for rent and damages is incidental to judgment for possession. Code 1932, §§ 9244, 9247, 9257. Nashville Housing Authority v. Kinnard, 1948, 207 S.W.2d 1019, 186 Tenn. 33. Landlord And Tenant 1806

Res judicata

Judgment for possession of land, rendered against complainant's agents in unlawful detainer suit brought by subsequent purchaser from complainant's vendor, was not res judicata against complainant since he was not a party and unlawful detainer suit did not involve question of title. Code, §§ 9118, 9142, 9257. Branstetter v. Poynter, 1949, 222 S.W.2d 214, 32 Tenn.App. 189. Res Judicata 376; Res Judicata 546

General sessions court had jurisdiction to consider merits of title when the issue was raised as a defense to a forcible entry and detainer (FED) case, and, thus, res judicata operated to bar mortgagors from raising the issue in subsequent action to set aside mortgage foreclosure. Boyce v. LPP Mortgage Ltd., 2013, 435 S.W.3d 758, appeal denied. Judgment 544; Judgment 585(4)

Review

Where unsuccessful defendant in action for unlawful detainer commenced in general sessions court in Davidson County wished to remain in possession of property while having case reviewed by circuit court, case could be removed to circuit court by petition for writs of certiorari and supersedeas, and dismissal of petition on ground that appeal was proper remedy was error. Code 1932, §§ 9244, 9247, 9257, 9266. Nashville Housing Authority v. Kinnard, 1948, 207 S.W.2d 1019, 186 Tenn. 33. Landlord And Tenant 1805

Proof that judgment for rent in unlawful detainer action commenced in general sessions court in Davidson County was under $50, did not authorize a review of the judgment in circuit court by certiorari under statute providing review by circuit court by certiorari of a judgment of general sessions court in Davidson County not exceeding amount of $50, since the judgment for rent was but incidental to the judgment for possession. Code 1932, §§ 9244, 9247, 9257; Priv.Acts 1937, c. 12, § 6. Nashville Housing Authority v. Kinnard, 1948, 207 S.W.2d 1019, 186 Tenn. 33. Landlord And Tenant 1805

T. C. A. § 29-18-120
§ 29-18-120. Trial; circuit courts
Effective: July 9, 2012

a) Actions originally instituted in the circuit court will stand for trial at the first term after the pleadings are complete.

(b) The jury, if it finds for the plaintiff, will ascertain the damages the plaintiff has sustained, including rent, and judgment shall be given accordingly

Credits

1841-1842 Acts, c. 186, §§ 8, 9; modified; 1972 Pub.Acts, c. 565, § 2.

Formerly 1858 Code, § 3367; Shannon's Code, § 5116; 1932 Code, § 9271; § 23-1621

Notes of Decisions (4)

Right to trial by jury

Where defendant's counterclaim, though involving equitable matters, was essentially a defense against plaintiff's action for recovery of possession of realty, under Tennessee law there was no impropriety in submitting certain decisive issues to jury. 28 U.S.C.A § 1652; T.C.A. §§ 21-1011, 21-1014, 23-1302, 23-1604, 23-1606, 23-1621, 23-1632. Pan-Am Southern Corp. v. Cummins, 1957, 156 F.Supp. 673, remanded 249 F.2d 955. Jury ⇦ 14.5(4)

Merger and bar of claims and defenses

Landlord's recovery of possession of premises through unlawful detainer action did not preclude landlord from bringing separate suit for rents which were not due at time possession was awarded; landlord was not required to seek future rents at time unlawful detainer action was filed. T.C.A. §§ 29-18-120, 29-18-125. Nashland Associates v. Shumate, 1987, 730 S.W.2d 332. Res Judicata ⇦ 384

Lessor recovering possession in unlawful detainer, cannot sue for rent or damages. Shannon's Code, §§ 5106a1, 5112, 5113, 5116. Bloch v. Busch, 1929, 22 S.W.2d 242, 160 Tenn. 21. Res Judicata ⇦ 376

Lessor recovering possession in unlawful detainer, in justice court, cannot sue for rent or damages. Shannon's Code, §§ 5106a1, 5112, 5113, 5116. Bloch v. Busch, 1929, 22 S.W.2d 242, 160 Tenn. 21. Justices Of The Peace ⇦ 130

T. C. A. § 29-18-121
§ 29-18-121. Subpoenas

The general sessions judge before whom the complaint is made, or the one before whom the cause is to be tried, may issue subpoenas for witnesses into any county of the state.

Credits

Impl. am. by 1879 Acts, c. 23, § 1; impl. am. by 1979 Pub.Acts, c. 68, § 3.

Formerly 1858 Code, § 3356; Shannon's Code, § 5105; 1932 Code, § 9259; § 23-1622.

T. C. A. § 29-18-122
§ 29-18-122. Fees

(a) The general sessions judge is entitled to one dollar ($1.00) per day for trying cases of forcible entry and detainer, forcible detainer, or unlawful detainer.

(b) The officer is entitled to two dollars and fifty cents ($2.50) for each defendant named in the original process, and one dollar ($1.00) for each witness summoned.

(c) Each witness shall receive one dollar ($1.00) for each day's attendance.

Credits

1849-1850 Acts, c. 131, § 1; impl. am. by 1879 Acts, c. 23, § 1; 1957 Pub.Acts, c. 22, § 6; impl. am. by 1979 Pub.Acts, c. 68, § 3.

Formerly 1858 Code, § 3365; Shannon's Code, § 5114; mod. 1932 Code, § 9269; § 23-1623.\

T. C. A. § 29-18-123
§ 29-18-123. Termination of lease; bond

(a) Any person, granting a lease of lands, tenements, and hereditaments, may incorporate or take from the tenant a bond covenanting to deliver possession of the rented premises on the day specified therein as the end of the term of the lease, and further authorizing the party from whom the premises are rented, or any other person whose name may be mentioned as attorney, in case possession of the premises is not delivered in conformity with the provisions of the lease, to appear on any day of the term of any court having jurisdiction in such case, the term of such court to be expressly named, and the premises to be sufficiently described in the bond, and then and there, in the name of the party executing the bond, confess a judgment for possession of the rented premises.

(b) Upon presentation of the bond, and satisfactory proof of its execution, the court shall enter judgment for possession and also for costs of the proceeding, in favor of the party granting the lease against the tenant thus unlawfully holding over.

(c) The writ of possession shall have effect to dispossess any party in possession who holds as assignee or sublessee of the original tenant.

Credits

1869-1870 Acts, c. 64, §§ 3 to 5.
Formerly Shannon's Code, §§ 5124 to 5126; mod. 1932 Code, §§ 9279 to 9281; §§ 23-1624, 23-1625.

Notes of Decisions (1)
Trial

In action for unlawful detainer, jury was required to find that plaintiff was entitled to possession of land as a necessary prerequisite to award of rents and/or damages, and verdict for rent and attorney's fee was not erroneous as failing to award possession, where it contained inherent, necessary, and implicit finding that plaintiff was entitled to possession, and though it would have been better practice for trial court to have required an express verdict for possession, trial court did not err in entering judgment on verdict. T.C.A. § 23-1625. Craig v. Collins, 1974, 524 S.W.2d 947. Landlord And Tenant 1803; Landlord And Tenant 1804

T. C. A. § 29-18-124
§ 29-18-124. Judgments and decrees; plaintiffs; form

The judgment for the plaintiff should be endorsed on the warrant or annexed thereto, substantially to the following effect:

A B Judgment for the plaintiff, that plaintiff's be restored

v. to possession of the land described in the

C D within warrant, and that a writ of possession or restitution issue therefor, and also for the costs of this suit. This _____day of _____, 20___. E F, G. S. J.

Credits

1841-1842 Acts, c. 186, § 3; impl. am. by 1879 Acts, c. 23, § 1; impl. am. by 1979 Pub.Acts, c. 68, § 3.

Formerly 1858 Code, § 3357; Shannon's Code, § 5106; 1932 Code, § 9260; § 23-1626.

T. C. A. § 29-18-125
§ 29-18-125. Judgments and decrees; plaintiffs
Effective: July 9, 2012

In all cases of forcible entry and detainer, forcible detainer, and unlawful detainer, the judge of the court of general sessions trying the cause shall be authorized and it shall be the judge's duty to ascertain the arrearage of rent, interest, and damages, if any, and render judgment therefor if the judge's judgment shall be that the plaintiff recover possession.

Credits

1903 Acts, c. 42, § 1; impl. Am. By 1979 Pub.Acts, c. 68, § 3.

Formerly Shannon's Code, § 5106a1; 1932 Code, § 9261; § 23-1627.

Notes of Decisions (5)

Pleadings

Gravamen of detainer suit was act of defendant in wrongfully detaining realty, and since ascertainment of damages for detention, rents or otherwise, was a statutory incident to proceeding, it was unnecessary for plaintiffs to demand damages in detainer warrant in order to authorize a judgment for same. T.C.A. §§ 23-1612, 23-1614, 23-1627, 23-1633. Craig v. Collins, 1974, 524 S.W.2d 947. Landlord And Tenant 1786; Landlord And Tenant 1798

Merger and bar of claims and defenses

Landlord's recovery of possession of premises through unlawful detainer action did not preclude landlord from bringing separate suit for rents which were not due at time possession was awarded; landlord was not required to seek future rents at time unlawful detainer action was filed. T.C.A. §§ 29-18-120, 29-18-125. Nashland Associates v. Shumate, 1987, 730 S.W.2d 332. Res Judicata 384

Under statute authorizing service of summons in landlord's forcible entry and detainer action on any adult in possession of leased premises, landlord may recover possession thereof where process cannot be served on tenant, and such proceeding does not preclude recovery of judgment for rents when service can be had. Code 1932, §§ 9261, 9267, 9282. Woodward v. Ragsdale, 1943, 167 S.W.2d 979, 179 Tenn. 526. Landlord And Tenant 1797; Res Judicata 384

Lessor recovering possession in unlawful detainer, cannot sue for rent or damages. Shannon's Code, §§ 5106a1, 5112, 5113, 5116. Bloch v. Busch, 1929, 22 S.W.2d 242, 160 Tenn. 21. Res Judicata ⚷ 376

Lessor recovering possession in unlawful detainer, in justice court, cannot sue for rent or damages. Shannon's Code, §§ 5106a1, 5112, 5113, 5116. Bloch v. Busch, 1929, 22 S.W.2d 242, 160 Tenn. 21. Justices Of The Peace ⚷ 130

T. C. A. § 29-18-126
§ 29-18-126. Execution; delay

No execution or writ of possession shall issue against the defendant upon any judgment, under this chapter, until after the lapse of ten (10) days from the rendition of the judgment.

Credits

1841-1842 Acts, c. 186, §§ 4, 6; 1849-1850 Acts, c. 131, § 3; 1963 Pub.Acts, c. 115, § 1.

Formerly 1858 Code, § 3361; Shannon's Code, § 5109; 1932 Code, § 9264; § 23-1628.

Notes of Decisions (2)

In general
Assuming a contract to obtain utility service is between a tenant and the utility, the Newport Housing Authority cannot disconnect these utilities in order to enforce a writ of possession; the proper manner to enforce the writ of possession is through compliance §§ 29-18-126, -127, and -130; these statutes collectively prohibit issuance of a writ of possession until ten days after entry of a judgment against a defendant in any action of forcible entry and detainer, and require the sheriff to put the plaintiff in immediate possession of the premises once the writ of possession is entered. Op.Atty.Gen. No. 90-26, Feb. 27, 1990, 1990 WL 512998.

Bankruptcy
Chapter 13 debtor had possessory interest in lease at time of bankruptcy filing and thus could assume the lease, even though there was prior judgment of eviction, as bankruptcy petition was filed on tenth day following the eviction judgment, and termination of lease was not effective until judgment had been finalized by writ of possession. Bankr.Code, 11 U.S.C.A. § 365; T.C.A. § 29-18-126. In re Shannon, 1985, 54 B.R. 219. Bankruptcy 3112

T. C. A. § 29-18-127

§ 29-18-127. Execution; writ of possession; form; personal property; liability

Effective: July 1, 2014

(a) The execution for costs shall issue in the usual form, and the writ of possession may be as follows:

State of Tennessee, To the sheriff or any

_____ County. constable of such county:

Whereas, at a trial of forcible and unlawful detainer had in such county on the _____ day of _____, 20 ___, before E F, a judge of the court of general sessions of such county, judgment was given that A B recover from C D possession of a certain tract or parcel of land, bounded [or known and described] as follows [insert the description in the warrant]: We therefore command you, that you take with you the force of the county, if necessary, and cause A B, the plaintiff in such judgment, to have and be restored to the possession of such tract or parcel of land, and that you remove C D, the defendant in such judgment, therefrom, and give such plaintiff peaceable possession of such premises, and make return to me in twenty (20) days how you have executed this writ.

This _____ day of _____, 20 ___. E F, G. S. J.

(b)(1) Upon removing the defendant in any judgment under this chapter, the plaintiff or a designated representative of the plaintiff, shall place the defendant's personal property:

(A) On the premises from which the defendant is being removed;

(B) In an appropriate area clear of the entrance to the premises; and

(C) At a reasonable distance from any roadway.

(2) The plaintiff or a designated representative of the plaintiff shall not disturb the defendant's personal property for forty-eight (48) hours. After such forty-eight (48) hours, the remaining personal property of the defendant may be discarded by the plaintiff or a designated representative of the plaintiff.

(c)(1) All actions of any county, municipality, metropolitan form of government or other local government relative to the disposition of personal property after the execution of a writ of possession shall be temporarily suspended during the forty-eight-hour time period created pursuant to subsection (b).

(2) Notwithstanding subdivision (c)(1), a county, municipality, metropolitan form of government or other local government shall not be liable for any damages to the defendant's personal property.

(d) The plaintiff or a designated representative of the plaintiff, acting in accordance with this section, shall not be liable for any damages to the defendant's personal property during or after the forty-eight-hour time period, unless it can be established by clear and convincing evidence that the damages resulted from a malicious act or malicious omission of the plaintiff or a designated representative of the plaintiff.

Credits

1841-1842 Acts, c. 186, § 4; impl. am. by 1879 Acts, c. 23, § 1; impl. am. by 1979 Pub.Acts, c. 68, § 3; 2014 Pub.Acts, c. 534, § 1, eff. July 1, 2014.

Formerly 1858 Code, § 3359; Shannon's Code, § 5107; mod. 1932 Code, § 9262; § 23-1629.

Notes of Decisions (4)

In general

A writ of possession, in an action for forcible entry and detainer, is not executed until the officer has put the plaintiff into quiet possession of the entire premises mentioned in the writ. Farnsworth v. Fowler, 1851, 31 Tenn. 1, 55 Am.Dec. 718. Ejectment 120(5)

A writ of possession is not executed until the person, in whose behalf and for whose benefit it issues, is restored to the full possession of the entire premises recovered by the judgment upon which the writ is predicated. Farnsworth v. Fowler, 1851, 31 Tenn. 1, 55 Am.Dec. 718. Ejectment 120(5)

Where an officer serving a writ of possession had only succeeded in placing the tenant's goods in the yard, and was proceeding to eject the tenant, when the sheriff arrived with an injunction staying the execution of the writ, and the tenant thereupon took up his abode in an outbuilding on the premises, such writ of possession was not executed before the service of the injunction, so as to deprive the tenant of possession, and thereby deprive him of his right to maintain forcible entry and detainer against the plaintiff in the writ of restitution. Farnsworth v. Fowler, 1851, 31 Tenn. 1, 55 Am.Dec. 718. Forcible Entry And Detainer 9(3)

Assuming a contract to obtain utility service is between a tenant and the utility, the Newport Housing Authority cannot disconnect these utilities in order to enforce a writ of possession; the proper manner to enforce the writ of possession is through compliance §§ 29-18-126, -127, and -130; these statutes collectively prohibit issuance of a writ of possession until ten days after entry of a judgment against a defendant in any action of forcible entry and detainer, and require the sheriff to put the plaintiff in immediate possession of the premises once the writ of possession is entered. Op.Atty.Gen. No. 90-26, Feb. 27, 1990, 1990 WL 512998.

T. C. A. § 29-18-128
§ 29-18-128. Appeal and review
Effective: July 9, 2012

An appeal will also lie in suits commenced before general sessions judges, under this chapter, within the ten (10) days allowed by § 27-5-108, as in other cases, the appellant, if the defendant, giving bond as in the case of a certiorari.

Credits

1849-1850 Acts, c. 74, § 1; impl. am. by 1979 Pub.Acts, c. 68, § 3; 1989 Pub.Acts, c. 20, § 1.
Formerly 1858 Code, § 3360; Shannon's Code, § 5108; 1932 Code, § 9263; § 23-1630.

Notes of Decisions (22)

Effect of appeal
Tenant's appeal to the circuit court, for a trial de novo in unlawful detainer action, opened the door for landlord to amend its complaint to include relief not available in the General Sessions Court proceeding, such as damages and discretionary costs. T.C.A. §§ 27-5-108, 29-18-128. B & G Const., Inc. v. Polk, 2000, 37 S.W.3d 462, rehearing denied, appeal denied. Courts 185

Time for appeal
Statute, which states ten-day period for appealing adverse decision of general sessions court to circuit court, implicitly repealed earlier statute, which covers same subject matter and which states two-day period for appealing forcible entry and detainer judgment from general sessions court. T.C.A. §§ 27-5-108, 29-18-128; § 27-501 (now § 27-5-101). Steinhouse v. Neal, 1987, 723 S.W.2d 625. Courts 185

The right given legislature by constitution to establish courts carries with it right to make provisions for procedure of courts created, and the act providing for time for perfecting an appeal from the General Sessions Court of Hamilton County to the circuit court, is not unconstitutional on ground the act is contrary to the general law. Private Acts 1941, c. 6, § 7, as amended by Private Acts 1943, c. 37, § 4; Code 1932, § 9263. Hunter v. Jones, 1945, 189 S.W.2d 825, 182 Tenn. 698. Courts 42(1); Statutes 1675(1)

Where, when defendant's appeal from the general sessions court of Hamilton county came on for trial in circuit court, plaintiff made no motion to dismiss appeal on ground it had not been perfected in time and that act providing for time for appeal was unconstitutional, plaintiff waived right to have appeal dismissed. Private Acts 1941, c. 6, § 7, as amended by Private Acts 1943, c. 37, § 4; Code 1932, § 9263. Hunter v. Jones, 1945, 189 S.W.2d 825, 182 Tenn. 698. Appeal And Error 797(1)

Mode of review

In landlord's action against tenant in General Sessions Court of Davidson County, judgment for landlord for possession of premises was not a judgment of dismissal or money judgment for less than $50 which could be reviewed under private act by Circuit Court by certiorari without supersedeas, but was reviewable only under General Code provisions for review either by appeal or by certiorari and supersedeas. Priv.Acts 1937, c. 12, § 6; Code 1932, §§ 9263, 9266. Bell v. Smith, 1947, 202 S.W.2d 654, 185 Tenn. 11. Landlord And Tenant 1805

Under code, certiorari and supersedeas but not appeal from adverse judgment in forcible entry and detainer action will forestall issuance of writ of possession. Code 1932, §§ 9263, 9266. Bell v. Smith, 1947, 202 S.W.2d 654, 185 Tenn. 11. Landlord And Tenant 1804; Landlord And Tenant 1805

The Private Act relating to review of judgments of General Sessions Court of Davidson County does not conflict with Code provisions for review of judgments in forcible entry and unlawful detainer cases. Priv.Acts 1937, c. 12, § 6; Code 1932, §§ 9263, 9266. Bell v. Smith, 1947, 202 S.W.2d 654, 185 Tenn. 11. Landlord And Tenant 1805

A petition for certiorari to review judgment of General Sessions Court of Davidson County in favor of landlord suing tenant for possession of leased premises was properly dismissed in absence of showing of good and sufficient reason for not taking an appeal. Priv.Acts 1937, c. 12, § 6; Code 1932, §§ 9263, 9266. Bell v. Smith, 1947, 202 S.W.2d 654, 185 Tenn. 11. Landlord And Tenant 1805

Where defendant did not appeal from judgment of General Sessions Court of Davidson County in favor of landlord suing for possession of leased premises, but merely petitioned for certiorari without supersedeas, General Sessions Court had jurisdiction to issue writ of possession. Priv.Acts 1937, c. 12, § 6; Code 1932, §§ 9263, 9265, 9266. Bell v. Smith, 1947, 202 S.W.2d 654, 185 Tenn. 11. Landlord And Tenant 1804; Landlord And Tenant 1805

Where defendants in action of unlawful detainer in court of general sessions executed bond and filed petition for certiorari and supersedeas to remove case to circuit court two days after judgment, the certiorari was dismissible on motion in circuit court, since appeal and not certiorari was proper remedy. Code 1932, §§ 9263-9266. Smith v. Holt, 1945, 193 S.W.2d 100, 29 Tenn.App. 31. Landlord And Tenant 1805

Where, in action of unlawful detainer, defendants executed bond and filed petition for certiorari and supersedeas for removal to circuit court within two days after judgment against them, but plaintiffs made no motion to dismiss and proceeded to a trial on the merits, the impropriety of substituting certiorari for appeal was waived. Code 1932, §§ 9263-9266. Smith v. Holt, 1945, 193 S.W.2d 100, 29 Tenn.App. 31. Landlord And Tenant 1805

Shannon's Code, § 5108, referring to forcible entry and detainer suits, provides that an appeal will lie, in suits commenced before justices, within the two days allowed by law, the appellant, if defendant, giving bond, as in the case of a certiorari. Section 5111 provides that such suits may, within 30 days after judgment, be removed to the circuit court by certiorari and supersedeas, and if the defendant be the applicant, then the bond shall be sufficient to cover the rent during the

litigation. Held that, under these statutes it was intended to allow defendant, if dissatisfied, either to appeal and surrender the property, or to retain the property and obtain a review by certiorari upon executing a supersedeas bond, but these remedies were not intended to be concurrent, so that within two days after the judgment certiorari could not be used as a substitute for an appeal without supersedeas. Ammons v. Coker, 1911, 139 S.W. 732, 124 Tenn. 676. Forcible Entry And Detainer 45; Supersedeas 5

An unsuccessful defendant, who appeals from a justice's judgment in forcible entry and detainer, and is permitted to remain in possession, cannot be required to give bond for rents of the land accruing during the pendency of the appealed case in the Circuit Court. The plaintiff's remedy is to give bond for rents himself, and take and hold possession pending the appeal. Hawkins v. Alexander, 1892, 18 S.W. 882, 91 Tenn. 359, 7 Pickle 359. Forcible Entry And Detainer 43(4); Justices Of The Peace 159(1)

The writ of certiorari is the proper remedy to bring into the circuit court the papers in a cause tried by a justice of the peace, where the appeal was prayed and obtained in time, and the appeal perfected by executing a bond or taking the pauper oath as required by law, and the petition for the writ may be filed at any stage of the cause, and need not state that it is the first application for a certiorari. McGhee v. Grady, 1883, 80 Tenn. 89. Justices Of The Peace 192; Justices Of The Peace 202(2)

Bond

Appeal bond requirements for appealing from general sessions court, in which there is no right to jury in unlawful detainer action, to circuit court, where jury trial is available, do not impose unreasonable or irrational burdens upon jury rights of parties seeking to appeal; in any event, if party is willing to surrender possession pending litigation in higher courts, there is remedy by appeal which may be obtained on pauper oath. T.C.A. §§ 29-15-101 et seq., 29-18-101 et seq., 29-18-128 to 29-18-130; Const. Art. 1, § 6. Newport Housing Authority v. Ballard, 1992, 839 S.W.2d 86. Jury 31.2(7)

Under Mill. & V. Code, § 4092, the successful plaintiff in unlawful detainer may have possession of the premises pending appeal by executing a bond to cover the rent in case judgment be reversed. Held, that plaintiff, by refusing to exercise this option, could not acquire the right to demand a bond from defendant to cover rent pending appeal, and, if such bond were obtained, no liability would arise thereon. Hawkins v. Alexander, 1892, 18 S.W. 882, 91 Tenn. 359, 7 Pickle 359. Appeal And Error 4851; Forcible Entry And Detainer 43(4); Landlord And Tenant 1805

Mill. & V. Code, § 4092, provides that whenever judgment shall be rendered for plaintiff in unlawful detainer, brought before a justice of the peace, and a writ of possession shall be awarded, the plaintiff shall immediately be restored to possession; provided that, if defendant appeal, plaintiff shall execute bond, in double the value of one year's rent of the premises, conditioned to pay all damages. Held, that where defendant appeals from a judgment for plaintiff, and the latter fails to sue out a writ of possession, the circuit court has no jurisdiction to order defendant to execute a bond to secure rents pending appeal. Hawkins v. Alexander, 1892, 18 S.W. 882, 91 Tenn. 359, 7 Pickle 359. Forcible Entry And Detainer 43(5)

In cases of unlawful detainer, where an appeal is granted to defendant by the Circuit Judge, he is entitled to possession, upon his giving the proper bond, the Court has no power to order a writ of possession, upon plaintiff's giving the bond prescribed in appeals from judgments before three Justices. Buchanan v. Robinson, 1873, 62 Tenn. 147. Forcible Entry And Detainer 41

Appeals in forma pauperis

Acts 1870, c. 64, Rev.St. § 3373a, etc., provides that, where, in an action of forcible entry and detainer, the judgment of the justice of the peace is in favor of plaintiff, and a writ of possession is awarded, the same shall be executed and plaintiff immediately restored to possession, but provides that, if defendant shall appeal, plaintiff must execute bond in double the value of one year's rent, conditioned to pay costs, and perform the judgment of the Appellate Court. Held, that a defendant against whom judgment had been rendered in an action of forcible entry and detainer might appeal in forma pauperis, though the writ of possession be not executed. Lynn v. Tellico Mfg. Co., 1881, 76 Tenn. 29. Costs, Fees, And Sanctions 1011

In the action of forcible or unlawful detainer, where there is judgment and writ of possession executed, defendant may appeal in forma pauperis. Burns v. Haggard, 1872, 58 Tenn. 122. Costs, Fees, And Sanctions 1011

In forcible detainer, where there is a judgment and executed writ of possession, defendant may appeal in forma pauperis. Burns v. Haggard, 1872, 58 Tenn. 122. Forcible Entry And Detainer 43(4)

Transfer or removal to federal court

Tenant's mere filing of removal petition in United States District Court, with no filing of notice of removal in the state circuit court, was not sufficient to divest the state circuit court of jurisdiction over tenant's appeal in the unlawful detainer action commenced by landlord in General Sessions Court. 28 U.S.C.A. § 1446(d); T.C.A. §§ 27-5-108, 29-18-128. B & G Const., Inc. v. Polk, 2000, 37 S.W.3d 462, rehearing denied, appeal denied. Removal Of Cases 95

T. C. A. § 29-18-129
§ 29-18-129. Circuit court; certiorari and supersedeas; bond

The proceedings in such actions may, within thirty (30) days after the rendition of judgment, be removed to the circuit court by writs of certiorari and supersedeas, which it shall be the duty of the judge to grant, upon petition, if merits are sufficiently set forth, and to require from the applicant a bond, with security sufficient to cover all costs and damages; and, if the defendant below be the applicant, then the bond and security shall be of sufficient amount to cover, besides costs and damages, the value of the rent of the premises during the litigation.

Credits

1869-1870 Acts, c. 64, § 2.

Formerly Shannon's Code, § 5111; 1932 Code, § 9266; § 23-1631.

Notes of Decisions (32)

Right to review on certiorari

In landlord's action against tenant in General Sessions Court of Davidson County, judgment for landlord for possession of premises was not a judgment of dismissal or money judgment for less than $50 which could be reviewed under private act by Circuit Court by certiorari without supersedeas, but was reviewable only under General Code provisions for review either by appeal or by certiorari and supersedeas. Priv.Acts 1937, c. 12, § 6; Code 1932, §§ 9263, 9266. Bell v. Smith, 1947, 202 S.W.2d 654, 185 Tenn. 11. Landlord And Tenant 18

Time of taking proceedings

Two Justices of the Peace have authority to grant writs of certiorari and supersedeas for removal of a case of forcible entry and unlawful detainer from the Justice's to the Circuit Court, at any time within twenty days after the rendition of the Justice's judgment therein. Fisher v. Baldridge, 1892, 19 S.W. 227, 91 Tenn. 418, 7 Pickle 418. Forcible Entry And Detainer 44; Forcible Entry And Detainer 45; Justices Of The Peace 155(1); Justices Of The Peace 163

Acts 1869-70, c. 64, relating to unlawful entry and detainer, provides that proceedings in such actions may, by writ of certiorari and supersedeas, be removed to the circuit court within 30 days after judgment, upon a petition showing merits. Held that, where such petition is not filed until after the 30 days have elapsed, it must, in addition to showing merits, show a good and sufficient cause for the delay, and such as would entitle the petitioner to relief under the general rules of

removal on such writs. Rogers v. Wheaton, 1890, 13 S.W. 689, 88 Tenn. 665, 4 Pickle 665. Certiorari 40; Forcible Entry And Detainer 44

Petition for writs of certiorari and supersedeas to remove a forcible entry and detainer case to the Circuit Court, if presented within thirty days after rendition of the Justice's judgment, must state merits, but if presented later it must state both merits and a sufficient excuse for the delay beyond thirty days in making the application. Rogers v. Wheaton, 1890, 13 S.W. 689, 88 Tenn. 665, 4 Pickle 665. Justices Of The Peace 202(2); Supersedeas 5

In an action of unlawful and forcible detainer, before the writ of possession is executed, either party may take the cause to the Circuit Court, by certiorari, or an appeal will lie within the two days, as in other cases. Day v. Johnson, 1867, 44 Tenn. 231. Forcible Entry And Detainer 43(.5)

As, in an action of forcible detainer, certiorari will lie to the circuit court at any time before the writ of possession is executed, though an appeal will also lie within the two days allowed by law, as in other cases, it is a sufficient reason for not appealing that the party was unable to give the security required by law to be given within two days. Day v. Johnson, 1867, 44 Tenn. 231. Forcible Entry And Detainer 44

In an action of forcible detainer, at any time before the writ of possession is executed either party may take the cause to the circuit court by certiorari. Day v. Johnson, 1867, 44 Tenn. 231. Forcible Entry And Detainer 44

In an action of forcible detainer, an appeal will lie to the circuit court within the two days allowed by law, as in other cases. Day v. Johnson, 1867, 44 Tenn. 231. Landlord And Tenant 1805

Petition or other application

Under the Act of February 9, 1870, c. 64, petitions for certiorari in cases of forcible entry and detainer need not contain any reason for a failure to appeal. Elliott v. Lawless, 1871, 53 Tenn. 123. Certiorari 42(5); Forcible Entry And Detainer 44

Jurisdiction

Where defendant did not appeal from judgment of General Sessions Court of Davidson County in favor of landlord suing for possession of leased premises, but merely petitioned for certiorari without supersedeas, General Sessions Court had jurisdiction to issue writ of possession. Priv.Acts 1937, c. 12, § 6; Code 1932, §§ 9263, 9265, 9266. Bell v. Smith, 1947, 202 S.W.2d 654, 185 Tenn. 11. Landlord And Tenant 1804; Landlord And Tenant 1805

Meritorious grounds, generally

A petition for certiorari to review judgment of General Sessions Court of Davidson County in favor of landlord suing tenant for possession of leased premises was properly dismissed in absence

of showing of good and sufficient reason for not taking an appeal. Priv.Acts 1937, c. 12, § 6; Code 1932, §§ 9263, 9266. Bell v. Smith, 1947, 202 S.W.2d 654, 185 Tenn. 11. Landlord And Tenant 1805

Party applying for writ of certiorari to review forcible entry and detainer proceedings as substitute for an appeal must show good reason or writ will be dismissed. Ammons v. Coker, 1911, 139 S.W. 732, 124 Tenn. 676. Certiorari 27; Certiorari 60; Forcible Entry And Detainer 44

Effect of grant

Under code, certiorari and supersedeas but not appeal from adverse judgment in forcible entry and detainer action will forestall issuance of writ of possession. Code 1932, §§ 9263, 9266. Bell v. Smith, 1947, 202 S.W.2d 654, 185 Tenn. 11. Landlord And Tenant 1804; Landlord And Tenant 1805

Shannon's Code, § 5108, referring to forcible entry and detainer suits, provides that an appeal will lie, in suits commenced before justices, within the two days allowed by law, the appellant, if defendant, giving bond, as in the case of a certiorari. Section 5111 provides that such suits may, within 30 days after judgment, be removed to the circuit court by certiorari and supersedeas, and if the defendant be the applicant, then the bond shall be sufficient to cover the rent during the litigation. Held that, under these statutes it was intended to allow defendant, if dissatisfied, either to appeal and surrender the property, or to retain the property and obtain a review by certiorari upon executing a supersedeas bond, but these remedies were not intended to be concurrent, so that within two days after the judgment certiorari could not be used as a substitute for an appeal without supersedeas. Ammons v. Coker, 1911, 139 S.W. 732, 124 Tenn. 676. Forcible Entry And Detainer 45; Supersedeas 5

Death of party

Under Shannon's Code, § 5111, leaseholds are interests in land descending to the heirs at law, and hence, where a lessee dies pending an action of unlawful detainer by the lessor, the heirs at law of the lessee are necessary parties upon revival. Matthews v. Crofford, 1914, 167 S.W. 695, 129 Tenn. 541. Abatement And Revival 73; Descent And Distribution 9; Landlord And Tenant 1795(4)

Private acts

The Private Act relating to review of judgments of General Sessions Court of Davidson County does not conflict with Code provisions for review of judgments in forcible entry and unlawful detainer cases. Priv.Acts 1937, c. 12, § 6; Code 1932, §§ 9263, 9266. Bell v. Smith, 1947, 202 S.W.2d 654, 185 Tenn. 11. Landlord And Tenant 1805

Proceedings in forma pauperis

Appeal bond requirements for appealing from general sessions court, in which there is no right to jury in unlawful detainer action, to circuit court, where jury trial is available, do not impose unreasonable or irrational burdens upon jury rights of parties seeking to appeal; in any event, if party is willing to surrender possession pending litigation in higher courts, there is remedy by appeal which may be obtained on pauper oath. T.C.A. §§ 29-15-101 et seq., 29-18-101 et seq., 29-18-128 to 29-18-130; Const. Art. 1, § 6. Newport Housing Authority v. Ballard, 1992, 839 S.W.2d 86. Jury 31.2(7)

A defendant in a forcible entry and detainer suit willing to surrender possession pending review in higher courts may obtain an appeal without bond upon taking the pauper oath. Ammons v. Coker, 1911, 139 S.W. 732, 124 Tenn. 676. Costs, Fees, And Sanctions 1011; Forcible Entry And Detainer 43(4); Justices Of The Peace 159(2)

Bond and actions on bonds

Tenant could not proceed by statutory writ of certiorari, after circuit court dismissed writ of supersedeas because tenant failed to post the necessary bond, in case in which tenant sought writs to stay writ of possession issued in favor of landlord by general sessions court after landlord filed detainer warrant; writs of certiorari and supersedeas were intended to be used together to enable an unsuccessful defendant to remain in possession of the leased premises while seeking a de novo review, and writ of certiorari was not intended for use as substitute for appeal. Gallatin Housing Authority v. Pelt, 2017, 532 S.W.3d 760, appeal denied. Certiorari 5(1)

Tenant's promise to pay rent as it became due was insufficient to meet statutory requirement that an unsuccessful defendant seeking writs of certiorari and supersedeas must post a bond with sufficient security to cover costs, damages, and value of rent during litigation, in case in which tenant sought writs to stay writ of possession issued in favor of landlord by general sessions court, even though tenant was indigent; tenant's promise did not protect the landlord from financial loss. Gallatin Housing Authority v. Pelt, 2017, 532 S.W.3d 760, appeal denied. Certiorari 43; Landlord and Tenant 1772

Under statutes requiring certiorari and supersedeas bond of defendant in unlawful detainer proceeding to cover costs and damages, value of rent during litigation and rents during time plaintiff has been kept out of possession, all rents past due at time action is commenced shall be included in judgment and cannot be otherwise recovered. Code 1932, §§ 9266, 9267. Robertson v. Penn Mut. Life Ins. Co., 1938, 123 S.W.2d 848, 22 Tenn.App. 387. Landlord And Tenant 1805; Landlord And Tenant 1806

Certiorari and supersedeas bond of defendant in unlawful detainer proceeding covered not only rents which accrued during litigation but also those which had accrued before litigation. Code 1932, §§ 9266, 9267. Robertson v. Penn Mut. Life Ins. Co., 1938, 123 S.W.2d 848, 22 Tenn.App. 387. Landlord And Tenant 1805

Where a lessee who defaulted retained possession pending unlawful detainer by giving the bond required by Shannon's Code, § 5111, her subsequent surrender did not relieve her on her surety

from liability on the bond and the judgment for the lessor should, under section 4702, assess such liability. Matthews v. Crofford, 1914, 167 S.W. 695, 129 Tenn. 541. Forcible Entry And Detainer 21(7); Landlord And Tenant 1805

Where a tenant removed unlawful detainer proceedings to the circuit court, giving a bond under Shannon's Code, § 5111, for the value of the rent of the premises during litigation, the lessor need not declare a forfeiture for nonpayment of each installment of rent as it accrues; the single bond covering the whole contract. Matthews v. Crofford, 1914, 167 S.W. 695, 129 Tenn. 541. Forcible Entry And Detainer 21(7); Landlord And Tenant 1805

Under Acts 1842, c. 86, § 6, as amended by Acts 1869-70, c. 67, § 2, Mill. & V. Code, §§ 4093, 4094, authorizing the removal to the circuit of an action of unlawful detainer by writs of certiorari and supersedeas on the giving of a bond to cover costs and damages, and, in case defendant be applicant, the value of the rent during litigation, and providing that if, on a removal by defendant, the jury find that plaintiff is entitled to possession, they "shall ascertain and find the value of the rents" during the time plaintiff has been kept out of possession, and "the court shall give judgment against defendant and his sureties accordingly," plaintiff, after obtaining a judgment for possession and costs, cannot sue on the bond for the rents during the litigation, though he presented no claim therefor in the former action. Simmons v. Taylor, 1892, 18 S.W. 867, 91 Tenn. 363, 7 Pickle 363. Res Judicata 376

Upon removal of a forcible entry and detainer case, by an unsuccessful defendant, from the Justice's Court to the Circuit Court by certiorari and supersedeas, he is required to give bond with sureties "of sufficient amount to cover, besides costs and damages, the value of the rents" of the premises during the litigation." And if upon the trial in the Circuit Court the plaintiff recovers the land, the statute provides that the jury shall "ascertain and find the value of the rents during the time the plaintiff has been kept out of possession, and the Court shall give judgment against the defendant and his sureties accordingly. Held: The statute is mandatory, and that the remedy upon the bond for rents therein provided is exclusive. The sureties on the bond cannot be held for rents in a separate suit, but only in the forcible entry and detainer case. Simmons v. Taylor, 1892, 18 S.W. 867, 91 Tenn. 363, 7 Pickle 363. Forcible Entry And Detainer 44; Justices Of The Peace 193; Justices Of The Peace 202(3)

The judgment in the forcible entry and detainer case is res adjudicata as to the liability of the sureties on the bond for rents, and a complete bar to a subsequent suit upon that bond, although the matter of rents was not in fact considered on the trial of the forcible entry and detainer case, and the judgment in that case is silent as to rents. Simmons v. Taylor, 1892, 18 S.W. 867, 91 Tenn. 363, 7 Pickle 363. Forcible Entry And Detainer 38(1); Principal And Surety 145(1)

In cases of unlawful detainer, where an appeal is granted to defendant by the Circuit Judge, he is entitled to possession, upon his giving the proper bond, the Court has no power to order a writ of possession, upon plaintiff's giving the bond prescribed in appeals from judgments before three Justices. Buchanan v. Robinson, 1873, 62 Tenn. 147. Forcible Entry And Detainer 41

Dismissal

Resident did not raise a meritorious defense to detainer warrant, supporting motion to dismiss petition for writ of certiorari and supersedeas following forcible entry and detainer action; resident withdrew challenge to the underlying foreclosure and only challenges how and when he was removed from the property. Scarlett v. AA Properties, GP, 2020, 616 S.W.3d 815, appeal denied. Forcible Entry and Detainer 🔑 44; Forcible Entry and Detainer 🔑 45

Where unsuccessful defendant in action for unlawful detainer commenced in general sessions court in Davidson County wished to remain in possession of property while having case reviewed by circuit court, case could be removed to circuit court by petition for writs of certiorari and supersedeas, and dismissal of petition on ground that appeal was proper remedy was error. Code 1932, §§ 9244, 9247, 9257, 9266. Nashville Housing Authority v. Kinnard, 1948, 207 S.W.2d 1019, 186 Tenn. 33. Landlord And Tenant 🔑 1805

Circuit court properly denied plaintiff's motion to dismiss defendants' petition for certiorari and supersedeas carrying suit, which originated in magistrate's court by a detainer warrant, from the magistrate's court to the circuit court, where petition showed merits, and a certified check for more than double the amount of one year's rent, in lieu of bond, was deposited by defendants with clerk of court. Code 1932, § 9266. Noles v. Winn Oil Co., 1947, 204 S.W.2d 539, 30 Tenn.App. 227. Landlord And Tenant 🔑 1772

Petition for writs of certiorari and supersedeas to review a judgment for landlord in unlawful detainer suit was properly dismissed on ground that it did not show merit, where petition was too vague and indefinite in that it consisted merely of petitioner's statement that they had been informed of the matters alleged therein and no support in fact appeared to sustain these allegations. Williams' Code, § 9266. Pritchard v. Dixie Greyhound Lines, 1946, 192 S.W.2d 845, 183 Tenn. 408. Landlord And Tenant 🔑 1805

T. C. A. § 29-18-130
§ 29-18-130. Execution; appeal and review; bond
Effective: April 8, 2022

(a) When judgment is rendered in favor of the plaintiff, in any action of forcible entry and detainer, forcible detainer, or unlawful detainer, brought before a judge of the court of general sessions, and a writ of possession is awarded, the same shall be executed and the plaintiff restored to the possession immediately.

(b)(1) If the defendant pray an appeal, then, in that case, the plaintiff shall execute bond, with good and sufficient security, in double the value of one (1) year's rent of the premises, conditioned to pay all costs and damages accruing from the wrongful enforcement of such writ, and to abide by and perform whatever judgment may be rendered by the appellate court in the final hearing of the cause.

(2)(A) If the defendant prays an appeal, then the defendant must execute bond, or post either a cash deposit or irrevocable letter of credit from a regulated financial institution, or provide two (2) good personal sureties with good and sufficient security in the amount of one (1) year's rent of the premises, conditioned to pay all costs and damages accruing from the failure of the appeal, including rent and interest on the judgment as provided for in this section, and to abide by and perform whatever judgment may be rendered by the appellate court in the final hearing of the cause.

(B) The plaintiff is not required to post a bond to obtain possession if the defendant appeals without complying with this subdivision (b)(2). The plaintiff is entitled to interest on the judgment, which accrues from the date of the judgment if the defendant's appeal fails.

Credits

1869-1870 Acts, c. 64, § 1; 1871 Acts, c. 65; impl. am. by 1879 Acts, c. 23, § 1; impl. am. by 1979 Pub.Acts, c. 68, § 3; 1983 Pub.Acts, c. 232, § 1; 2022 Pub.Acts, c. 817, § 1, eff. April 8, 2022.

Formerly Shannon's Code, § 5110; mod. 1932 Code, § 9265; § 23-1632.

Notes of Decisions (5)

In general

Assuming a contract to obtain utility service is between a tenant and the utility, the Newport Housing Authority cannot disconnect these utilities in order to enforce a writ of possession; the proper manner to enforce the writ of possession is through compliance §§ 29-18-126, -127, and -130; these statutes collectively prohibit issuance of a writ of possession until ten days after entry

of a judgment against a defendant in any action of forcible entry and detainer, and require the sheriff to put the plaintiff in immediate possession of the premises once the writ of possession is entered. Op.Atty.Gen. No. 90-26, Feb. 27, 1990, 1990 WL 512998.

Jurisdiction

Where defendant did not appeal from judgment of General Sessions Court of Davidson County in favor of landlord suing for possession of leased premises, but merely petitioned for certiorari without supersedeas, General Sessions Court had jurisdiction to issue writ of possession. Priv.Acts 1937, c. 12, § 6; Code 1932, §§ 9263, 9265, 9266. Bell v. Smith, 1947, 202 S.W.2d 654, 185 Tenn. 11. Landlord And Tenant 1804; Landlord And Tenant 1805

Right to trial by jury

Where defendant's counterclaim, though involving equitable matters, was essentially a defense against plaintiff's action for recovery of possession of realty, under Tennessee law there was no impropriety in submitting certain decisive issues to jury. 28 U.S.C.A § 1652; T.C.A. §§ 21-1011, 21-1014, 23-1302, 23-1604, 23-1606, 23-1621, 23-1632. Pan-Am Southern Corp. v. Cummins, 1957, 156 F.Supp. 673, remanded 249 F.2d 955. Jury 14.5(4)

Appeal bond requirements for appealing from general sessions court, in which there is no right to jury in unlawful detainer action, to circuit court, where jury trial is available, do not impose unreasonable or irrational burdens upon jury rights of parties seeking to appeal; in any event, if party is willing to surrender possession pending litigation in higher courts, there is remedy by appeal which may be obtained on pauper oath. T.C.A. §§ 29-15-101 et seq., 29-18-101 et seq., 29-18-128 to 29-18-130; Const. Art. 1, § 6. Newport Housing Authority v. Ballard, 1992, 839 S.W.2d 86. Jury 31.2(7)

Bond

Provision of unlawful detainer statute requiring tenant appealing to circuit court from general sessions court's judgment in favor of landlord to post bond equal to one year's rent does not apply if tenant has surrendered possession of the property prior to appeal; abrogating *Swanson Devs., LP v. Trapp*, 2008 WL 555705, *Amberwood Apartments v. Kirby*, 1989 WL 89761. Johnson v. Hopkins, 2013, 432 S.W.3d 840. Landlord And Tenant

T. C. A. § 29-18-131
§ 29-18-131. Damages; circuit courts
Effective: July 9, 2012

(a) If the defendant obtain certiorari, and, upon trial in the circuit court, the jury find that the plaintiff is entitled to the possession of the land, the jury shall also ascertain the value of the rents during the time the plaintiff has been kept out of possession, and such other damages as the plaintiff is entitled to, and the court shall give judgment against the defendant and the defendant's sureties for the amount.

(b) Should the cause be taken to the circuit court by the plaintiff, and a verdict be found in the plaintiff's favor, the jury shall, in like manner, ascertain the value of the rents, and the damages the jury may consider the plaintiff entitled to, and return the amount in its verdict, upon which the court shall give judgment accordingly.

Credits

1841-1842 Acts, c. 186, § 6.

Formerly 1858 Code, §§ 3363, 3364; Shannon's Code, §§ 5112, 5113; 1932 Code, §§ 9267, 9268; § 23-1633.

Notes of Decisions (17)

Nature of action
In forcible detainer, rents are recoverable only incidentally. The action is primarily possessory. Spillman v. Walt, 1873, 59 Tenn. 574. Forcible Entry And Detainer 30(2)

Right of action for damages
Under statute authorizing service of summons in landlord's forcible entry and detainer action on any adult in possession of leased premises, landlord may recover possession thereof where process cannot be served on tenant, and such proceeding does not preclude recovery of judgment for rents when service can be had. Code 1932, §§ 9261, 9267, 9282. Woodward v. Ragsdale, 1943, 167 S.W.2d 979, 179 Tenn. 526. Landlord And Tenant 1797; Res Judicata 384

Lessor recovering possession in unlawful detainer, in justice court, cannot sue for rent or damages. Shannon's Code, §§ 5106a1, 5112, 5113, 5116. Bloch v. Busch, 1929, 22 S.W.2d 242, 160 Tenn. 21. Justices Of The Peace 130

Lessor recovering possession in unlawful detainer, cannot sue for rent or damages. Shannon's Code, §§ 5106a1, 5112, 5113, 5116. Bloch v. Busch, 1929, 22 S.W.2d 242, 160 Tenn. 21. Res Judicata 376

Bond and actions on bond

Where tenant appealed to Court of Appeals from adverse decision in unlawful detainer action but landlord failed to execute bond in double the value of one years' rent conditioned to pay all costs and damages sustained by tenant from landlord's wrongfully enforcing writ of possession, tenant was not required to elect whether to surrender possession of premises or execute like bond to landlord for rent pending appeal, and tenant's failure to give such bond did not mean that tenant, who filed pauper's oath for appeal, failed to perfect her appeal. T.C.A. §§ 23-1322, 23-1323, 23-1633. Elliott v. Lewis, 1971, 463 S.W.2d 698, 225 Tenn. 96. Landlord And Tenant ⚷ 1805

Certiorari and supersedeas bond of defendant in unlawful detainer proceeding covered not only rents which accrued during litigation but also those which had accrued before litigation. Code 1932, §§ 9266, 9267. Robertson v. Penn Mut. Life Ins. Co., 1938, 123 S.W.2d 848, 22 Tenn.App. 387. Landlord And Tenant ⚷ 1805

Under statutes requiring certiorari and supersedeas bond of defendant in unlawful detainer proceeding to cover costs and damages, value of rent during litigation and rents during time plaintiff has been kept out of possession, all rents past due at time action is commenced shall be included in judgment and cannot be otherwise recovered. Code 1932, §§ 9266, 9267. Robertson v. Penn Mut. Life Ins. Co., 1938, 123 S.W.2d 848, 22 Tenn.App. 387. Landlord And Tenant ⚷ 1805; Landlord And Tenant ⚷ 1806

Under Acts 1842, c. 86, § 6, as amended by Acts 1869-70, c. 67, § 2, Mill. & V. Code, §§ 4093, 4094, authorizing the removal to the circuit of an action of unlawful detainer by writs of certiorari and supersedeas on the giving of a bond to cover costs and damages, and, in case defendant be applicant, the value of the rent during litigation, and providing that if, on a removal by defendant, the jury find that plaintiff is entitled to possession, they "shall ascertain and find the value of the rents" during the time plaintiff has been kept out of possession, and "the court shall give judgment against defendant and his sureties accordingly," plaintiff, after obtaining a judgment for possession and costs, cannot sue on the bond for the rents during the litigation, though he presented no claim therefor in the former action. Simmons v. Taylor, 1892, 18 S.W. 867, 91 Tenn. 363, 7 Pickle 363. Res Judicata ⚷ 376

Upon removal of a forcible entry and detainer case, by an unsuccessful defendant, from the Justice's Court to the Circuit Court by certiorari and supersedeas, he is required to give bond with sureties "of sufficient amount to cover, besides costs and damages, the value of the rents" of the premises during the litigation." And if upon the trial in the Circuit Court the plaintiff recovers the land, the statute provides that the jury shall "ascertain and find the value of the rents during the time the plaintiff has been kept out of possession, and the Court shall give judgment against the defendant and his sureties accordingly. Held: The statute is mandatory, and that the remedy upon the bond for rents therein provided is exclusive. The sureties on the bond cannot be held for rents in a separate suit, but only in the forcible entry and detainer case. Simmons v. Taylor, 1892, 18 S.W. 867, 91 Tenn. 363, 7 Pickle 363. Forcible Entry And Detainer ⚷ 44; Justices Of The Peace ⚷ 193; Justices Of The Peace ⚷ 202(3)

Determination of damages

On appeal or certiorari to the circuit court in an action of forcible entry and detainer, such damages as are the immediate result of a forcible and unlawful disseisin may be recovered, but not damages

for an injury to the freehold. Spillman v. Walt, 1873, 59 Tenn. 574. Forcible Entry And Detainer 30(2)

The recovery in the circuit court, on appeal or certiorari thereto, may embrace such damages so are the immediate consequence of the forcible and unlawful disseizin;--not, however, damages for an injury merely to the freehold. Spillman v. Walt, 1873, 59 Tenn. 574. Forcible Entry And Detainer 43(7)

In estimating the damages in an action of forcible entry and detainer, the jury may look as well to the actual expense the plaintiff has been put to by defendant's unlawful act, as to the violation of his legal rights. White v. Suttle, 1851, 31 Tenn. 169. Forcible Entry And Detainer 30(2)

In determining the measure of damages to be recovered by an action of forcible entry and detainer, the jury may not only look to the violation of the plaintiff's right and the manner in which it was done, but to any actual inconvenience or expense he may have incurred as a direct consequence of the unlawful act of the defendant. White v. Suttle, 1851, 31 Tenn. 169. Forcible Entry And Detainer 30(3)

Pleadings

Gravamen of detainer suit was act of defendant in wrongfully detaining realty, and since ascertainment of damages for detention, rents or otherwise, was a statutory incident to proceeding, it was unnecessary for plaintiffs to demand damages in detainer warrant in order to authorize a judgment for same. T.C.A. §§ 23-1612, 23-1614, 23-1627, 23-1633. Craig v. Collins, 1974, 524 S.W.2d 947. Landlord And Tenant 1786; Landlord And Tenant 1798

Admissibility of evidence

In the action of forcible entry and detainer, any evidence of injury committed by the disseisor to the freehold merely, such as waste, &c., is incompetent as indicating the plaintiff's damages; if, however, such evidence be permitted to go to the jury, without objection or without a distinct motion, made during the progress of the trial to exclude it from the jury, it is no ground for the assignment of error. White v. Suttle, 1851, 31 Tenn. 169. Forcible Entry And Detainer 29(2); Forcible Entry And Detainer 33; Forcible Entry And Detainer 43(7)

Judgment

Although plaintiff, in an action of forcible entry and detainer, has sold his interest in the premises pending the action, the judgment in his favor should be both for possession and for the rents. Spillman v. Walt, 1873, 59 Tenn. 574. Forcible Entry And Detainer 30(2)

Persons bound by judgment

In enacting statute authorizing service of summons in landlord's forcible entry and detainer action on any adult in possession of leased premises, legislature was charged with knowledge that judgment for rent under previous statute then in effect could not be entered against lessees not before court. Code 1932, §§ 9261, 9267, 9282. Woodward v. Ragsdale, 1943, 167 S.W.2d 979, 179 Tenn. 526. Landlord And Tenant 1782

T. C. A. § 29-18-132

§ 29-18-132. Repealed by 1981 Pub.Acts, c. 449, § 1(6)

T. C. A. § 29-18-133
§ 29-18-133. Illegal possession; fines and penalties

(a) A person, once dispossessed by action, who again illegally possesses the premises, commits a Class C misdemeanor.

(b) The only evidence, required or admitted on the trial of the criminal charge, is that the defendant was turned out of possession by action brought for the purpose, and that the defendant has again taken possession of the premises.

Credits

1825 Acts, c. 63, § 3; 1989 Pub.Acts, c. 591, § 113.

Formerly 1858 Code, §§ 3370, 3371; Shannon's Code, §§ 5120, 5121; 1932 Code, §§ 9275, 9276; § 23-1635.

T. C. A. § 29-18-134

§ 29-18-134. Trespass

The judgment in a case of forcible entry and detainer shall be no bar to an action against the defendant for trespass.

Credits

1821 Acts, c. 14, § 19.

Formerly 1858 Code, § 3372; Shannon's Code, § 5122; 1932 Code, § 9277; § 23-1636.

Notes of Decisions (1)

In general

Sublessor, who takes possession of leased premises before expiration of term and evicts sublessee commits "trespass" and sublessee may sue for damages; sublessee not being limited to remedy of forcible entry and detainer. Code 1932, §§ 8564, 9277. Walgreen Co. v. Walton, 1932, 64 S.W.2d 44, 16 Tenn.App. 213. Landlord And Tenant ⇐ 1814; Landlord And Tenant ⇐ 1824(1); Landlord And Tenant ⇐ 1824(2)

Section 2
URLTA

URLTA
T.C.A. § 66-28-101 ET SEQ.

T.C.A. § 66-28-101

§ 66-28-101. Short Title

This chapter shall be known and may be cited as the "Uniform Residential Landlord and Tenant Act."

Credits

1975 Pub. Acts, c. 245, § 1.101.

Formerly § 64-2801.

Notes of Decisions (5)

Construction and application

Limited application of Uniform Residential Landlord and Tenant Act, which prohibited exculpatory clauses in leases, only to the more populous counties of state, did not constitute declaration by legislature that public policy of state favored freedom of contract for residential leases in counties not covered by Act, and so court was free to declare that exculpatory clauses in residential leases were void as against public policy. T.C.A. §§ 66-28-101 to 66-28-517. Crawford v. Buckner, 1992, 839 S.W.2d 754, on remand, appeal denied.

Housing and urban development

Policy of local agency charged with administration of federal housing rent subsidy program of excluding applicants because of prior indebtedness to the agency conflicted with Tennessee law governing settlement of landlord-tenant disputes by creating an unauthorized collection device circumventing procedures and protections provided under such law. United States Housing Act of 1937, § 8 as amended 42 U.S.C.A. § 1437f; T.C.A. §§ 23-1601 et seq., 64-2801 et seq. Ferguson v. Metropolitan Development and Housing Agency, 1980, 485 F.Supp. 517.

Rental Agreements

Provision of Uniform Residential Landlord and Tenant Act of 1975 prohibiting provisions in rental agreements in which tenant agrees to exculpation or limitation of any liability of landlord to tenant arising under law did not apply to counties having population of less than 200,000, and thus exculpatory clause in residential lease in such a county was enforced to bar tenant's recovery against landlord for losses resulting from fire in apartment building negligently caused by landlord's agent. T.C.A. §§ 64-2801 et seq., 64-2802. Schratter v. Development Enterprises, Inc., 1979, 584 S.W.2d 459.

Jurisdiction

Where claim under Fair Labor Standards Act was essentially that former employee was not paid minimum wage, claim under Tennessee Uniform Residential Landlord and Tenant Act concerned eviction which took place after former employee had ceased working, and value of apartment was part of former employee's compensation, state claim was within district court's pendent jurisdiction; however, because resolution of state claim would require extensive interpretation of recently enacted state law and would render case unduly complex, Court would decline to exercise pendent jurisdiction. T.C.A. § 64-2801 et seq. Taylor v. Brown, 1978, 461 F.Supp. 559.

Attorney's fees

Parties to action brought under the Uniform Residential Landlord and Tenant Act were entitled to have a jury determine amount of attorney fees to be awarded, where parties demanded a jury to try all disputed issues of fact including whether tenants were entitled to attorney fees and, if so, the amount; judge's decision as to amount of attorney fees upon affidavits submitted by tenants, once jury had decided that award of attorney fees was to be made, was error. T.C.A. §§ 66-28-101 et seq., 66-28-504. McCormic v. Smith, 1984, 668 S.W.2d 304.

T. C. A. § 66-28-102

§ 66-28-102. Application

Effective: July 1, 2021

(a) This chapter applies only in counties having a population of more than seventy-five thousand (75,000), according to the 2010 federal census.

(b) This chapter applies to rental agreements entered into or extended or renewed after July 1, 1975. Transactions entered into before July 1, 1975, and not extended or renewed after that date, and the rights, duties and interests flowing from them remain valid and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or repealed by this chapter as though the amendment or repeal has not occurred.

(c) Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

(1) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service;

(2) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to the purchaser's interest;

(3) Transient occupancy in a hotel, or motel or lodgings subject to city, state, transient lodgings or room occupancy under the Excise Tax Act, compiled in title 67, chapter 4, part 20;

(4) Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative; or

(5) Occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes.

(d) This chapter shall not apply to any occupancy in a public housing unit or other housing unit that is subject to regulation by the department of housing and urban development and owned by a

governmental entity or non-profit corporation to the extent such regulation conflicts with state law, but shall apply to the extent that any such regulations defer to the application of state law.

(e) In the counties in which this chapter applies, this chapter occupies and preempts the entire field of legislation concerning the regulation of landlords and tenants. The governing body of a county subject to this chapter shall not enact or enforce regulations that conflict with, or are an addition to, this chapter.

Credits

1975 Pub.Acts, c. 245, §§ 1.201, 1.202, 6.101, 6.102; 1992 Pub.Acts, c. 995, §§ 1, 4 to 6; 2001 Pub.Acts, c. 101, § 1, eff. April 18, 2001; 2008 Pub.Acts, c. 1067, §§ 1, 2, eff. Oct. 1, 2008; 2011 Pub.Acts, c. 272, § 1, eff. Oct. 1, 2011; 2012 Pub.Acts, c. 847, § 1, eff. April 27, 2012; 2021 Pub.Acts, c. 182, §§ 1, 2, eff. July 1, 2021.

Formerly §§ 64-2802, 64-2804; § 64-2864.

Notes of Decisions (3)

Validity

The exclusions in Tenn. Code Ann. § 66-28-102(a)(2) and (d), which permanently exclude counties within four population brackets from the Uniform Residential Landlord and Tenant Act, Tenn. Code Ann. § 66-28-101, et seq., are unconstitutional absent a rational basis; where the legislative history indicates that these counties were excluded at the request of local officials in these counties, and, where a trial court in a decision which is not binding on other courts of this state has rejected this as a rational basis for excluding Sullivan County from the Uniform Act, other courts are likely to conclude that the exclusions violate Article XI, Section 8, of the Tennessee Constitution. Op.Atty.Gen. No. 08-80, April 3, 2008, 2008 WL 950207.

Senate Bill 2885/House Bill 2746, amending the Uniform Residential Landlord and Tenant Act codified in Tenn. Code Ann. § 66-28-101 et. seq., to eliminate an exemption for counties within four narrowly defined population brackets, is constitutional and does not violate equal protection clause of the Tennessee Constitution. Op.Atty.Gen. No. 08-57, March 18, 2008, 2008 WL 757286.

Construction and application

Provision of Uniform Residential Landlord and Tenant Act of 1975 prohibiting provisions in rental agreements in which tenant agrees to exculpation or limitation of any liability of landlord to tenant arising under law did not apply to counties having population of less than 200,000, and thus exculpatory clause in residential lease in such a county was enforced to bar tenant's recovery

against landlord for losses resulting from fire in apartment building negligently caused by landlord's agent. T.C.A. §§ 64-2801 et seq., 64-2802. Schratter v. Development Enterprises, Inc., 1979, 584 S.W.2d 459.

T. C. A. § 66-28-103

§ 66-28-103. Purposes

Effective: July 10, 2015

(a) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(b) Underlying purposes and policies of this chapter are to:

(1) Simplify, clarify, modernize and revise the law governing the rental of dwelling units and the rights and obligations of landlord and tenant;

(2) Encourage landlord and tenant to maintain and improve the quality of housing;

(3) Promote equal protection to all parties; and

(4) Make uniform the law in Tennessee.

(c) Unless displaced by this chapter, the principles of law and equity, including the law relating to capacity to contract, health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.

(d) This chapter being a general chapter intended as a unified coverage of its subject matter, no part of it is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

Credits
1975 Pub.Acts, c. 245, §§ 1.102 to 1.104.

Formerly §§ 64-2861 to 64-2863.
T. C. A. § 66-28-103, TN ST § 66-28-103

T. C. A. § 66-28-104

§ 66-28-104. Definitions

Effective: July 1, 2021

Subject to additional definitions contained in this chapter, which apply to specific portions of this chapter, and unless the context otherwise requires, in this chapter:

(1) "Action" means recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined, including an action for possession;

(2) "Building and housing codes" means any law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of any premises, or dwelling unit;

(3) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one (1) person who maintains a household or by two (2) or more persons who maintain a common household;

(4) "Good faith" means honesty in fact in the conduct of the transaction concerned;

(5) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to disclose as required by § 66-28-302;

(6) "Manager" means an individual, group, business, or organization hired by a landlord or owner to oversee the day-to-day operations of a premises;

(7) "Nuisance vehicle" means any vehicle that is incapable of operating under its own power and is detrimental to the health, welfare or safety of persons in the community;

(8) "Organization" means a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, and any other legal or commercial entity;

(9)(A) "Owner" means one (1) or more persons, jointly or severally, in whom is vested:

(i) All or part of the legal title to property; or

(ii) All or part of the beneficial ownership and a right to the present use and enjoyment of the premises;

(B) "Owner" also means a mortgagee in possession;

(10) "Person" means an individual or organization;

(11) "Premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant;

(12) "Rental agreement" means all agreements, written or oral, and valid rules and regulations adopted under § 66-28-402 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises;

(13) "Rents" means all payments to be made to the landlord under the rental agreement;

(14)(A) "Security deposit" means an escrow payment made to the landlord under the rental agreement for the purpose of securing the landlord against financial loss due to damage to the premises occasioned by the tenant's occupancy other than ordinary wear and tear and any monetary damage due to the tenant's breach of the rental agreement;

(B) "Security deposit" shall in no way infer that the landlord is providing any service for the personal protection or safety of the tenant beyond that prescribed by law;

(15) "Substantially impaired" means that a dwelling unit or premises has been deemed unfit for human habitation by a governmental authority;

(16) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others;

(17) "Unauthorized vehicle" means a vehicle that is not registered to a tenant, an occupant or a tenant's known guest, and has remained for more than seven (7) consecutive days on real property leased or rented by a landlord for residential purposes;

(18) "Utilities" means the provision of water, electricity, sewer or natural gas; and

(19) "Vehicle" means any device for carrying passengers, livestock, goods or equipment that moves on wheels and/or runners.

Credits

1975 Pub.Acts, c. 245, § 1.301; 1999 Pub.Acts, c. 284, § 2, eff. July 1, 1999; 2001 Pub.Acts, c. 153, §§ 1 to 3, eff. May 3, 2001; 2005 Pub.Acts, c. 156, § 1, eff. May 9, 2005; 2011 Pub.Acts, c. 272, § 2, eff. Oct. 1, 2011; 2021 Pub.Acts, c. 100, § 2, eff. July 1, 2021.

Formerly § 64-2803.
T. C. A. § 66-28-104, TN ST § 66-28-104

T. C. A. § 66-28-105

§ 66-28-105. Jurisdiction; service of process

(a) The general sessions and circuit courts of this state shall exercise original jurisdiction over any landlord or tenant with respect to any conduct in this state governed by this chapter. In addition to any other method provided by rule or by statute, personal jurisdiction over the parties may be acquired in a civil action or proceeding instituted in law or equity by service of process in the manner provided by law.

(b) A landlord who is not a resident of this state or is a corporation not authorized to do business in this state and engages in a transaction subject to this chapter may designate an agent upon whom service of process may be made in this state. The agent shall be a resident of this state or a corporation authorized to do business in this state. The designation shall be in writing, filed with the secretary of state, and must set forth the name and street address, including zip code, of the agent, the name and street address, including zip code, of the landlord and be accompanied by a ten dollar ($10.00) filing fee. If no designation is made and filed or if process cannot be served in this state upon the designated agent, process may be served upon the secretary of state forthwith by mailing a copy of the process and pleading by registered or certified mail to the defendant or respondent at that party's last known address. The process must be accompanied by a ten dollar ($10.00) fee and specify the address of the defendant. An affidavit of service shall be filed by the secretary of state with the clerk of the court on or before the return day of the process.

Credits

1975 Pub.Acts, c. 245, § 1.203; 1991 Pub.Acts, c. 297, § 1.

Formerly § 64-2805.

Notes on Decisions (2)

In general

Circuit court has exclusive, original jurisdiction over actions brought under Uniform Residential Landlord Tenant Act (URLTA). West's Tenn.Code, § 66-28-105(a). Woods v. MTC Management, 1998, 967 S.W.2d 800.

Tenant's action against landlord under Uniform Residential Landlord Tenant Act (URLTA), which was brought in chancery court, should have been transferred from chancery court to circuit court, where general statute governing jurisdiction of circuit and chancery courts mandated transfer. West's Tenn.Code, §§ 16-11-102, 66-28-105(a). Woods v. MTC Management, 1998, 967 S.W.2d 800.
T.C.A. §66-28-105, TN ST §66-28-105

T. C. A. § 66-28-106

§ 66-28-106. Notice

(a) Either party has notice of a fact if such person:

(1) Has actual knowledge of it; or

(2) Has been given written notice.

(b) All parties must give written notice to the last known or designated address contained in the lease agreement.

Credits

1975 Pub.Acts, c. 245, § 1.304.

Formerly § 64-2806.

T. C. A. § 66-28-106, TN ST § 66-28-106

T. C. A. § 66-28-107

§ 66-28-107. Residential landlord registration; penalties and fines; application

Effective: April 28, 2014

(a)(1) Each landlord of one (1) or more dwelling units is required to furnish the following information with the agency or department of local government that is responsible for enforcing building codes in the jurisdiction where the dwelling units are located:

(A) The landlord or the landlord's agent's name, telephone number, and physical address, which does not include a post office box; and

(B) The street address and unit number, as appropriate, for each dwelling unit that the landlord owns, leases, or subleases or has the right to own, lease, or sublease.

(2) The information required under subdivision (a)(1) shall be furnished on a form provided by the agency or department responsible for enforcing building codes. The agency or department is authorized to collect from a landlord filing the form a fee not to exceed ten dollars ($10.00) per year.

(3) If any information required under subdivision (a)(1) or the ownership of the dwelling units changes, the landlord who transferred the property by sale or otherwise, or the landlord's agent, shall notify the agency or department of such change within thirty (30) days of the change in ownership.

(b)(1) Any landlord who fails to register or who fails to send notification of change of ownership as required by this section shall be assessed a fine in the amount of fifty dollars ($50.00) per week by the agency or department of local government that is responsible for enforcing building codes in the jurisdiction where the dwelling units are located.

(2) Prior to the assessment of the fine, the landlord shall be given an opportunity to appear and be heard at a hearing to be held concerning the landlord's failure to register or failure to send notification of change of ownership. A written notice of the date, time and place of the hearing shall be mailed the landlord at least fifteen (15) days prior to the scheduled hearing.

(c) This section shall only apply to any county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census.

Credits

2006 Pub.Acts, c. 800, § 1, eff. July 1, 2006; 2014 Pub.Acts, c. 845, §§ 1 to 4, eff. April 28, 2014.

T. C. A. § 66-28-107, TN ST § 66-28-107

T. C. A. § 66-28-108

§ 66-28-108. Electronic mail address; notice

Effective: October 1, 2011

If the tenant provides an electronic mail address in the rental agreement, any notification required to be sent to the tenant pursuant to this chapter may be made by the landlord through electronic notification to such mail address, unless a provision in this chapter requires a specific form of notification other than electronic notification; provided, however, that the landlord shall not require the tenant to provide an electronic mail address as a condition of entering into a rental agreement.

Credits

2011 Pub.Acts, c. 272, § 3, eff. Oct. 1, 2011.

T. C. A. § 66-28-201

§ 66-28-201. Conditions and terms

Effective: July 10, 2015

(a) The landlord and tenant may include in a rental agreement, terms and conditions not prohibited by this chapter or other rule of law including rent, term of the agreement, and other provisions governing the rights and obligations of parties. A rental agreement cannot provide that the tenant agrees to waive or forego rights or remedies under this chapter. The landlord or the landlord's agent shall advise in writing that the landlord is not responsible for, and will not provide, fire or casualty insurance for the tenant's personal property.

(b) In absence of a lease agreement, the tenant shall pay the reasonable value for the use and occupancy of the dwelling unit.

(c) Rent shall be payable without demand at the time and place agreed upon by the parties. Notice is specifically waived upon the nonpayment of rent by the tenant only if such a waiver is provided for in a written rental agreement. Unless otherwise agreed, rent is payable at the dwelling unit and periodic rent is payable at the beginning of any term of one (1) month or less and otherwise in equal monthly installments at the beginning of each month. Upon agreement, rent shall be uniformly apportionable from day to day.

(d) There shall be a five-day grace period beginning the day the rent was due to the day a fee for the late payment of rent may be charged. The date the rent was due shall be included in the calculation of the five-day grace period. If the last day of the five-day grace period occurs on a Sunday or legal holiday, as defined in § 15-1-101, the landlord shall not impose any charge or fee for the late payment of rent; provided, that the rent is paid on the next business day. Any charge or fee, however described, which is charged by the landlord for the late payment of rent, shall not exceed ten percent (10%) of the amount of rent past due.

Credits

1975 Pub.Acts, c. 245, § 1.401; 1984 Pub.Acts, c. 876, § 1; 1986 Pub.Acts, c. 747, § 1; 1989 Pub.Acts, c. 503, § 1; 2000 Pub.Acts, c. 666, § 1, eff. July 1, 2000; 2001 Pub.Acts, c. 154, § 1, eff. May 3, 2001; 2011 Pub.Acts, c. 272, § 4, eff. Oct. 1, 2011; 2013 Pub.Acts, c. 206, § 1, eff. April 23, 2013.

Formerly § 64-2811.

Notes of Decisions (9)

In general

Rule that parties are free to contract that one shall not be liable to other for its negligence and exception to that rule for exculpatory clauses affecting public interest are judicial declarations of public policy. Crawford v. Buckner, 1992, 839 S.W.2d 754, on remand, appeal denied.

Construction and application

Limited application of Uniform Residential Landlord and Tenant Act, which prohibited exculpatory clauses in leases, only to the more populous counties of state, did not constitute declaration by legislature that public policy of state favored freedom of contract for residential leases in counties not covered by Act, and so court was free to declare that exculpatory clauses in residential leases were void as against public policy. T.C.A. §§ 66-28-101 to 66-28-517. Crawford v. Buckner, 1992, 839 S.W.2d 754, on remand, appeal denied.

Exculpatory clauses

"Exculpatory clause" in context of landlord-tenant relationship refers to clause which deprives tenant of right to recover damages for harm caused by landlord's negligence by releasing landlord from liability for future acts of negligence. Crawford v. Buckner, 1992, 839 S.W.2d 754, on remand, appeal denied.

Exculpatory clause in residential lease limiting landlord's liability for negligence to tenant was void as against public policy; overruling Schratter v. Development Enterprises, Inc., 584 S.W.2d 459. Crawford v. Buckner, 1992, 839 S.W.2d 754, on remand, appeal denied.

Standardized adhesion contract of exculpation offered by landlord to tenant on take-it-or-leave-it basis, generalized use of which had impact upon large number of potential tenants, is a matter of public interest rather than a purely private contract. Crawford v. Buckner, 1992, 839 S.W.2d 754, on remand, appeal denied.

Firearms

A landlord can prohibit tenants, including those who hold handgun carry permits, from possessing firearms within the leased premises; such a prohibition may be imposed through a clause in the lease, or, in counties where the Uniform Residential Landlord and Tenant Act, §§ 66-28-101 to 66-28-501, is in effect, such a prohibition may be imposed by adopting a rule that satisfies the requirements of § 68-28-402. Op.Atty.Gen. No. 09-170, Oct. 26, 2009, 2009 WL 3666436.

Guests

A landlord may prohibit a guest of a tenant from coming onto the property if there is a clause in the lease authorizing the landlord to take such action. Op.Atty.Gen. No. 09-170, Oct. 26, 2009, 2009 WL 3666436.

Parking Restrictions

Section 66-28-201(a) prohibits a landlord from using a clause in a lease to circumvent the requirement that signs be posted in parking areas before a landlord may immediately tow vehicles that are parked in violation of the landlord's parking policy. Op.Atty.Gen. No. 09-170, Oct. 26, 2009, 2009 WL 3666436.

Renewal and extension of lease

Lease renewal clause was not read as requiring lessee to send written notice of its election to renew to lessor's principal office in Washington, D.C., but merely suggested a permitted place and method of giving notice and did not preclude sending notice to other offices of lessor. Southern Region Indus. Realty, Inc. v. Chattanooga Warehouse and Cold Storage Co., Inc., 1980, 612 S.W.2d 162, 27 A.L.R.4th 259.

T. C. A. § 66-28-202

§ 66-28-202. Unsigned or undelivered agreement

Effective: October 1, 2011

(a) If the landlord does not sign a written rental agreement, acceptance of rent without reservation by the landlord binds the parties on a month to month tenancy.

(b) Any person or persons taking possession without payment of rent and failing to sign a written rental agreement delivered to them by the landlord or who enter without oral agreement are deemed to be trespassers and may be evicted forthwith and may be held liable for damages and rent for the term of trespass and reasonable attorney's fees; provided, that if such person or persons pay rent, which is accepted by the landlord, such person or persons shall become tenants of the landlord.

Credits

1975 Pub.Acts, c. 245, § 1.402; 2011 Pub.Acts, c. 272, § 5, eff. Oct. 1, 2011.

Formerly § 64-2812.

T. C. A. § 66-28-203

§ 66-28-203. Prohibited provisions

(a) No rental agreement may provide that the tenant:

(1) Authorizes any person to confess judgment on a claim arising out of the rental agreement;

(2) Agrees to the exculpation or limitation of any liability of the landlord to the tenant arising under law or to indemnify the landlord for that liability or the costs connected with such liability.

(b) A provision prohibited by subsection (a) included in an agreement is unenforceable. Should a landlord willfully provide a rental agreement containing provisions known by the landlord to be prohibited by this chapter, the tenant may recover actual damages sustained. The tenant cannot agree to waive or forego rights or remedies under this chapter.

Credits

1975 Pub.Acts, c. 245, § 1.403.

Formerly § 64-2813.

Notes of Decisions (5)

In general

Rule that parties are free to contract that one shall not be liable to other for its negligence and exception to that rule for exculpatory clauses affecting public interest are judicial declarations of public policy. Crawford v. Buckner, 1992, 839 S.W.2d 754, on remand, appeal denied.

Construction and application

Limited application of Uniform Residential Landlord and Tenant Act, which prohibited exculpatory clauses in leases, only to the more populous counties of state, did not constitute declaration by legislature that public policy of state favored freedom of contract for residential leases in counties not covered by Act, and so court was free to declare that exculpatory clauses in residential leases were void as against public policy. T.C.A. §§ 66-28-101 to 66-28-517. Crawford v. Buckner, 1992, 839 S.W.2d 754, on remand, appeal denied.

Exculpatory Clauses

"Exculpatory clause" in context of landlord-tenant relationship refers to clause which deprives tenant of right to recover damages for harm caused by landlord's negligence by releasing landlord from liability for future acts of negligence. Crawford v. Buckner, 1992, 839 S.W.2d 754, on remand, appeal denied.

Exculpatory clause in residential lease limiting landlord's liability for negligence to tenant was void as against public policy; overruling Schratter v. Development Enterprises, Inc., 584 S.W.2d 459. Crawford v. Buckner, 1992, 839 S.W.2d 754, on remand, appeal denied.

Standardized adhesion contract of exculpation offered by landlord to tenant on take-it-or-leave-it basis, generalized use of which had impact upon large number of potential tenants, is a matter of public interest rather than a purely private contract. Crawford v. Buckner, 1992, 839 S.W.2d 754, on remand, appeal denied.

T. C. A. § 66-28-204

§ 66-28-204. Unconscionability

Effective: July 1, 2018

(a) If the court, as a matter of law, finds:

(1) A rental agreement or any provision thereof was unconscionable when made, the court shall enforce the remainder of the agreement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result; or

(2) A settlement in which a party waives or agrees to forego a claim or right under this chapter or under a rental agreement was unconscionable at the time it was made, the court shall enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid the unconscionable result.

(b) If unconscionability is put into issue by a party or by the court upon its own motion, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

(c) A provision in a rental agreement that authorizes a landlord to hold a tenant in breach of the rental agreement in accordance with § 66-28-505(f) is not unconscionable and is fully enforceable.

Credits

1975 Pub.Acts, c. 245, § 1.303; 2018 Pub.Acts, c. 960, § 3, eff. July 1, 2018.

Formerly § 64-2814.

T. C. A. § 66-28-205

§ 66-28-205. Victims of domestic abuse, sexual assault, or stalking--request to terminate lease; when permitted; notice to landlord

Effective: July 1, 2021

(a) As used in this section:

(1) "Domestic abuse victim" has the same meaning as defined in § 36-3-601;

(2) "Household member" means a member of the tenant's family who lives in the same household as the tenant;

(3) "Sexual assault victim" has the same meaning as defined in § 36-3-601; and

(4) "Stalking victim" has the same meaning as defined in § 36-3-601.

(b)(1) A tenant who meets the requirements established in this subsection (b) may terminate a residential rental or lease agreement entered into or renewed on or after July 1, 2021, upon the tenant providing the landlord with written notice stating that the tenant or household member is a domestic abuse victim, sexual assault victim, or stalking victim, regardless of whether the victim is an adult or a child. In order for a tenant to terminate the tenant's rights and obligations under the rental or lease agreement and vacate the dwelling without liability for future rent and early termination penalties or fees, the tenant must provide the landlord with:

(A) Written notice requesting release from the rental or lease agreement;

(B) A mutually agreed upon release date within the next thirty (30) days from the date of the written notice; and

(C) One (1) of the following:

(i) A copy of a valid order of protection issued or extended pursuant to § 36-3-605, following a hearing at which the court found by a preponderance of the evidence that the tenant or household member is a domestic abuse victim, sexual assault victim, or stalking victim, regardless of whether the victim is an adult or child; or

(ii) Documentation evidencing a criminal charge of domestic abuse, sexual assault, or stalking, based on a police report reflecting that the tenant or household member was subject to domestic abuse, sexual assault, or stalking, regardless of whether the alleged victim is an adult or a child.

(2) The documentation the tenant offers in support of the termination request must be dated no more than sixty (60) days prior to the tenant's notice to the landlord.

(3)(A) Unless otherwise required by law or a court of competent jurisdiction, a landlord shall not reveal any identifying information concerning a tenant who has terminated a rental or lease agreement pursuant to this subsection (b) without the written consent of the tenant.

(B) As used in this subdivision (b)(3), "identifying information" means any information that could reasonably be used to locate the former tenant or household member, including a home or work address, telephone number, or social security number.

(4) The tenant shall vacate the premises within thirty (30) days of giving notice to the landlord or at any other time as may be agreed upon by the landlord and the tenant.

(c) A tenant terminating the rental or lease agreement pursuant to this section is responsible for:

(1) The rent payment for the full month in which the tenancy terminates; and

(2) The previous obligations outstanding on the termination date.

(d) This section does not:

(1) Release other parties to the rental or lease agreement from the obligation under the rental or lease agreement;

(2) Authorize the landlord to terminate the tenancy and cause the eviction of a residential tenant solely because the tenant or a household member is a domestic abuse victim, sexual assault victim, or stalking victim, regardless of whether the victim is an adult or child; or

(3) Authorize the landlord or tenant, by agreement, to waive or modify any provision of this section other than subdivision (b)(4).

Credits

2021 Pub.Acts, c. 293, § 2, eff. July 1, 2021.

T. C. A. § 66-28-301

§ 66-28-301. Security deposit

Effective: July 10, 2015

(a) All landlords of residential property requiring security deposits prior to occupancy are required to deposit all tenants' security deposits in an account used only for that purpose, in any bank or other lending institution subject to regulation by the state or any agency of the United States government.

(b) Except as otherwise provided in subdivision (b)(2)(B), the tenant shall have the right to inspect the premises to determine the tenant's liability for physical damages that are the basis for any charge against the security deposit. An inspection of the premises to determine the tenant's liability for physical damages that are the basis for any charge against the security deposit and the landlord's estimated costs to repair such damage shall be conducted as follows:

(1)(A) Upon request by the landlord for a tenant to vacate or within five (5) days after receipt by the landlord of written notice of the tenant's intent to vacate, the landlord may provide notice to the tenant of the tenant's right to be present at the inspection of the premises. Such notice may advise the tenant that the tenant may request a time of inspection to be set by the landlord during normal working hours. The landlord may require the inspection to be after the tenant has completely vacated the premises and is ready to surrender possession and return all means of access to the entire premises; provided, that the inspection shall be either on the day the tenant completely vacates the premises or within four (4) calendar days of the tenant vacating the premises. If the landlord provides written notice of the tenant's right to be present at the landlord's inspection and the tenant schedules an inspection, but fails to attend such inspection, the tenant waives the right to contest any damages found by the landlord as a result of such inspection by the landlord; provided, that notice of the tenant's waiver upon such circumstances is set out in the rental agreement.

(B) If a tenant requests a mutual inspection as provided in subdivision (b)(1)(A), the landlord and tenant shall then inspect the premises and compile a comprehensive listing of any presently ascertainable damage to the unit that is the basis for any charge against the security deposit and the estimated dollar cost of repairing the damage. The landlord and tenant shall sign the listing. Except as provided in subsection (g), the signatures of the landlord and the tenant on the listing shall be conclusive evidence of the accuracy of the listing. If the tenant refuses to sign the listing, the tenant shall state specifically in writing the items on the list to which the tenant dissents.

(2)(A) If the tenant has acted in any manner set out in subdivisions (b)(2)(B)(i)-(vi), the landlord may inspect the premises and compile a comprehensive listing of any presently ascertainable damage to the unit that is the basis for any charge against the security deposit and the estimated dollar cost of repairing the damage without providing the tenant an opportunity to inspect the premises; provided, that the landlord provides a written copy, sent by certificate of mailing to the tenant, of the listing of any damages and estimated cost of repairs to the tenant upon the tenant's written request.

(B) The tenant shall not have a right to inspect the premises as provided in this section if the tenant has:

(i) Vacated the rental premises without giving written notice;

(ii) Abandoned the premises;

(iii) Been judicially removed from the premises;

(iv) Not contacted the landlord after the landlord's notice of right to mutual inspection of the premises;

(v) Failed to appear at the arranged time of inspection as provided in subdivision (b)(1); or

(vi) If the tenant has not requested a mutual inspection pursuant to subsection (b) or is otherwise inaccessible to the landlord.

(c) No landlord shall be entitled to retain any portion of a security deposit if the security deposit was not deposited in an account as required by subsection (a) and a listing of damages is not provided as required by subsection (b).

(d) A tenant who disputes the accuracy of the final damage listing given pursuant to subsection (b) may bring an action in a circuit or general sessions court of competent jurisdiction of this state. The tenant's claim shall be limited to those items from which the tenant specifically dissented in accordance with the listing or specifically dissented in accordance with subsection (b); otherwise the tenant shall not be entitled to recover any damages under this section.

(e) Should a tenant vacate the premises with unpaid rent or other amounts due and owing, the landlord may remove the deposit from the account and apply the moneys to the unpaid debt.

(f) In the event the tenant leaves not owing rent and having any refund due, the landlord shall send notification to the last known or reasonably determinable address, of the amount of any refund due the tenant. In the event the landlord shall not have received a response from the tenant within sixty (60) days from the sending of such notification, the landlord may remove the deposit from the account and retain it free from any claim of the tenant or any person claiming in the tenant's behalf.

(g) Nothing in this section precludes the landlord from recovering the costs of any and all contractual damages to which the landlord may be entitled, plus the cost of any additional physical damages to the premises that are discovered after an inspection that has been completed pursuant to subsection (b); provided, however, that costs of any physical damage to the premises may only be recovered if the damage was discovered by the landlord prior to the earlier of:

(1) Thirty (30) days after the tenant vacated or abandoned the premises; or

(2) Seven (7) days after a new tenant takes possession of the premises.

(h) Notwithstanding subsection (a), all landlords of residential property shall be required to notify their tenants at the time such persons sign the lease and submit the security deposit, of the location of the account required to be maintained pursuant to this section, but shall not be required to provide the account number to such persons.

Credits

1975 Pub.Acts, c. 245, § 2.101; 1984 Pub.Acts, c. 645, § 1; 1992 Pub.Acts, c. 995, §§ 2, 4 to 6; 1997 Pub.Acts, c. 397, §§ 1, 2, eff. June 5, 1997; 2001 Pub.Acts, c. 153, § 4, eff. May 3, 2001; 2004 Pub.Acts, c. 683, § 1, eff. July 1, 2004; 2005 Pub.Acts, c. 156, § 2, eff. May 9, 2005; 2008 Pub.Acts, c. 1067, § 3, eff. October 1, 2008; 2011 Pub.Acts, c. 272, §§ 6 to 9, eff. Oct. 1, 2011; 2012 Pub.Acts, c. 887, § 1, eff. May 9, 2012.

Formerly § 64-2821.

Notes of Decisions (1)

Estimated repair costs

Under § 66-28-301(b) a landlord cannot retain a security deposit if the landlord fails to give the tenant a written estimate of the cost of repairs; however, the tenant would still be liable for the cost of any damages to the property under 66-28-301(g). Op.Atty.Gen. No. 09-170, Oct. 26, 2009, 2009 WL 3666436.

T. C. A. § 66-28-302

§ 66-28-302. Landlord or agent; address

(a) The landlord or any person authorized to enter into a rental agreement on the landlord's behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

(1) The agent authorized to manage the premises; and

(2) An owner of the premises or a person or agent authorized to act for and on behalf of the owner for the acceptance of service of process and for receipt of notices and demands.

(b) The information required to be furnished by this section shall be kept current and this section extends to and is enforceable against any successor landlord, owner or manager.

(c) A person who fails to comply with subsection (a) becomes an agent of each person who is a landlord for the purpose of service of process and receiving and receipting for notices and demands.

Credits

1975 Pub.Acts, c. 245, § 2.102.

Formerly § 64-2822.

T. C. A. § 66-28-303

§ 66-28-303. Dwelling possession

At the commencement of the terms, the landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and § 66-28-304. The landlord may bring an action for possession against any person wrongfully in possession and may recover the damages provided in § 66-28-512(c).

Credits

1975 Pub.Acts, c. 245, § 2.103.

Formerly § 64-2823.

T. C. A. § 66-28-304

§ 66-28-304. Landlord maintenance

(a) The landlord shall:

(1) Comply with requirements of applicable building and housing codes materially affecting health and safety;

(2) Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(3) Keep all common areas of the premises in a clean and safe condition; and

(4) In multi-unit complexes of four (4) or more units, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish and other waste from common points of collection subject to § 66-28-401(3).

(b) If the duty imposed by subdivision (a)(1) is greater than any duty imposed by any other paragraph of subsection (a), the landlord's duty shall be determined by reference to subdivision (a)(1).

(c) The landlord and tenant may agree in writing that the tenant perform specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(d) The landlord may not treat performance of the separate agreement described in subsection (c) as a condition to any obligation or performance of any rental agreement.

Credits
1975 Pub.Acts, c. 245, § 2.104.

Formerly § 64-2824.

T. C. A. § 66-28-305

§ 66-28-305. Landlord liability; limitation

Unless otherwise agreed, a landlord who conveys premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser, landlord or agent, or both, is relieved of liability under the rental agreement and this chapter as to events occurring subsequent to written notice to the tenant of the conveyance and transfer of the security deposit to the bona fide purchaser.

Credits

1975 Pub.Acts, c. 245, § 2.105; 2005 Pub.Acts, c. 156, § 3, eff. May 9, 2005.

Formerly § 64-2825.

T. C. A. § 66-28-401

§ 66-28-401. Maintenance and conduct

The tenant shall:

(1) Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(2) Keep that part of the premises that the tenant occupies and uses as clean and safe as the condition of the premises when the tenant took possession;

(3) Dispose from the tenant's dwelling unit all ashes, rubbish, garbage, and other waste to the designated collection areas and into receptacles;

(4) Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person to do so; and shall not engage in any illegal conduct on the premises; and

(5) Act and require other persons on the premises, with the tenant's or other occupants' consent, to act in a manner that will not disturb the neighbors' peaceful enjoyment of the premises.

Credits
1975 Pub.Acts, c. 245, § 3.101; 2005 Pub.Acts, c. 156, § 4, eff. May 9, 2005.

Formerly § 64-2831.

T. C. A. § 66-28-402

§ 66-28-402. Rules and regulation

(a) A landlord, from time to time, may adopt rules or regulations, however described, concerning the tenant's use and occupancy of the premises. It is enforceable against the tenant only if:

(1) Its purpose is to promote the convenience, safety, or welfare of the tenants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(2) It is reasonably related to the purpose for which it is adopted;

(3) It applies to all tenants in the premises;

(4) It is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what the tenant must or must not do to comply;

(5) It is not for the purpose of evading the obligations of the landlord; and

(6) The tenant has notice of it at the time the tenant enters into the rental agreement.

(b) A rule or regulation adopted after the tenant enters into the rental agreement is enforceable against the tenant if reasonable notice of its adoption is given to the tenant and it does not work a substantial modification of the rental agreement.

Credits
1975 Pub.Acts, c. 245, § 3.102.

Formerly § 64-2832.

Notes of Decisions (1)

Firearms

A landlord can prohibit tenants, including those who hold handgun carry permits, from possessing firearms within the leased premises; such a prohibition may be imposed through a clause in the lease, or, in counties where the Uniform Residential Landlord and Tenant Act, §§ 66-28-101 to 66-28-501, is in effect, such a prohibition may be imposed by adopting a rule that satisfies the requirements of 68-28-402. Op.Atty.Gen. No. 09-170, Oct. 26, 2009, 2009 WL 3666436.

T. C. A. § 66-28-403

§ 66-28-403. Landlord access

Effective: October 1, 2011

(a) The tenant shall not unreasonably withhold consent to the landlord to enter onto the premises, including entering into the dwelling unit, in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the premises to prospective or actual purchasers, mortgagees, workers or contractors.

(b) The landlord may enter the premises without consent of the tenant in case of emergency. "Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

(c) Where no known emergency exists, if any utilities have been turned off due to no fault of the landlord, the landlord shall be permitted to enter the premises. The landlord may inspect the premises to ascertain any damages to the premises and make necessary repairs of damages resulting from the lack of utilities.

(d) The landlord shall not abuse the right of access or use it to harass the tenant.

(e) The landlord has no right of access to the premises except:

(1) By court order;

(2) As permitted by this section, § 66-28-506 and § 66-28-507(b);

(3) If the tenant has abandoned or surrendered the premises;

(4) If the tenant is deceased, incapacitated or incarcerated; or

(5) Within the final thirty (30) days of the termination of the rental agreement for the purpose of showing the premises to prospective tenants; provided, that such right of access is set forth in the rental agreement and notice is given to the tenant at least twenty-four (24) hours prior to entry.

Credits

1975 Pub.Acts, c. 245, § 3.103; 2011 Pub.Acts, c. 272, § 10, eff. Oct. 1, 2011.

Formerly § 64-2833.

T. C. A. § 66-28-404

§ 66-28-404. Tenant use and occupation

Unless otherwise agreed, the tenant shall occupy the dwelling unit only as a dwelling unit. The rental agreement may require that the tenant notify the landlord of any anticipated extended absence from the premises in excess of seven (7) days. Notice shall be given on or before the first day of any extended absence.

Credits
1975 Pub.Acts, c. 245, § 3.104.

Formerly § 64-2834.

T. C. A. § 66-28-405

§ 66-28-405. Abandonment

(a) The tenant's unexplained or extended absence from the premises for thirty (30) days or more without payment of rent as due shall be prima facie evidence of abandonment. The landlord is then expressly authorized to reenter and take possession of the premises.

(b)(1) The tenant's nonpayment of rent for fifteen (15) days past the rental due date, together with other reasonable factual circumstances indicating the tenant has permanently vacated the premises, including, but not limited to, the removal by the tenant of substantially all of the tenant's possessions and personal effects from the premises, or the tenant's voluntary termination of utility service to the premises, shall also be prima facie evidence of abandonment.

(2) In cases described in subdivision (b)(1), the landlord shall post notice at the rental premises and shall also send the notice to the tenant by regular mail, postage prepaid, at the rental premises address. The notice shall state that:

(A) The landlord has reason to believe that the tenant has abandoned the premises;

(B) The landlord intends to reenter and take possession of the premises, unless the tenant contacts the landlord within ten (10) days of the posting and mailing of the notice;

(C) If the tenant does not contact the landlord within the ten-day period, the landlord intends to remove any and all possessions and personal effects remaining in or on the premises and to rerent the dwelling unit; and

(D) If the tenant does not reclaim the possessions and personal effects within thirty (30) days of the landlord taking possession of the possessions and personal effects, the landlord intends to dispose of the tenant's possessions and personal effects as provided for in subsection (c).

(3) The notice shall also include a telephone number and a mailing address at which the landlord may be contacted.

(4) If the tenant fails to contact the landlord within ten (10) days of the posting and mailing of the notice, the landlord may reenter and take possession of the premises. If the tenant

contacts the landlord within ten (10) days of the posting and mailing of the notice and indicates the tenant's intention to remain in possession of the rental premises, the landlord shall comply with the provisions of this chapter relative to termination of tenancy and recovery of possession of the premises through judicial process.

(c) When proceeding under either subsection (a) or (b), the landlord shall remove the tenant's possessions and personal effects from the premises and store the personal possessions and personal effects for not less than thirty (30) days. The tenant may reclaim the possessions and personal effects from the landlord within the thirty-day period. If the tenant does not reclaim the possessions and personal effects within the thirty-day period, the landlord may sell or otherwise dispose of the tenant's possessions and personal effects and apply the proceeds of the sale to the unpaid rents, damages, storage fees, sale costs and attorney's fees. Any balances are to be held by the landlord for a period of six (6) months after the sale.

Credits

1975 Pub.Acts, c. 245, § 3.105; 2005 Pub.Acts, c. 156, § 5, eff. May 9, 2005.

Formerly § 64-2835.

Notes of Decisions (1)

In general

Although it could be inferred from fact that tenant's furniture was in yard that furniture had been removed from leased house, this fact did not establish landlord's responsibility for removal where there was no evidence that landlord or her agents were in possession of premises at the time, and thus tenant, who failed to meet her burden of proving who removed items of furniture from leased house, had to suffer loss. T.C.A. § 64-2835. Leonard v. Gilreath, 1981, 625 S.W.2d 722.

T. C. A. § 66-28-406

§ 66-28-406. Tenant requests relating to service or support animals; supporting documentation; liability for misrepresentation

Effective: July 1, 2019

(a) As used in this section:

(1) "Disability" means:

(A) A physical or mental impairment that substantially limits one (1) or more major life activities;

(B) A record of an impairment described in subdivision (a)(1)(A); or

(C) Being regarded as having an impairment described in subdivision (a)(1)(A);

(2) "Health care" means any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition;

(3) "Healthcare provider" means a person who is licensed, certified, or otherwise authorized or permitted by the laws of any state to administer health care in the ordinary course of business or practice of a profession;

(4) "Reliable documentation" means written documentation provided by:

(A) A healthcare provider with actual knowledge of an individual's disability;

(B) An individual or entity with a valid, unrestricted license, certification, or registration to serve persons with disabilities with actual knowledge of an individual's disability; or

(C) A caregiver, reliable third party, or a governmental entity with actual knowledge of an individual's disability;

(5) "Service animal" means a dog or miniature horse that has been individually trained to work or perform tasks for an individual with a disability; and

(6) "Support animal" means an animal selected to accompany an individual with a disability that has been prescribed or recommended by a healthcare provider to work, provide assistance, or perform tasks for the benefit of the individual with a disability, or provide emotional support that alleviates one (1) or more identified symptoms or effects of the individual's disability.

(b) A tenant or prospective tenant with a disability who requires the use of a service animal or support animal may request an exception to a landlord's policy that prohibits or limits animals or pets on the premises or that requires any payment by a tenant to have an animal or pet on the premises.

(c) A landlord who receives a request made under subsection (b) from a tenant or prospective tenant may ask that the individual, whose disability is not readily apparent or known to the landlord, submit reliable documentation of a disability and the disability-related need for a service animal or support animal. If the disability is readily apparent or known but the disability-related need for the service animal or support animal is not, then the landlord may ask the individual to submit reliable documentation of the disability-related need for a service animal or support animal.

(d) A landlord who receives reliable documentation under subsection (c) may verify the reliable documentation. However, nothing in this subsection (d) authorizes a landlord to obtain confidential or protected medical records or confidential or protected medical information concerning a tenant's or prospective tenant's disability.

(e) A landlord may deny a request made under subsection (b) if a tenant or prospective tenant fails to provide accurate, reliable documentation that meets the requirements of subsection (c), after the landlord requests the reliable documentation.

(f)(1) It is deemed to be material noncompliance and default by the tenant with the rental agreement, if the tenant:

(A) Misrepresents that there is a disability or disability-related need for the use of a service animal or support animal; or

(B) Provides documentation under subsection (c) that falsely states an animal is a service animal or support animal.

(2) In the event of any violation of subdivision (f)(1), the landlord may terminate the tenancy and recover damages, including, but not limited to, reasonable attorney's fees.

(g) Notwithstanding any other law to the contrary, a landlord is not liable for injuries by a person's service animal or support animal permitted on the premises as a reasonable accommodation to assist the person with a disability pursuant to the Fair Housing Act, as amended, (42 U.S.C. §§ 3601 et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.); Section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. § 701); or any other federal, state, or local law.

(h) Only to the extent it conflicts with federal or state law, this section does not apply to public housing units owned by a governmental entity.

Credits

2019 Pub.Acts, c. 236, § 5, eff. July 1, 2019.

T. C. A. § 66-28-501

§ 66-28-501. Rental agreement; landlord noncompliance

(a) Except as provided in this chapter, the tenant may recover damages, obtain injunctive relief and recover reasonable attorney's fees for any noncompliance by the landlord with the rental agreement or any section of this chapter upon giving fourteen (14) days' written notice.

(b) If the rental agreement is terminated for noncompliance after sufficient notice, the landlord shall return all prepaid rent and security deposits recoverable by the tenant under § 66-28-301.

Credits
1975 Pub.Acts, c. 245, § 4.101; 1978 Pub.Acts, c. 735, § 1.

Formerly § 64-2841.

T. C. A. § 66-28-502
§ 66-28-502. Essential services; failure to supply

(a)(1) If the landlord deliberately or negligently fails to supply essential services, the tenant shall give written notice to the landlord specifying the breach and may do one (1) of the following:

(A) Procure essential services during the period of the landlord's noncompliance and deduct their actual and reasonable costs from the rent;

(B) Recover damages based upon the diminution in the fair rental value of the dwelling unit, provided tenant continues to occupy premises; or

(C) Procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

(2) In addition to the remedy provided in subdivision (a)(1)(C), the tenant may recover the actual and reasonable value of the substitute housing and in any case under this subsection (a), reasonable attorney's fees.

(3) "Essential services" means utility services, including gas, heat, electricity, and any other obligations imposed upon the landlord which materially affect the health and safety of the tenant.

(b) A tenant who proceeds under this section may not proceed under § 66-28-501 or § 66-28-503 as to that breach.

(c) The rights under this section do not arise until the tenant has given written notice to the landlord and has shown that the condition was not caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.

Credits
1975 Pub.Acts, c. 245, § 4.102; 1978 Pub.Acts, c. 735, § 2.

Formerly § 64-2842.

T. C. A. § 66-28-503
§ 66-28-503. Damage; fire or casualty
Effective: July 1, 2013

(a) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that the use of the dwelling unit is substantially impaired, the tenant:

(1) May immediately vacate the premises; and

(2) Shall notify the landlord in writing within fourteen (14) days thereafter of the tenant's intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating.

(b) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that restoring the dwelling unit or premises to its undamaged condition requires the tenant to vacate the premises, the landlord is authorized to terminate the rental agreement within fourteen (14) days of providing written notice to the tenant.

(c) If the rental agreement is terminated, the landlord shall return all prepaid rent and security deposits recoverable under § 66-28-301. If the tenant vacates pursuant to this section, accounting for rent is to occur as of the date the tenant returns the keys to the landlord or has, in fact, vacated the dwelling unit or premises whichever date is earlier.

Credits

1975 Pub.Acts, c. 245, § 4.103; 2013 Pub.Acts, c. 107, §§ 1, 2, eff. July 1, 2013.

T. C. A. § 66-28-504
§ 66-28-504. Unlawful ouster

If the landlord unlawfully removes or excludes the tenant from the premises or willfully diminishes services to the tenant by interrupting essential services as provided in the rental agreement to the tenant, the tenant may recover possession or terminate the rental agreement and, in either case, recover actual damages sustained by the tenant, and punitive damages when appropriate, plus a reasonable attorney's fee. If the rental agreement is terminated under this section, the landlord shall return all prepaid rent and security deposits.

Credits

1975 Pub.Acts, c. 245, § 4.104.

Formerly § 64-2844.

Notes of Decisions (4)

Construction with federal law

Judgment previously entered in favor of tenant in unlawful ouster action under Tennessee law was res judicata on amount of debtor-landlords' liability for unlawfully ousting tenant from premises, and bankruptcy court could not relitigate amount of debtors' liability in proceeding to except judgment debt from discharge on "willful and malicious injury" theory. In re Ausley, 2014, 507 B.R. 234.

Issues in cause of action under Tennessee's unlawful ouster statute, for landlord's unlawful removal or exclusion of tenant from premises, did not possess requisite identity with those in proceeding to except debt from discharge on "willful and malicious injury" theory, so that Tennessee state court judgment entered against Chapter 7 debtor-landlords in unlawful ouster action could not be given collateral estoppel effect in dischargeability proceeding on question of whether debtor-landlords had willfully and malicious injured tenant or tenant's property. In re Ausley, 2014, 507 B.R. 234.

Harmless or reversible error

Parties to action brought under the Uniform Residential Landlord and Tenant Act were entitled to have a jury determine amount of attorney fees to be awarded, where parties demanded a jury to try all disputed issues of fact including whether tenants were entitled to attorney fees and, if so, the amount; judge's decision as to amount of attorney fees upon affidavits submitted by tenants, once jury had decided that award of attorney fees was to be made, was error. T.C.A. §§ 66-28-101 et seq., 66-28-504. McCormic v. Smith, 1984, 668 S.W.2d 304.

Attorney's fees

Amount of attorney fees to be awarded pursuant to statute allowing recovery of actual damages, punitive damages, and reasonable attorney fees by an unlawfully removed tenant or one whose essential services have been willfully diminished or interrupted by landlord must be determined by a jury when a jury has been demanded. T.C.A. §§ 66-28-101 et seq., 66-28-504. McCormic v. Smith, 1984, 668 S.W.2d 304.

T. C. A. § 66-28-505
§ 66-28-505. Tenant noncompliance
Effective: July 1, 2019

(a)(1) Except as otherwise provided in subsection (b), if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with § 66-28-401 materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement shall terminate as provided in subdivisions (a)(2) or (a)(3).

(2) If the breach for which notice was given in subdivision (a)(1) is remediable by the payment of rent, the cost of repairs, damages, or any other amount due to the landlord pursuant to the rental agreement, the landlord may inform the tenant that if the breach is not remedied within fourteen (14) days after receipt of such notice, the rental agreement shall terminate, subject to the following:

(A) All repairs to be made by the tenant to remedy the tenant's breach must be requested in writing by the tenant and authorized in writing by the landlord prior to such repairs being made; provided, however, that the notice sent pursuant to this subdivision (a)(2) shall inform the tenant that prior written authorization must be given by the landlord to the tenant pursuant to this subdivision (a)(2)(A); and

(B) If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six (6) months, the landlord may terminate the rental agreement upon at least seven (7) days' written notice specifying the breach and the date of termination of the rental agreement.

(3) If the breach for which notice was given in subdivision (a)(1) is not remediable by the payment of rent, the cost of repairs, damages, or any other amount due to the landlord pursuant to the rental agreement, the landlord may inform the tenant that the rental agreement shall terminate upon a date not less than fourteen (14) days after receipt of the notice.

(4) Nothing in subdivision (a)(2) or (a)(3) shall be construed as requiring a landlord to provide additional notice to the tenant other than the notice required by this section.

(b) Notwithstanding subsection (a), if the tenant waives any notice required by this section, the landlord may proceed to file a detainer warrant immediately upon breach of the agreement for failure to pay rent without the landlord providing notice of such breach to the tenant; provided, however, that this subsection (b) shall not reduce the tenant's grace period as provided in § 66-

28-201. The tenant's waiver pursuant to this subsection (b) shall be set out in twelve (12) point bold font or larger in the rental agreement.

(c) Notwithstanding notice of a breach or the filing of a detainer warrant pursuant to this section, the rental agreement is enforceable by the landlord for the collection of rent for the remaining term of the rental agreement.

(d) Except as otherwise provided in this chapter, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or § 66-28-401. The landlord may recover reasonable attorney's fees for breach of contract and nonpayment of rent as provided in the rental agreement.

(e) The landlord may recover punitive damages from the tenant for willful destruction of property caused by the tenant or by any other person on the premises with the tenant's consent.

(f)(1) It is deemed to be material noncompliance and default by the tenant with the rental agreement, if the tenant:

(A) Misrepresents that there is a disability or disability-related need for the use of a service animal or support animal; or

(B) Provides documentation under § 66-28-406(c) that falsely states an animal is a service animal or support animal.

(2) As used in this subsection (f), "service animal" and "support animal" have the same meanings as the terms are defined in § 66-28-406(a).

(3) In the event of any violation under subdivision (f)(1), the landlord may terminate the tenancy and recover damages, including, but not limited to, reasonable attorney's fees.

(4) Only to the extent it conflicts with federal or state law, this subsection (f) does not apply to public housing units owned by a governmental entity.

Credits

1975 Pub.Acts, c. 245, § 4.201; 2011 Pub.Acts, c. 272, § 11, eff. Oct. 1, 2011; 2014 Pub.Acts, c. 593, §§ 1 to 3, eff. March 28, 2014; 2018 Pub.Acts, c. 960, § 2, eff. July 1, 2018; 2019 Pub.Acts, c. 236, § 4, eff. July 1, 2019.

Formerly § 64-2845.

Notes of Decisions (1)

In general

Debtor's government-subsidized residential lease was not terminated under Tennessee law, despite issuance of writ of restitution, and thus, debtor was entitled to assume the lease and her interest in it was protected by automatic stay, where detainer warrant had been resolved by agreed judgment which apparently contemplated continuation of original lease, thus requiring landlord to give debtor new notice of any intention to terminate and new opportunity to cure default under Tennessee law governing termination, landlord gave debtor no notice her preexplained two-week delay in payment was unacceptable, and debtor tendered full payment of amounts due prior to expiration of what would have been 30-day notice period if notice had been given. Bankr.Code, 11 U.S.C.A. §§ 362, 365, 541; T.C.A. § 66-28-505. In re Goodloe, 1986, 61 B.R. 1016.

T. C. A. § 66-28-506
§ 66-28-506. Dwelling; tenant failure to maintain

If there is noncompliance by the tenant with § 66-28-401 materially affecting health and safety that can be remedied by repair, replacement of a damaged item or cleaning, and the tenant fails to comply as promptly as conditions require in case of emergency or within fourteen (14) days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit an itemized bill for the actual and reasonable cost or the fair and reasonable value thereof as rent on the next date when periodic rent is due, or if the rental agreement has terminated, for immediate payment.

Credits

1975 Pub.Acts, c. 245, § 4.202.

Formerly § 64-2846.

T. C. A. § 66-28-507
§ 66-28-507. Tenant absence

(a) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of seven (7) days as required in § 66-28-404 and the tenant willfully fails to do so, the landlord may recover actual damages from the tenant.

(b) During any absence of the tenant in excess of seven (7) days, the landlord may enter the dwelling unit at times reasonably necessary.

(c) If the tenant abandons the dwelling unit, the landlord shall use reasonable efforts to rerent the dwelling unit at a fair rental. If the landlord rents the dwelling unit for a term beginning prior to the expiration of the rental agreement, the rental agreement is terminated as of the date of the new tenancy. If the tenancy is from month-to-month, or week-to-week, the term of the rental agreement for this purpose shall be deemed to be a month or a week, as the case may be.

Credits

1975 Pub.Acts, c. 245, § 4.203.

Formerly § 64-2847.

T. C. A. § 66-28-508
§ 66-28-508. Landlord right to terminate; waiver

If the landlord accepts rent without reservation and with knowledge of a tenant default, the landlord by such acceptance condones the default and thereby waives such landlord's right and is estopped from terminating the rental agreement as to that breach.

Credits

1975 Pub.Acts, c. 245, § 4.204.

Formerly § 64-2848.

Notes of Decisions (1)

Construction with federal law

Federal statute and regulations governing federally-subsidized housing for the elderly and disabled, requiring eviction if tenant, member of tenant's household, tenant's guest, or person under tenant's control engages in criminal activity that threatens other residents' health, safety, or right to peaceful enjoyment of premises, preempted provision of Tennessee Uniform Residential Landlord and Tenant Act stating that if landlord accepts rent without reservation and with knowledge of tenant's default, then landlord condones tenant's default and is estopped from terminating the lease based on that default; application of Tennessee statute would stand as obstacle to accomplishment of federal public policy of providing subsidized housing that is safe and crime-free for all tenants. Housing Act of 1959, § 202, 12 U.S.C.A. § 1701q; 24 C.F.R. § 5.859(a)(1, 2), Ross v. Broadway Towers, Inc., 2006, 228 S.W.3d 113, appeal denied, certiorari denied 128 S.Ct. 543, 552 U.S. 1019, 169 L.Ed.2d 389.

T. C. A. § 66-28-509
§ 66-28-509. Landlord liens
Effective: July 10, 2015

A contracted lien or security interest on behalf of the landlord in the tenant's household goods shall not be enforceable unless perfected by a Uniform Commercial Code filing with the secretary of state. All other liens are hereby expressly prohibited under this chapter. The landlord shall be responsible for releasing the lien at expiration or termination of the lease.

Credits

1975 Pub.Acts, c. 245, § 4.205.

Formerly § 64-2849.

T. C. A. § 66-28-510
§ 66-28-510. Termination; landlord remedies

If the rental agreement is terminated, the landlord may have a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement and reasonable attorney's fees.

Credits

1975 Pub.Acts, c. 245, § 4.206.

Formerly § 64-2850.

T. C. A. § 66-28-511
§ 66-28-511. Landlord recovery of possession

A landlord may not recover or take possession of the dwelling unit by action or otherwise, including willful diminution of services to the tenant by interrupting or causing the interruption of electric, gas, water or other essential service to the tenant, except in case of abandonment, surrender, or as permitted in this chapter.

Credits

1975 Pub.Acts, c. 245, § 4.207.

Formerly § 64-2851.

T. C. A. § 66-28-512

§ 66-28-512. Periodic tenancy; termination

Effective: October 1, 2011

(a) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least ten (10) days prior to the termination date specified in the notice.

(b) The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty (30) days prior to the periodic rental date specified in the notice.

(c) If a tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession, back rent and reasonable attorney's fees as well as any other damages provided for in the lease. If the tenant's holdover is willful and not in good faith, the landlord, in addition, may also recover actual damages sustained by the landlord, plus reasonable attorney's fees. If the landlord consents to the tenant's continued occupancy, § 66-28-201(c) shall apply.

Credits

1975 Pub.Acts, c. 245, § 4.301; 2011 Pub.Acts, c. 272, § 12, eff. Oct. 1, 2011.

Formerly § 64-2852.

Notes of Decisions (3)

Curing defaults

Chapter 13 debtor could cure default and assume residential lease where judgment for unlawful detainer had been entered prior to petition but no writ of possession has been served upon debtor; execution of writ of possession marks point after which debtor may not rehabilitate residential lease. Bankr.Code, 11 U.S.C.A. § 1301 et seq. In re Talley, 1986, 69 B.R. 219.

Unexpired lease that is in default cannot be assumed unless debtor cures all default or provides adequate assurance that defaults will be cured and future rentals will be paid. Bankr.Code, 11 U.S.C.A. § 365(b)(1). In re Talley, 1986, 69 B.R. 219.

Res judicata

Res judicata did not bar prospective vendor of real estate from filing detainer warrant alleging forcible entry and detainer (FED) or unlawful detainer by prospective purchasers, even though previous such action filed by prospective vendor was dismissed, where no evidence indicated that prior action was decided on merits, and prospective vendor testified that action was dismissed due to lack of requisite notice. T.C.A. §§ 28-18-102(a), 29-18-104, 66-28-512(b). Lewis v. Muchmore, 2000, 26 S.W.3d 632, appeal denied.

T. C. A. § 66-28-513
§ 66-28-513. Abuse of access; remedies

(a) If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access, or terminate the rental agreement. In either case, the landlord may recover actual damages and reasonable attorney's fees.

(b) If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct, or terminate the rental agreement. In either case, the tenant may recover actual damages and reasonable attorney's fees.

Credits

1975 Pub.Acts, c. 245, § 4.302.

Formerly § 64-2853.

T. C. A. § 66-28-514
§ 66-28-514. Retaliatory conduct
Effective July 10, 2015

(a) Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession because the tenant:

(1) Has complained to the landlord of a violation under § 66-28-301; or

(2) Has made use of remedies provided under this chapter.

(b)(1) Notwithstanding subsection (a), a landlord may bring an action for possession if:

(A) The violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or other person in the tenant's household or upon the premises with the tenant's consent;

(B) The tenant is in default in rent; or

(C) Compliance with the applicable building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit.

(2) The maintenance of the action does not release the landlord from liability under § 66-28-501(b).

Credits

1975 Pub.Acts, c. 245, § 5.101.

Formerly § 64-2854.

T. C. A. § 66-28-515
§ 66-28-515. Remedies; enforcement

(a) The remedies provided by this chapter shall be so administered that the aggrieved party may recover lawful damages. The aggrieved party has an obligation and duty to mitigate damages.

(b) Any right or obligation declared by this chapter is enforceable by legal action unless the provision declaring it specifies a different and limited effect.

Credits

1975 Pub.Acts, c. 245, § 1.105.

Formerly § 64-2855.

T. C. A. § 66-28-516
§ 66-28-516. Good faith obligation

Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

Credits

1975 Pub.Acts, c. 245, § 1.302.

Formerly § 64-2856.

T. C. A. § 66-28-517

§ 66-28-517. Violence or threats; landlord termination; domestic abuse; victim rights

Effective: July 1, 2020

(a) A landlord may terminate a rental agreement within three (3) days from the date written notice is received by the tenant if the tenant or any other person on the premises with the tenant's consent:

(1) Willfully or intentionally commits a violent act;

(2) Behaves in a manner which constitutes or threatens to be a real and present danger to the health, safety or welfare of the life or property of other tenants or persons on the premises;

(3) Creates a hazardous or unsanitary condition on the property that affects the health, safety or welfare or the life or property of other tenants or persons on the premises; or

(4) Refuses to vacate the premises after entering the premises as an unauthorized subtenant or other unauthorized occupant.

(b) The notice required by this section shall specifically detail the violation which has been committed and shall be effective only from the date of receipt of the notice by the tenant.

(c) Upon receipt of such written notice, the tenant shall be entitled to immediate access to any court of competent jurisdiction for the purpose of obtaining a temporary or permanent injunction against such termination by the landlord.

(d) Nothing in this section shall be construed to allow a landlord to recover or take possession of the dwelling unit by action or otherwise including willful diminution of services to the tenant by interrupting or causing interruption of electric, gas or other essential service to the tenant except in the case of abandonment or surrender.

(e) If the landlord's action in terminating the lease under this provision is willful and not in good faith, the tenant may in addition recover actual damages sustained by the tenant plus reasonable attorney's fees.

(f) The failure to bring an action for or to obtain an injunction may not be used as evidence in any action to recover possession of the dwelling unit.

(g)(1) If domestic abuse, as defined in § 36-3-601, is the underlying offense for which a tenancy is terminated, only the perpetrator may be evicted. The landlord shall not evict the victims, minor children under eighteen (18) years of age, or innocent occupants, any of whom occupy the subject premises under a lease agreement, based solely on the domestic abuse. Even if evicted or removed from the lease, the perpetrator shall remain financially liable for all amounts due under all terms and conditions of the present lease agreement.

(2) If a lease agreement is in effect at the time that the domestic abuse is committed, the landlord may remove the perpetrator from the lease agreement and require the remaining adult tenants to qualify for and enter into a new agreement for the remainder of the present lease term. The landlord shall not be responsible for any and all damages suffered by the perpetrator due to the bifurcation and termination of the lease agreement in accordance with this section.

(3) If domestic abuse, as defined in § 36-3-601, is the underlying offense for which tenancy could be terminated, the victim and all adult tenants shall agree, in writing, not to allow the perpetrator to return to the subject premises or any part of the community property, and to immediately report the perpetrator's return to the proper authority, for the remainder of the tenancy. A violation of such agreement shall be cause to terminate tenancy as to any victim and all other tenants.

(4) The rights under this section shall not apply until the victim has been judicially granted an order of protection against the perpetrator for the specific incident for which tenancy is being terminated, a copy of such order has been provided to the landlord, and the order:

(A) Provides for the perpetrator to move out or vacate immediately;

(B) Prohibits the perpetrator from coming by or to a shared residence;

(C) Requires that the perpetrator stay away from the victim's residence; or

(D) Finds that the perpetrator's continuing to reside in the rented or leased premises may jeopardize the life, health, and safety of the victim or the victim's minor children.

(5) Failure to comply with this section, or dismissal of an order of protection that allows application of this section, abrogates the rights provided to the victim, minor children, and innocent occupants under this section.
(6) The rights granted in this section shall not apply in any situation where the perpetrator is a child or dependent of any tenant.

(7) Nothing in this section shall prohibit the eviction of a victim of domestic abuse for non-payment of rent, a lease violation, or any violation of this chapter.

Credits

1983 Pub.Acts, c. 271, § 1; 2011 Pub.Acts, c. 272, § 13, eff. Oct. 1, 2011; 2012 Pub.Acts, c. 887, § 2, eff. May 9, 2012; 2016 Pub.Acts, c. 895, § 1, eff. July 1, 2016; 2020 Pub.Acts, c. 528, § 1, eff. July 1, 2020.

T. C. A. § 66-28-518
§ 66-28-518. Unauthorized vehicles; towing or removal
Effective July 1, 2011

(a) A landlord may have an unauthorized vehicle towed or otherwise removed from real property leased or rented by such landlord for residential purposes, upon giving ten (10) days written notice by posting the same upon the subject vehicle.

(b) A landlord may have a tenant's, occupant's, tenant's guest's, or trespasser's vehicle immediately towed or otherwise removed from such real property, without notice, if and when such person fails to comply with the landlord's permit parking policy as defined in the landlord's posted signage.

(c) A landlord may have a tenant's, occupant's, tenant's guest's, or trespasser's vehicle immediately towed or otherwise removed from such real property, without notice, for such person's failure to comply with the landlord's posted signage relative to traffic and parking restrictions, including, but not limited to, traffic lanes, fire lanes, fire hydrants, accessible parking areas for persons with disabilities, and/or the blocking of trash receptacles.

(d) The owner or lessee of a vehicle that has been removed pursuant to this section may make application to take possession of such vehicle and remove such vehicle from the place to which it has been removed or stored by paying the costs of removing such vehicle, plus the accrued towing and storage charges.

Credits

1999 Pub.Acts, c. 284, § 1, eff. July 1, 1999; 2011 Pub.Acts, c. 47, § 72, eff. July 1, 2011.

Notes of Decisions (1)

Parking rules signage

No particular wording is required by § 66-28-518(b) to appear in the landlord's posted signs announcing the landlord's parking rules; any sign giving reasonable notice of the landlord's parking rules will suffice. Op.Atty.Gen. No. 09-170, Oct. 26, 2009, 2009 WL 3666436.

T. C. A. § 66-28-519

§ 66-28-519. Damaged vehicles; towing or removal

Effective: July 1, 2012

(a) A landlord may have the following vehicles towed or otherwise removed from real property leased or rented by such landlord for residential purposes, upon giving a ten-day written notice by posting the same upon the subject vehicle:

(1) A vehicle with one (1) or more flat or missing tires;

(2) A vehicle unable to operate under its own power;

(3) A vehicle with a missing or broken windshield or more than one (1) broken or missing window;

(4) A vehicle with one (1) or more missing fenders or bumpers; or

(5) A motor vehicle that has not been in compliance with all applicable local or state laws relative to titling, licensing, operation, and registration for more than thirty (30) days.

(b) If the owner of the vehicle is not present, then prior to removing the vehicle pursuant to this section, the person, firm or entity that actually tows the vehicle shall notify local law enforcement of the vehicle identification number (VIN), registration information, license plate number and description of the vehicle. Local law enforcement shall keep a record of all such information which shall be available for public inspection.

Credits

1999 Pub.Acts, c. 284, § 1, eff. July 1, 1999; 2011 Pub.Acts, c. 244, § 3, eff. July 1, 2011; 2012 Pub.Acts, c. 834, § 1, eff. July 1, 2012.

T. C. A. § 66-28-520
§ 66-28-520. Nuisance vehicles; towing or removal

Any nuisance vehicle located on or about the premises of real property that has been leased or rented for residential purposes may be towed or otherwise removed from such premises by the landlord upon giving twenty-four (24) hours written notice by posting the same upon the subject vehicle.

Credits

1999 Pub.Acts, c. 284, § 1, eff. July 1, 1999.

T. C. A. § 66-28-521
§ 66-28-521. Utility services
Effective: October 1, 2011

If a written rental agreement requires the tenant to have utility services placed in the tenant's name and the tenant fails to do so within three (3) days of occupancy of the rented premises, the landlord may have such utility services terminated if the existing utility service is in the name of the landlord.

Credits
2003 Pub.Acts, c. 318, § 1, eff. June 11, 2003; 2011 Pub.Acts, c. 272, §§ 14, 15, eff. Oct. 1, 2011.

T. C. A. § 66-28-522
§ 66-28-522. Manager testimony
Effective: July 1, 2021

Notwithstanding a rental agreement to the contrary, a manager may testify against a tenant under this chapter in the same manner as a landlord or owner.

Credits

2021 Pub.Acts, c. 100, § 1, eff. July 1, 2021.

Section 3
Non-URLTA

NON-URLTA
T.C.A. § 66-7-101 ET SEQ.

T. C. A. § 66-7-101

§ 66-7-101. Writing requirement

Leases for more than three (3) years shall be in writing, and, to be valid against any person other than the lessor, the lessor's heirs and devisees, and persons having actual notice thereof, shall be proved and registered as provided in chapters 22-24 of this title.

Credits

1841-1842 Acts, c. 12, § 4.

Formerly 1858 Code, § 2002; Shannon's Code, § 3663; 1932 Code, § 7191; § 64-701.

Notes of Decisions (6)

Construction with other laws

Shannon's Code, § 3142, subsec. 4, provides that no action shall be brought to charge one on a lease of land for a longer term than one year, unless there be some memorandum thereof signed by the party to be charged; and subsection 5 contains the same prohibition of suit on any agreement not to be performed within one year from the "making thereof." Held, that a lease is governed by subsection 4, and a parol lease for a year, though the term is to commence in the future, is not within the statute. Hayes v. Arrington, 1902, 68 S.W. 44, 108 Tenn. 494, 24 Pickle 494.

That such a construction of the statute might operate to the injury of a subsequent vendee is not sufficient to call for a construction placing the lease within the statute, since it is provided by Shannon's Code, § 3663, that leases for more than three years shall be in writing, and, to be valid, against any person other than the lessor, his heirs and devisees, and persons having actual notice thereof, shall be proved and registered in a manner therein provided. Hayes v. Arrington, 1902, 68 S.W. 44, 108 Tenn. 494, 24 Pickle 494.

Unregistered leases

Where a lease for more than three years is not registered as provided by statute, and a junior lease is registered, it may become fastened upon the property and defeat the senior lease but if neither lease is registered they retain their priority and the junior lease cannot become fastened upon the property to defeat the senior lease. Langos v. Jacobs, 1928, 7 Tenn.App. 206.

Assignment of rent

Advance payment of rent under lease for not more than three years is valid without registration against bona fide purchaser of estate of lessor. Shannon's Code, §§ 3663, 3697, 3749. Schmid v. Baum's Home of Flowers, 1931, 37 S.W.2d 105, 162 Tenn. 439, 75 A.L.R. 261.

Lessor's assignment of rent for one year to which he is entitled under registered lease is valid without registration. Shannon's Code, §§ 3663, 3697, 3749. Schmid v. Baum's Home of Flowers, 1931, 37 S.W.2d 105, 162 Tenn. 439, 75 A.L.R. 261.

Assignment of right to future rents to accrue beyond period of three years is effective only from date of its registration as against innocent purchasers. Shannon's Code, §§ 3697, 3749. Schmid v. Baum's Home of Flowers, 1931, 37 S.W.2d 105, 162 Tenn. 439, 75 A.L.R. 261.

T. C. A. § 66-7-102

§ 66-7-102. Buildings; injury; effect

(a) Where any building which is leased or occupied is destroyed or so injured by the elements, or any other cause, as to be untenantable and unfit for occupancy, and no express agreement to the contrary has been made in writing, the lessee or occupant may, if the destruction or injury occurred without fault or neglect by the lessee, surrender possession of the premises, without liability to the lessor or owner for rent for the time subsequent to the surrender.

(b) A covenant or promise by the lessee to leave or restore the premises in good repair shall not have the effect to bind the lessee to erect or pay for such buildings as may be so destroyed, unless in respect of the matter of loss or destruction there was neglect or fault on the lessee's part, or unless the lessee has expressly stipulated in writing to be so bound.

Credits

Formerly 1932 Code, §§ 7619, 7620; §§ 64-702, 64-703.

Notes of Decisions (3)

Covenants and agreements as to repairs and alterations

Existence of tenant's statutory right to surrender premises and to be relieved of any further rental payments upon total destruction of building by fire did not, in and of itself, relieve lessor of a covenant to rebuild or replace. T.C.A. §§ 64-702, 64-703. Evco Corp. v. Ross, 1975, 528 S.W.2d 20.

Negotiability of bills and notes

Under statute providing that lessee would not be liable for rent subsequent to surrender of premises which had become untenantable, notes reciting that they were for rent of premises described for named future months held not negotiable, since obligation in note was made conditional by statute. Code 1932, § 7619. Robbins v. Life Ins. Co. of Virginia, 1936, 89 S.W.2d 340, 169 Tenn. 507, 104 A.L.R. 1376.

Condition of premises at termination of tenancy

Where lease provided that lessee would return premises at end of term in good repair, ordinary wear and tear and damage by fire being specifically excepted, such exception was intended to cover damages by fire in the ordinary sense of the word, so that where sublessee intentionally set fire to and destroyed buildings there was a breach of the covenant to return the premises in good repair and lessee was liable for damages. T.C.A. §§ 64-702, 64-703. Bishop v. Associated Transport, Inc., 1959, 332 S.W.2d 696, 46 Tenn.App. 644

T. C. A. § 66-7-103

§ 66-7-103. Oil and gas; maximum term

Effective: July 10, 2015

(a)(1) Any lease of oil or natural gas rights or any other conveyance of any kind separating such rights from the freehold estate of land shall expire at the end of ten (10) years from the date executed, unless, at the end of such ten (10) years, natural gas or oil is being produced from such land for commercial purposes. If, at any time after the ten-year period, commercial production of oil or natural gas is terminated for a period of six (6) months, all such rights shall revert to the owner of the estate out of which the leasehold estate was carved. No assignment or agreement to waive this subsection (a) shall be valid or enforceable.

(2) This subsection (a) shall not be construed to affect the validity or the expiration date of any lease or other instrument executed prior to March 16, 1939, nor shall it be construed to affect the validity or the expiration date of any lease, conveyance or other instrument insofar as it may convey underground natural gas storage rights, or otherwise separate such rights from the freehold estate, whenever executed.

(b)(1) For a period of one (1) year after the ten-year period provided for in subsection (a) has expired, "production," as used in subsection (a), includes the actual production of minerals under any lease hereof or by the owner of any mineral interest, or when operations are being conducted by any owner of a lease or mineral interest for injection, withdrawal, storage, or disposal of water, gas, or other fluid substances, or when rentals or royalties are being paid by the owner of such leases for the purpose of delaying or enjoying the use of exercise of the rights thereunder or when the same is being carried out on any tract with which such leasehold interest may be unitized or pooled for production purposes. During the one-year period provided for in this subsection (b), any act by the owner of any leasehold or mineral interest pursuant to or authorized by the instrument creating such interest shall be effective to continue in force all rights granted by such instrument, notwithstanding subsection (a).

(2) This subsection (b) applies to a drilling unit of no more than the number of acres provided for under the pooling clause of the lease and provided there is compliance with the rules of the Tennessee oil and gas board as set forth in paragraph 1040-2-4-01 of such rules (well spacing).

Credits

1939 Pub.Acts, c. 89, §§ 1 to 3; 1963 Pub.Acts, c. 69, § 1; 1978 Pub.Acts, c. 945, §§ 1, 2.

Formerly 1950 Code Supp., § 7620.1; Williams' Code, § 7620.1; § 64-704.

Notes of Decisions (2)

Grants and reservation of minerals and mining rights

Where defendants obtained mineral interest via deed their interest was a freehold which included oil and gas and was not an "oil and gas lease" within meaning of statute providing for expiration of an oil or gas lease ten years after execution unless gas or oil was produced for commercial purposes. T.C.A. § 64-704 (now § 66-7-103). Layne v. Baggenstoss, 1982, 640 S.W.2d 1.

Necessary and indispensable parties

Where landowner which had entered into an oil and gas lease covering approximately 53,000 acres of land sought a declaration that lease had expired by its own terms because of a failure to produce oil or gas therefrom, original lessees and individual to whom the entire lease was assigned by original lessees were necessary parties to suit, but it was not necessary to join the some 552 individuals or legal entries who now or at one time claimed some interest in leased premises because of assignments and subassignments of interests in lease. T.C.A. §§ 23-1107, 64-704. David v. Coal Creek Min. & Mfg. Co., 1970, 461 S.W.2d 29, 224 Tenn. 636.

T. C. A. § 66-7-104

§ 66-7-104. Physically disabled persons; housing access

(a) Totally or partially blind persons and other physically disabled persons shall be entitled to full and equal access, as other members of the general public, to all housing accommodations offered for rent, lease or compensation in this state, subject to the conditions and limitations established by law and applicable to all persons.

(b) "Housing accommodations" means any real property or portion thereof which is used to occupy or is intended, arranged or designed to be used or occupied, as the home, residence or sleeping place of one (1) or more human beings, but does not include any single family residence, the occupants of which rent, lease or furnish for compensation not more than one (1) room in the residence.

(c)(1) Nothing in this section shall require any person renting, leasing, or providing for compensation any real property to modify such property in any way or manner or to provide a higher degree of care for a totally blind or partially blind person or other physically disabled person than for a person who is not blind or disabled.

(2)(A) Notwithstanding subdivision (c)(1), any person renting, leasing, or providing for compensation any real property that is three (3) or more stories tall shall give priority in access to housing units on floors one (1) and two (2) of such property to physically disabled persons whose disability would prevent such persons from having reasonable access to units located on higher floors; provided, that the person shall not be required to seek out physically disabled occupants or forego occupancy of the unit for any period of time if a physically disabled occupant is not available. Nothing in this subdivision (c)(2) shall prevent the lessor from using or applying other factors in determining whether or not to rent to a disabled person.

(B) A violation of subdivision (c)(2)(A) is a Class C misdemeanor punishable only by a fine not to exceed fifty dollars ($50.00).

(d) Every totally blind or partially blind person who has a guide dog, or who obtains a guide dog, shall be entitled to full and equal access to all housing accommodations included within subsection (a) or any accommodations provided for in §§ 71-4-201, 71-4-202 and this section, and such person shall not be required to pay extra compensation for such guide dog, but shall be liable for any damages done to the premises by such animal.

Credits

1972 Pub.Acts, c. 480, § 3; 2005 Pub.Acts, c. 215, § 1, eff. May 27, 2005.

Formerly § 64-705.

T. C. A. § 66-7-105

§ 66-7-105. Obscene bookstores, movie houses and live performances

Hereby declared against public policy and unenforceable are all leases or rental contracts, whether or not in writing, on real estate or buildings which are used for the purpose of sale, display, distribution or exhibition of obscene live performances or obscene material of any other kind including, but not limited to, the business of operating a store or house for the sale, or the commercial display, distribution or exhibition of an obscene book or magazine or other printed matter, motion pictures or peep shows. Occupants claiming the right to possess, use or occupy any building or real estate because of such an unenforceable lease or rental contract shall be immediately subject to eviction for unlawful detainer thereof in a suit by the owner of the building or real estate or by the state or by the county or by the incorporated municipality in which the building or real estate is located. Any person, firm, partnership or corporation that knowingly leases or rents any real estate or building to any person, firm, partnership or corporation for such purpose shall not have standing to use the courts or legal processes to enforce such lease or rental contract or to collect rentals or any other consideration because of such an unenforceable lease or rental contract.

Credits

1973 Pub.Acts, c. 184, § 2; 1996 Pub.Acts, c. 1071, § 1, eff. May 15, 1996.

Formerly § 64-706.

T. C. A. § 66-7-106

§ 66-7-106. Blind persons

Effective: July 10, 2015

(a) Any legally blind person in this state whose loss of sight necessitates a guide dog for mobility purposes, which has been obtained from a recognized school of training for such purposes, may not be denied the right to lease an apartment or other types of dwellings as a consequence of having a guide dog.

(b) Because the guide dog is essential to the mobility of its master, no deposit may be required to be paid, with respect to the dog, by the legally blind person to the owner, manager, landlord or agent of any such attendance.

(c) No restrictions may be imposed upon the legally blind person regarding the whereabouts of the animal so long as its master is in attendance.

(d) Any owner, manager, landlord or agent who refuses to lease living space to any legally blind person because of a guide dog, or violates this section, commits a Class C misdemeanor.

Credits

1982 Pub.Acts, c. 951, § 1; 1989 Pub.Acts, c. 591, § 113.

T. C. A. § 66-7-107

§ 66-7-107. Termination of occupant's tenancy for knowing use or occupation in violation of §§ 39-17-417, 39-13-513, or 39-13-515

(a)(1) An occupant's tenancy may be terminated where the premises or the area immediately surrounding the premises is knowingly used or occupied in whole or in part to violate § 39-13-513, § 39-13-515 or § 39-17-417.

(2) The identity of any person who provides evidence or other information that results in an eviction or other termination of residency pursuant to this section shall be kept confidential and shall not be made a public record by the law enforcement agency or the district attorney general.

(b) The district attorney general for the district in which the real property is located may serve personally upon the owner or landlord of the premises so used or occupied, or upon the owner's or landlord's agent, or may send by registered return receipt or certified return receipt mail, a written notice requiring the owner or landlord to inform such district attorney general in writing of the owner's or landlord's intent to diligently and in good faith seek the eviction of the tenants or occupants so using or occupying the premises. If the owner or landlord or the owner's or landlord's agent does not so inform such district attorney general in writing within five (5) days of receiving written notice or, having so done, does not in good faith diligently prosecute such eviction, the district attorney general may bring a proceeding under this section in general sessions court, specifically including any general sessions court designated as an environmental court, or circuit court for such eviction as though the district attorney general was the owner or landlord of the premises, and such proceeding shall have precedence over any similar proceeding thereafter brought by such owner or landlord or to a proceeding previously brought by such owner or landlord and not prosecuted diligently and in good faith. The person in possession of the property and the owner or landlord shall be made respondents in such a proceeding.

(c) A court granting relief pursuant to this section may order, in addition to any other costs provided by law, the payment by the respondent or respondents of reasonable attorney fees and the prepaid costs of the proceeding to the district attorney general. In such cases, multiple respondents are jointly and severally liable for any payment so ordered. Any costs collected shall be remitted to the office of the district attorney general, and any attorney fees collected shall be remitted to the general fund of the county where the proceeding occurred.

(d) A proceeding brought under this section for possession of the premises does not preclude the owner or landlord from recovering monetary damages from the tenants or occupants of such premises in a civil action.

(e) The owner or landlord of the real property is obligated to pay the costs required to physically remove the tenant's personal belongings from the rental property in compliance with an eviction order of the court in all eviction proceedings brought under this section by the district attorney general; such costs not to exceed two hundred dollars ($200) for each such eviction order.

Credits

1997 Pub.Acts, c. 203, § 1, eff. July 1, 1997; 1998 Pub.Acts, c. 703, § 1, eff. July 1, 1998; 1998 Pub.Acts, c. 885, § 1, eff. May 6, 1998; 1999 Pub.Acts, c. 319, § 1, eff. May 26, 1999; 2000 Pub.Acts, c. 591, § 1, eff. March 14, 2000; 2003 Pub.Acts, c. 133, § 1, eff. May 19, 2003.

T. C. A. § 66-7-108

§ 66-7-108. Commercial or industrial real property; lease disclosure statement; remedies for misrepresentation

(a) At the request of a prospective tenant, the owner of commercial or industrial real property where the commercial property space is one thousand five hundred square feet (1,500 sq. ft.) or less, and the industrial real property is five thousand square feet (5,000 sq. ft.) or less, shall furnish to such prospective tenant a signed disclosure statement detailing the extent to which such real property is understood by the owner to be in compliance with local and state fire, plumbing, and electrical codes for a building of the type under construction. If, at the time such disclosure is made, an item of information required to be disclosed is unknown or not available to the owner, the owner may state that such information is unknown.

(b) If the owner knowingly misrepresents information required to be disclosed by this section, the lessee's remedies, at the option of the lessee, for such misrepresentation on the disclosure statement shall be either:

(1) An action for actual damages suffered as a result of known defects existing in the property as of the date of execution of the lease. Any action brought under this subdivision (b)(1) shall be commenced within one (1) year from the date the lessee received the disclosure statement or the date of occupancy, whichever occurs first; or

(2) Termination of the lease.

(c) Nothing in this section shall affect other remedies at law or equity otherwise available against an owner in the event of an owner's intentional or willful misrepresentation of the condition of the subject property.

Credits

1999 Pub.Acts, c. 122, §§ 1 to 3, eff. May 12, 1999.

T. C. A. § 66-7-109

§ 66-7-109. Termination of tenancy--grounds; notice to be provided

Effective: July 1, 2021

(a)(1) Except as provided in this section, fourteen (14) days' notice by a landlord shall be sufficient notice of termination of tenancy for the purpose of eviction of a residential tenant, if the termination of tenancy is for one of the following reasons:

(A) Tenant neglect or refusal to pay rent that is due and is in arrears, upon demand;

(B) Damage beyond normal wear and tear to the premises by the tenant, members of the household, or guests; or

(C) The tenant or any other person on the premises with the tenant's consent willfully or intentionally commits a violent act or behaves in a manner which constitutes or threatens to be a real and present danger to the health, safety or welfare of the life or property of other tenants, the landlord, the landlord's representatives or other persons on the premises.

(2) If the notice of termination of tenancy is given for one of the reasons set out in subdivision (a)(1)(A) or (a)(1)(B) and the breach is remediable by repairs or the payment of rent or damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice from the landlord, the rental agreement will not terminate. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six (6) months, the landlord may terminate the rental agreement upon at least fourteen (14) days' written notice specifying the breach and the date of termination of the rental agreement.

(b) For all other defaults in the lease agreement, a thirty (30) day termination notice from the date such notice is given by the landlord shall be required for the purpose of eviction of a residential tenant.

(c) This section shall not apply to a tenancy where the rental period is for less than fourteen (14) days.

(d) Notwithstanding § 66-7-107 or this section to the contrary, three (3) days' notice by a landlord is sufficient notice of termination of tenancy to evict a residential tenant in a housing authority created pursuant to title 13, chapter 20, part 4 or 5, or a residential tenant, who is not mentally or physically disabled, in a rental property located in any county not governed by the Uniform

Residential Landlord and Tenant Act, compiled in chapter 28 of this title, if the tenant, in either case, or any other person on the premises with the tenant's consent, willfully or intentionally:

(1) Commits a violent act;

(2) Engages in any drug-related criminal activity; or

(3) Behaves in a manner that constitutes or threatens to be a real and present danger to the health, safety, or welfare of the life or property of other tenants, the landlord, the landlord's representatives, or other persons on the premises.

(e)(1) If domestic abuse, as defined in § 36-3-601, is the underlying offense for which a tenancy is terminated, only the perpetrator may be evicted. The landlord shall not evict the victims, minor children under eighteen (18) years of age, or innocent occupants, any of whom occupy the subject premises under a lease agreement, based solely on the domestic abuse. Even if evicted or removed from the lease, the perpetrator shall remain financially liable for all amounts due under all terms and conditions of the present lease agreement.

(2) If a lease agreement is in effect, the landlord may remove the perpetrator from the lease agreement and require the remaining adult tenants to qualify for and enter into a new agreement for the remainder of the present lease term. The landlord shall not be responsible for any and all damages suffered by the perpetrator due to the bifurcation and termination of the lease agreement in accordance with this section.

(3) If domestic abuse, as defined in § 36-3-601, is the underlying offense for which tenancy could be terminated, the victim and all adult tenants shall agree, in writing, not to allow the perpetrator to return to the subject premises or any part of the community property, and to immediately report the perpetrator's return to the proper authority, for the remainder of the tenancy. A violation of such agreement shall be cause to terminate tenancy as to the victim and all other tenants.

(4) The rights under this section shall not apply until the victim has been judicially granted an order of protection against the perpetrator for the specific incident for which tenancy is being terminated, a copy of such order has been provided to the landlord, and the order:

(A) Provides for the perpetrator to move out or vacate immediately;

(B) Prohibits the perpetrator from coming by or to a shared residence;

(C) Requires that the perpetrator stay away from the victim's residence; or

(D) Finds that the perpetrator's continuing to reside in the rented or leased premises may jeopardize the life, health, and safety of the victim or the victim's minor children.

(5) Failure to comply with this section, or dismissal of an order of protection that allows application of this section, abrogates the rights provided to the victim, minor children, and innocent occupants under this section.

(6) The rights granted in this section shall not apply in any situation where the perpetrator is a child or dependent of any tenant.

(7) Nothing in this section shall prohibit the eviction of a victim of domestic abuse for non-payment of rent, a lease violation, or any violation of this chapter.

(f) Three (3) days' notice by a landlord is sufficient notice of termination of tenancy for the purpose of eviction of an unauthorized subtenant or other unauthorized occupant, if the termination of tenancy is for refusal by the unauthorized subtenant or other unauthorized occupant to vacate the premises.

(g) Nothing in this section shall apply to rental property located in any county governed by the Uniform Residential Landlord and Tenant Act.

(h) Notwithstanding a rental agreement to the contrary, a manager may testify against a tenant under this chapter in the same manner as a landlord or owner.

Credits

1999 Pub.Acts, c. 451, §§ 1, 2, eff. July 1, 1999; 2007 Pub.Acts, c. 75, § 1, eff. July 1, 2007; 2015 Pub.Acts, c. 172, §§ 1, 2, eff. April 16, 2015; 2016 Pub.Acts, c. 895, § 2, eff. July 1, 2016; 2018 Pub.Acts, c. 960, § 1, eff. July 1, 2018; 2019 Pub.Acts, c. 236, § 2, eff. July 1, 2019; 2020 Pub.Acts, c. 528, § 2, eff. July 1, 2020; 2021 Pub.Acts, c. 100, § 3, eff. July 1, 2021.

T. C. A. § 66-7-110

§ 66-7-110. Person with a physical disability; termination of rental lease

A person with a physical disability shall be permitted to terminate a rental lease relative to such person's primary residence without incurring penalties or being obligated to pay rent after ceasing to occupy the property if such person is accepted as a resident of a public housing facility, unless the person's current landlord has made significant modifications to the residence to address issues of accessibility for persons with a physical disability. The person with a physical disability who terminates a rental lease pursuant to this section shall present written evidence of the public housing facility acceptance to the rental leaseholder and the rental leaseholder shall provide written acknowledgement of the lease termination to the lessee. For the purposes of this section, a "person with a physical disability" means a person who meets the standard for being "permanently and totally disabled" under § 71-4-1102.

Credits

2001 Pub.Acts, c. 169, § 1, eff. July 1, 2001; 2011 Pub.Acts, c. 47, § 70, eff. July 1, 2011.

T. C. A. § 66-7-111

§ 66-7-111. Tenant requests relating to service or support animals; supporting documentation; liability for misrepresentation

Effective: July 1, 2019

(a) As used in this section:

(1) "Disability" means:

(A) A physical or mental impairment that substantially limits one (1) or more major life activities;

(B) A record of an impairment described in subdivision (a)(1)(A); or

(C) Being regarded as having an impairment described in subdivision (a)(1)(A);

(2) "Health care" means any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition;

(3) "Healthcare provider" means a person who is licensed, certified, or otherwise authorized or permitted by the laws of any state to administer health care in the ordinary course of business or practice of a profession;

(4) "Reliable documentation" means written documentation provided by:

(A) A healthcare provider with actual knowledge of an individual's disability;

(B) An individual or entity with a valid, unrestricted license, certification, or registration to serve persons with disabilities with actual knowledge of an individual's disability; or

(C) A caregiver, reliable third party, or a governmental entity with actual knowledge of an individual's disability;

(5) "Service animal" means a dog or miniature horse that has been individually trained to work or perform tasks for an individual with a disability; and

(6) "Support animal" means an animal selected to accompany an individual with a disability that has been prescribed or recommended by a healthcare provider to work, provide assistance, or perform tasks for the benefit of the individual with a disability, or provide emotional support that alleviates one (1) or more identified symptoms or effects of the individual's disability.

(b) A tenant or prospective tenant with a disability who requires the use of a service animal or support animal may request an exception to a landlord's policy that prohibits or limits animals or pets on the premises or that requires any payment by a tenant to have an animal or pet on the premises.

(c) A landlord who receives a request made under subsection (b) from a tenant or prospective tenant may ask that the individual, whose disability is not readily apparent or known to the landlord, submit reliable documentation of a disability and the disability-related need for a service animal or support animal. If the disability is readily apparent or known but the disability-related need for the service animal or support animal is not, then the landlord may ask the individual to submit reliable documentation of the disability-related need for a service animal or support animal.

(d) A landlord who receives reliable documentation under subsection (c) may verify the reliable documentation. However, nothing in this subsection (d) authorizes a landlord to obtain confidential or protected medical records or confidential or protected medical information concerning a tenant's or prospective tenant's disability.

(e) A landlord may deny a request made under subsection (b) if a tenant or prospective tenant fails to provide accurate, reliable documentation that meets the requirements of subsection (c), after the landlord requests the reliable documentation.

(f)(1) It is deemed to be material noncompliance and default by the tenant with the rental agreement, if the tenant:

(A) Misrepresents that there is a disability or disability-related need for the use of a service animal or support animal; or

(B) Provides documentation under subsection (c) that falsely states an animal is a service animal or support animal.

(2) In the event of any violation under subdivision (f)(1), the landlord may terminate the tenancy and recover damages, including, but not limited to, reasonable attorney's fees.

(g) Notwithstanding any other law to the contrary, a landlord is not liable for injuries by a person's service animal or support animal permitted on the premises as a reasonable accommodation to assist the person with a disability pursuant to the Fair Housing Act, as amended, (42 U.S.C. §§ 3601 et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.); Section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. § 701); or any other federal, state, or local law.

(h) Only to the extent it conflicts with federal or state law, this section does not apply to public housing units owned by a governmental entity.

Credits

2019 Pub.Acts, c. 236, § 3, eff. July 1, 2019.

T. C. A. § 66-7-112

§ 66-7-112. Victims of domestic abuse, sexual assault, or stalking--request to terminate lease; when permitted; notice to landlord

Effective: July 1, 2021

(a) As used in this section:

(1) "Domestic abuse victim" has the same meaning as defined in § 36-3-601;

(2) "Household member" means a member of the tenant's family who lives in the same household as the tenant;

(3) "Sexual assault victim" has the same meaning as defined in § 36-3-601; and

(4) "Stalking victim" has the same meaning as defined in § 36-3-601.

(b)(1) A tenant who meets the requirements established in this subsection (b) may terminate a residential rental or lease agreement entered into or renewed on or after July 1, 2021, upon the tenant providing the landlord with written notice stating that the tenant or household member is a domestic abuse victim, sexual assault victim, or stalking victim, regardless of whether the victim is an adult or a child. In order for a tenant to terminate the tenant's rights and obligations under the rental or lease agreement and vacate the dwelling without liability for future rent and early termination penalties or fees, the tenant must provide the landlord with:

(A) Written notice requesting release from the rental or lease agreement;

(B) A mutually agreed upon release date within the next thirty (30) days from the date of the written notice; and

(C) One (1) of the following:

(i) A copy of a valid order of protection issued or extended pursuant to § 36-3-605, following a hearing at which the court found by a preponderance of the evidence that the tenant or household member is a domestic abuse victim, sexual assault victim, or stalking victim, regardless of whether the victim is an adult or child; or

(ii) Documentation evidencing a criminal charge of domestic abuse, sexual assault, or stalking, based on a police report reflecting that the tenant or household member was subject to domestic abuse, sexual assault, or stalking, regardless of whether the alleged victim is an adult or a child.

(2) The documentation the tenant offers in support of the termination request must be dated no more than sixty (60) days prior to the tenant's notice to the landlord.

(3)(A) Unless otherwise required by law or a court of competent jurisdiction, a landlord shall not reveal any identifying information concerning a tenant who has terminated a rental or lease agreement pursuant to this subsection (b) without the written consent of the tenant.

(B) As used in this subdivision (b)(3), "identifying information" means any information that could reasonably be used to locate the former tenant or household member, including a home or work address, telephone number, or social security number.

(4) The tenant shall vacate the premises within thirty (30) days of giving notice to the landlord or at another time as may be agreed upon by the landlord and the tenant.

(c) A tenant terminating the rental or lease agreement pursuant to this section is responsible for:

(1) The rent payment for the full month in which the tenancy terminates; and

(2) The previous obligations outstanding on the termination date.

(d) This section does not:

(1) Release other parties to the rental or lease agreement from the obligations under the rental or lease agreement;

(2) Authorize the landlord to terminate the tenancy and cause the eviction of a residential tenant solely because the tenant or a household member is a domestic abuse victim, sexual assault victim, or stalking victim, regardless of whether the victim is an adult or child; or

(3) Authorize the landlord or tenant, by agreement, to waive or modify any provision of this section other than subdivision (b)(4).

Credits

2021 Pub.Acts, c. 293, § 1, eff. July 1, 2021.

Section 4

Case Law

Section 4 – Case Law

CASES:

- *Cole v. Wyndchase Aspen Grove Acquisition Corp.,* No. 3:05-0558, 2006 WL 2827452 (M.D. Tenn. Sept. 28, 2006)
- *Crawford v. Buckner,* 839 S.W.2d 754 (Tenn. 1992)
- *Hall v. Houston,* No. M2002-01371-COA-R3-CV, 2003 WL 21688578 (Tenn. Ct. App. July 21, 2003)
- *Johnson v. Hopkins,* 432 S.W.3d 840 (Tenn. 2013)
- *McKeever v Matlock,* No. M2004-01846-COA-R3-CV, 2005 WL 2477526 (Tenn. Ct. App. Oct. 6, 2005)
- *Mora v. Vincent,* 2017 WL 1372862 (Tenn. Ct. App. Apr. 13, 2017)
- *Ross v. Broadway Towers*, 228 S.W.3d 113 (Tenn. Ct. App. 2006).
- *Ruff v. Reddoch Mgmt., LLC,* No. M2010-02609-COA-R3-CV, 2011 WL 5999047 (Tenn. Ct. App. Nov. 30, 2011) URLTA
- *Tennessee Homes v. Dalton L. Welch,* No. M2021-01383-COA-R3-CV, 2022 WL 3332662 (Tenn. Ct. App. August 12, 2022)
- *Thompson v. Groves,* No. W2012-01764-COA-R3-CV, 2013 WL 5433479 (Tenn. Ct. App. Sept. 26, 2013)
- *Wessington House Apartments v. Clinard,* No. M1999-010290COA-R-CV, 2001 WL 605105 (Tenn. Ct. App. June 5, 2001).
- *West v. West*, No. E2020000780-COA-R3-CV, 2021 WL 1426950 (Tenn. Ct. App. April 15, 2021)

Cole v. Wyndchase Aspen Grove Acquisition Corp.

No. 3:05-0558, 2006 WL 2827452 (M.D. Tenn. 2006)

Issue:

Exculpatory Clauses Void

2006 WL 2827452
Only the Westlaw citation is currently available.
United States District Court,
M.D. Tennessee,
Nashville Division.

Sarah COLE, Plaintiff,

v.

WYNDCHASE ASPEN GROVE ACQUISITION CORPORATION, Defendant.

No. 3:05-0558.
|
Sept. 28, 2006.

Attorneys and Law Firms

Mark M. Mizell, Thomas Holland McKinnie, Jr., McKinnie & Moore, PLC, Franklin, TN, for Plaintiff.

S. Morris Hadden, Hunter, Smith & Davis LLP, Kingsport, TN, for Defendant.

MEMORANDUM

ALETA A. TRAUGER, District Judge.

***1** This matter comes before the court on a Motion for Summary Judgment filed by the defendant (Docket No. 22), to which the plaintiff has responded (Docket No. 24), and the defendant has replied (Docket No. 26). For the reasons discussed herein, the defendant's motion will be denied.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Plaintiff Sarah Cole rented an apartment from defendant Wyndchase Aspen Grove Acquisition Corporation ("Wyndchase") from January 2002 through early October 2004.[1] During this period of tenancy, water leaked into the apartment through the ceiling in several different rooms, allegedly due to problems with the building's sprinkler system. In addition, at some point, water ran out of the air-conditioning vent in the hallway and into a wall, soaking that wall and the carpet below. The defendant painted over the water stains on the ceiling and took other actions, such as bringing in fans and pulling up the carpet, in an attempt to dry out the apartment.

In August 2003, Ms. Cole began to feel ill. First, Ms. Cole experienced a lack of energy; later, she suffered from additional symptoms such as shortness of breath, inability to concentrate, burning eyes, tingling in her extremities, and pain in her teeth, jaw, and sinus areas. Ms. Cole saw a physician to determine the cause of these symptoms and underwent tests for diabetes, mononucleosis, and allergies, all of which returned negative.

On January 24, 2004, despite her illness, Ms. Cole signed a new lease agreement, renewing her tenancy in the Wyndchase building. Later that year, Ms. Cole was informed by her physician that her illness might be caused by mold in her apartment. The plaintiff reports that she told an employee of the defendant that she thought there might be mold in the apartment but that the employee had insisted there was no such mold, only "dust in the vents." (Docket No. 1, Ex. 2 at ¶ 5.) In July of that year, the defendant had a sample from her apartment tested for mold, and in August, the test returned positive, indicating that mold existed at such high levels that occupation of the apartment was hazardous. Additionally, at some point, Ms. Cole's parents visited her in Nashville and, out of concern for her illness, took samples from her apartment back to their home in Houston, Texas, to be tested for mold. (Docket No. 23, Ex. 9 at p. 2.) The samples tested positive. *(Id.* at p. 4.)

The plaintiff alleges that her parents visited during the summer of 2004 and that the test results came in during July or August of that year (Docket No. 25, Ex. 2. at p. 11). The defendant, on the other hand, citing the deposition of Ms. Cole's father, argues that this visit, and the mold tests subsequently performed in Texas, occurred a year earlier, in 2003. (Docket No. 23, Ex. 9 at p. 3-4.) Whatever the chronology of these events, it was not until August 2004 that Ms. Cole informed her physician of the mold tests. Ms. Cole's physician told her that her illness was likely due to the mold problem and that she should leave the apartment immediately. That very day, on her physician's advice, Ms. Cole alleges that she moved out of the apartment, never to return. However, the defendant has provided documentation showing that, on September 27, 2004, Ms. Cole met with Amy Hanson, an employee of the defendant, to discuss the mold issue, and that Ms. Cole moved out of the apartment on or about October 9, 2004. (Docket No. 13, Ex. 13, 16.)

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*2 Of certain relevance to this case are exculpatory clauses in the January 2, 2002, and December 1, 2002, leases and additional language in the January 4, 2004 renewal. The January 2, 2002 lease agreement contained the following language:

> Materials In The Apartment Community. Resident is hereby made aware that certain materials containing potentially health-affecting substances may exist in the Premises and elsewhere in the Apartment Community (such materials hereinafter called the "Materials" ...). Resident, by signing this Lease, understands and acknowledges that potential health hazards may exist or occur under some circumstances during Resident's occupation or use of the Premises or other portions of the Apartment Community. Being fully apprised of these facts, and as additional consideration for Manager to enter into this Lease, subject to standards required by law, *Resident hereby knowingly and voluntarily (i) waives all claims and causes of action, arising by statute, ordinance, rule, regulation or similar provision, against Manager and its Afiliates with respect to the presence and effects of the Materials, and (ii) assumes and accepts any and all risks associated with the presence and effects of the Materials and Resident waives such claims and causes of action and assumes and accepts such risks for itself, its heirs, successors, assigns, guests and all other that may claim by and through Resident....*

(Docket No. 23 at p. 2.) (emphasis added). On December 1, 2002, the plaintiff signed a new lease agreement for her second year of tenancy, which contained a more specific exculpatory clause:

> Mold and Mildew. Resident acknowledges that the apartment is located in Tennessee, which has a climate conducive to the growth of mold and mildew. It is therefore necessary to provide proper ventilation and dehumidification to the apartment to minimize the growth of mold and mildew. The only effective method to properly condition the air is to operate the heating and/or air conditioning ventilation system at all times throughout the year, even during those times when outside temperatures are moderate. *Please understand the management is not responsible for any injury, illness, harm or damage to this apartment or any person or property caused by or arising from, in whole or in part, mold or mildew.*

(Docket No. 23 at p. 3.) (emphasis added).

Finally, on January 4, 2004, when the plaintiff renewed her lease for the third and final time, she signed a Mold Information and Prevention Addendum, highlighting preventive steps she could take to help reduce the chances of mold growing in her living space. The Addendum is divided by helpful section headings such as "About Mold," "Preventing Mold Begins With You," and "In Order To Avoid Mold Growth," and contains the following language: "If you fail to comply with this Addendum, you can be held responsible for property damage to the apartment home and any health problems that may result. We cannot fix problems in your apartment home unless we know about them." (Docket No. 23, Ex. 12.)

*3 On June 15, 2005, Ms. Cole filed this action, alleging that the defendant had breached its duty of care owed to her by failing to remedy a dangerous condition or warn her of its existence. (Docket No. 1, Ex. 2.) On July 18, 2005, the defendant removed the action to this court pursuant to its diversity jurisdiction. (Docket No. 1.) The defendant moved for summary judgment on May 15, 2006. (Docket No. 22.)

ANALYSIS

I. Summary Judgment Standard

Federal Rule of Civil Procedure 56(c) provides that summary judgment shall be granted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). To prevail, the moving party must demonstrate the absence of a genuine issue of material fact as to an essential element of the opposing party's claim. *See Celotex Corp. v. Catrett,* 477 U.S. 317, 323 (1986); *Logan v. Denny's, Inc.,* 259 F.3d 558, 566 (6th Cir.2001).

In determining whether the moving party has met its burden, the court must view the factual evidence and draw all reasonable inferences in the light most favorable to the nonmoving party. *See Matsushita Electric Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 586 (1986); *McLean v. 988011 Ontario, Ltd.,* 224 F.3d 797, 800 (6th Cir.2000). Our function "is not to weigh the evidence and determine the truth of the matters asserted, 'but to determine whether there is a genuine issue for trial.' " *Little Caesar Enters., Inc. v. OPPCO, LLC,* 219 F.3d 547, 551 (6th Cir.2000) (quoting *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 249 (1986)).

If the nonmoving party fails to make a sufficient showing on an essential element of the case-provided that the nonmoving party bears the burden for that element-the moving party is entitled to summary judgment as a matter of law. *See Williams v. Ford Motor Co.,* 187 F.3d 533, 537-38 (6th Cir.1999). To avoid summary judgment, the nonmoving party "must go beyond the pleadings and come forward with specific facts to demonstrate that there is a genuine issue for trial." *Chao v. Hall Holding Co.,* 285 F.3d 415, 424 (6th Cir.2002). And we must keep in mind that "[t]he mere existence of a scintilla of evidence in support of the [nonmoving party's] position will be insufficient; there must be evidence on which the jury could reasonably find for the [nonmoving party]." *Shah v. Racetrac Petroleum Co.,* 338 F.3d 557, 566 (6th Cir.2003) (quoting *Anderson,* 477 U.S. at 252). If the evidence offered by the nonmoving party is "merely colorable," or "not significantly probative," or not enough to lead a fair-minded jury to find for the nonmoving party, the motion for summary judgment should be granted. *Anderson,* 477 U.S. at 249-52. Finally, "A genuine dispute between the parties on an issue of material fact must exist to render summary judgment inappropriate." *Hill v. White,* 190 F.3d 427, 430 (6th Cir.1999) (citing *Anderson,* 477 U.S. at 247-49). With this standard in mind, the court turns to an analysis of the plaintiff's claims.

II. Statute of Limitations

***4** The defendant argues that the plaintiff discovered, or should have discovered, her cause of action over a year before she filed this suit on June 15, 2005 and, therefore, that her suit is barred by the one-year statute of limitations for personal injuries set forth in T.C.A. § 28-3-104. Under Tennessee law, in all tort actions, "the cause of action accrues and the statute of limitations commences to run when the injury occurs or is discovered, or when in the exercise of reasonable care and diligence, it should have been discovered." *McCroskey v. Bryant Air Conditioning Co.,* 524 S.W.2d 487, 491 (Tenn.1975); *see also Murphree v. RaybestosManhattan, Inc.,* 696 F.2d 459, 462 (6th Cir.1982).

Tennessee courts have articulated the "discovery rule" in this way: "it is not necessary that the 'plaintiff actually know that the injury constitutes a breach of the appropriate legal standard in order to discover that he has a 'right of action'; the plaintiff is deemed to have discovered the right of action if he is aware of facts sufficient to put a reasonable person on notice that he has suffered an injury as a result of wrongful conduct.' " *Crafton v. Van Den Bosch,* 196 S.W.3d 767, 772 (Tenn.Ct.App.2005) (quoting *Carvell v. Bottoms,* 900 S.W.2d 23, 29 (Tenn.1995)). Under Tennessee's application of the discovery rule, the limitations period "is not postponed until the plaintiff becomes fully aware of all the injurious effects of the defendant's conduct," but instead, "[a] cause of action is deemed to be discovered when the plaintiff knows that he or she has been injured and who caused the injury." *Clifton v. Bass,* 908 S.W.2d 205, 209 (Tenn.Ct.App.1995); *see also Chambers v. Dillow,* 713 S.W.2d 896, 898 (Tenn.1986); *Foster v. Harris,* 633 S.W.2d 304, 304-05 (Tenn.1982).

Finally, it is important to note that, under Tennessee law, "[t]he time of accrual of the cause of action, as affecting limitations, is frequently a question of fact to be determined by the jury ... where the evidence is conflicting or subject to different inferences." *Prescott v. Adams,* 627 S.W.2d 134, 139 (Tenn.Ct.App.1982); *see also Hamblen v. Davidson,* 30 S.W.3d 433, 438 (Tenn.Ct.App.2001) (holding that whether or not the plaintiff should have discovered that her venereal disease had been caused by her ex-husband at an earlier date was "a matter of fact for the jury to decide").

The *Prescott* case is particularly instructive. In *Prescott,* an action for damage to the plaintiffs' home due to a faulty drainage system, the court addressed whether the plaintiffs should reasonably have been alerted to their cause of action over a year prior to their filing suit. 627 S.W.2d at 138. The trial court had held that the plaintiff could not reasonably have remained ignorant of the faulty construction in the face of telltale signs, such as "a greatly reduced purchase price, notice of 'mud washes' and the installation of drains, reports of mud slides by neighbors and cracks in the ground" and, therefore, that the statutory period had expired prior to the filing of the suit. *Id.* at 139. The Court of Appeals reversed, finding that it was "inappropriate" for the trial court "to have decided this question on the basis of a motion for summary judgment." *Id.* at 138. The court explained that:

> ***5** Although the facts may not have been in dispute, a dispute did exist as to the proper interpretation of those facts. Summary judgment for the defendant is not proper where, although the basic facts are not in dispute, parties in good faith may disagree nevertheless about the inferences to be drawn from the facts.

Id. at 138-39. Accordingly, the court found that "a question of fact exists as to when the plaintiffs knew or should reasonably have known that a cause of action existed." *Id.* at 139; *see also Sullivant v. Americana Homes, Inc.,* 605 S.W.2d 246, 249 (Tenn .App.1980) (holding that whether the plaintiff should have discovered that her living conditions were contributing to her asthma condition "is a fact for a jury to determine").

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The Tennessee Supreme Court's decision in *Leach v. Taylor,* 124 S.W.3d 87, 90-91 (Tenn.2004), is also pertinent. In *Leach,* the defendants, two funeral directors, made upsetting statements to the plaintiffs about the condition of a body on which they had performed work, which, after the plaintiffs had the body disinterred, turned out to be false. Although several years had passed since the defendants had made the false statements, the court held that, under the discovery rule, the limitations period should be tolled until the body was removed, and the plaintiffs discovered that, in fact, the statements were false. *Id.* at 91. Because the funeral directors were in a unique position of familiarity with the body in question, the court held that the plaintiffs were entitled to rely on the veracity of the defendants' statements until such time as those statements were actually proven false. *Id.* Until that time, under the discovery rule, the limitations period was tolled. *Id.*

In the present action, there is at least a factual dispute as to when the plaintiff reasonably should have discovered her cause of action. The plaintiff alleges that, although she experienced signs of illness at a much earlier date, she was not alerted by either her physician, or the tests performed on samples from her apartment, that her illness was likely caused by mold in her apartment until July or August of 2004, putting her action well within the statutory period. The defendant alleges that the plaintiff's parents performed mold tests a year earlier, in 2003. The plaintiff, however, denies that those tests occurred in 2003. The record is not conclusive as to when those tests occurred; at this time there is a factual dispute as to that issue, which must be decided in favor of the plaintiff for the purposes of this motion.

Moreover, even if the plaintiff's parents were themselves alerted to the possibility that the plaintiff's illness was caused by mold in her apartment, that would not, in and of itself, demonstrate that the plaintiff knew or should have known that her cause of action existed. As in *Prescott,* even if there were not a factual dispute as to the chronology of events in this case, a dispute would exist as to the proper interpretation of those facts, that is, whether or not the plaintiff's symptoms and her investigations should have alerted her to her cause of action. And as in *Leach,* the plaintiff must be reasonably permitted to rely on statements from the defendant's employee that the apartment did not contain dangerous amounts of mold, but merely "dust in the vents." The defendant, as the owner and operator of an apartment complex, is in a unique position to know whether or not mold is present. Whether or not the plaintiff should have known, at an earlier date, that the defendant was responsible for her injuries is a question for the jury. Accordingly, the court cannot grant summary judgment in this case based on the running of the statute of limitations.

III. Validity of the Exculpatory Clauses

***6** Additionally, the defendant argues that the plaintiff has waived any right to damages for her injuries pursuant to several exculpatory clauses contained in the lease agreements relating both generally to hazardous materials in the apartment building and specifically to mold-related problems. Although the clauses are, as the defendant asserts, quite clear, they are additionally unenforceable as a matter of Tennessee law. Accordingly the clauses cannot limit the plaintiff's cause of action.

An exculpatory clause in a lease agreement between landlord and tenant is "a clause which deprives the tenant of the right to recover damages for harm caused by the landlord's negligence by releasing the landlord from liability for future acts of negligence." *Crawford v. Buckner,* 839 S.W.2d 754, 755-56 (Tenn .1992). The Tennessee Supreme Court, in *Olson v. Molzen,* 558 S.W .2d 429, 430-31 (Tenn.1977)-while reaffirming that, "as a general rule, a party may contract against his or her own negligence"-adopted the California Supreme Court's test for determining when an exculpatory clause is void for reasons of public policy. That test directs the court to weigh the following factors:

(a.) [Whether] [i]t concerns a business of a type generally thought suitable for public regulation.

(b) [Whether] [t]he party seeking exculpation is engaged in performing a service of great importance to the public, which is often a matter of practical necessity for some members of the public.

(c) [Whether] [t]he party holds himself out as willing to perform this service for any member coming within certain established standards.

(d) [Whether,] [a]s a result of the essential nature of the service, in the economic setting of the transaction, the party invoking exculpation possesses a decisive advantage of bargaining strength against any member of the public who seeks his services.

(e.) [Whether,] [i]n exercising a superior bargaining power the party confronts the public with a standardized adhesion contract of exculpation, and makes no

provision whereby a purchaser may pay additional reasonable fees and obtain protection against negligence.

(f.) Finally, [whether,] as a result of the transaction, the person or property of the purchaser is placed under the control of the seller, subject to the risk of carelessness by the seller or his agents.

Olson, 558 S.W.2d at 430 (quoting *Tunkl v. Regents of University of California,* 383 F.2d 441 (1963)). While adopting those factors, the court in Olson stressed that "[i]t is not necessary that all be present in any given transaction, but generally a transaction that has some of these characteristics would be offensive." *Id.*

In *Crawford,* 839 S.W.2d at 756-58, the court, applying the above criteria, held that an exculpatory clause in a landlord-tenant contract was void as a matter of public policy. The court in *Crawford* addressed an exculpatory clause containing the following language:

*7 [t]enant agrees that the landlord, his agents and servants shall not be liable to tenant or any person claiming through tenant, for any injury to the person or loss of or damage to property for any cause. Tenant shall hold and save landlord harmless for any and all claims, suits, or judgments for any such damages or injuries however occurring.

Id. at 755. Although, under *Olson,* an exculpatory clause need not exhibit every factor in order to be void, the court in *Crawford* found that the above clause did, in fact, exhibit each of them, concluding, "we find that the residential landlord-tenant relationship here satisfies all six of the public interest criteria adopted in *Olsen.*" *Id.* at 758. In support of its holding, the court quoted approvingly the following language from the Washington Supreme Court's decision in *McCutcheon v. United Homes Corp.:*

[W]e are not faced merely with the theoretical duty of construing a provision in an isolated contract specifically bargained for by *one landlord and one tenant* as a purely private affair. Considered realistically, we are asked to construe an exculpatory clause, the generalized use of which may have an impact upon thousands of potential tenants.

486 P.2d 1093, 1097 (Wash.1971) (emphasis in original). Finally, the court concluded that, "in the residential landlord-tenant relationship, the public policy against exculpatory clauses affecting the public interest should control lease provisions limiting a landlord's liability to its tenants." *Crawford,* 839 S.W.2d at 759.

In addition, the Tennessee legislature has delineated the public policy against exculpatory clauses in landlord-tenant contracts in T .C.A. § 66-28-203(a), which provides that "[n]o rental agreement may provide that the tenant ... [a]grees to the exculpation or limitation of any liability of the landlord to the tenant arising under law or to indemnify the landlord for that liability or the costs connected with such liability." Further, § 66-28-203(b) provides that any such provision "is unenforceable." Accordingly, "[s]hould a landlord willfully provide a rental agreement containing provisions known by the landlord to be prohibited by this chapter, the tenant may recover actual damages sustained." *Id.*

It is beyond question that both under the *Olson* test, as applied in *Crawford,* and under T.C.A. § 66-28-203, the exculpatory clauses at issue in this case are void and do not deprive the plaintiff of her cause of action. The court finds the defendant's attempt to distinguish *Crawford* on the basis that it was decided "on the facts before it" unconvincing. All courts must decide cases based on the facts before them. This fact does not itself dissuade courts from relying on prior case law when resolving legal disputes. The *Crawford* court did not rely on the breadth of the clause at issue, but rather on its application to the specific factors set forth in *Olson;* therefore, its analysis applies equally to clauses seeking to exculpate a landlord for only certain kinds of harm, such as harm due to dangerous levels of mold in an apartment.

***8** Specifically, as in *Crawford,* the clause concerns a business generally thought suitable for public regulation-housing-which is also a matter of great import to the public and is, in fact, a matter of public necessity. The defendant, a corporation that owns the housing complex at issue, holds itself out as willing to perform its service-providing living space-for members of the public who meet established standards and, as a result, possesses a decisive advantage in bargaining with the public. As such, it has confronted the public-and specifically the plaintiff-with several standardized adhesion contracts, each containing exculpatory clauses, with no mechanism by which the plaintiff could bargain for additional protection against negligence. Finally, as in *Crawford,* the plaintiff's person and property have been placed under the control of the defendant during her period of tenancy under its roof. Not one of the *Olson* factors asks the court to examine the breadth or narrowness of the clause at issue; accordingly, as in *Crawford,* each factor has been met in this case. Neither does T.C.A. § 66-28-203 limit itself to broad exculpatory clauses. Whether the clause is broad or narrow,

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under § 66-28-203 it is void. Under Tennessee law, therefore, the exculpatory clauses are unenforceable, and the plaintiff has not waived any right to recovery.

CONCLUSION

For the reasons stated herein, the defendant's Motion for Summary Judgment will be denied.

An appropriate order will enter.

All Citations

Not Reported in F.Supp.2d, 2006 WL 2827452

Footnotes

1 Unless otherwise noted, the facts have been drawn from the plaintiff's Complaint (Docket No. 1, Ex. 2, attach. Compl.) and the plaintiff's Memorandum in Support of its Response to Defendant's Statement of Undisputed Material Facts (Docket No. 25).

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Crawford v. Buckner

839 S.W.2d 754 (Tenn. 1992)

Issue:

Landlord exculpatory clauses barred

KeyCite Yellow Flag - Negative Treatment
Declined to Follow by Marilyn Warren v. Paragon Technologies Group, Coast Federal Mortgage Corporation, Mo.App. E.D., December 24, 1996

839 S.W.2d 754
Supreme Court of Tennessee,
at Knoxville.

Linda M. **CRAWFORD**, Plaintiff–Appellant,

v.

Debra Gail **BUCKNER**, Larry Eugene **Buckner**, Tobe McKenzie, and McKenzie Development Corp., Defendants–Appellees.

Aug. 31, 1992.

Synopsis

Tenant brought action against landlord for personal injuries allegedly caused by landlord's negligence. The Law Court, Bradley County, Earle G. Murphy, J., granted landlord's motion for summary judgment, holding that tenant's tort action was barred by exculpatory clause in lease. Tenant appealed, and the Court of Appeals, affirmed. Tenant appealed, and that Supreme Court, Anderson, J., held that clause in tenant's residential lease limiting landlord's liability for negligence to its tenants was void as against public policy.

Reversed and remanded.

Reid, C.J., filed dissenting opinion.

West Headnotes (8)

[1] **Landlord and Tenant** ⇐ Waiver of duty

"Exculpatory clause" in context of landlord-tenant relationship refers to clause which deprives tenant of right to recover damages for harm caused by landlord's negligence by releasing landlord from liability for future acts of negligence.

6 Cases that cite this headnote

[2] **Contracts** ⇐ Exemption from liability

Parties may contract that one shall not be liable for his negligence to the other.

2 Cases that cite this headnote

[3] **Carriers** ⇐ Limitation of Liability

Common carrier cannot by contract exempt itself from liability for breach of duty imposed on it for benefit of public.

[4] **Landlord and Tenant** ⇐ Waiver of duty

Exculpatory clause in residential lease limiting landlord's liability for negligence to tenant was void as against public policy; overruling *Schratter v. Development Enterprises, Inc.*, 584 S.W.2d 459.

11 Cases that cite this headnote

[5] **Landlord and Tenant** ⇐ Waiver of duty

Standardized adhesion contract of exculpation offered by landlord to tenant on take-it-or-leave-it basis, generalized use of which had impact upon large number of potential tenants, is a matter of public interest rather than a purely private contract.

1 Cases that cite this headnote

[6] **Constitutional Law** ⇐ Policy

It is for legislature to determine public policy of state; however, where there is no declaration in Constitution or statutes, and area is governed by common-law doctrines, it is province of courts to consider public policy of state as reflected in court-made rules.

17 Cases that cite this headnote

[7] **Contracts** ⇐ Exemption from liability

Rule that parties are free to contract that one shall not be liable to other for its negligence and exception to that rule for exculpatory clauses affecting public interest are judicial declarations of public policy.

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12 Cases that cite this headnote

[8] **Landlord and Tenant** ⇐ Exculpatory clauses

Landlord and Tenant ⇐ Duty Based on Statute or Other Regulation

Limited application of Uniform Residential Landlord and Tenant Act, which prohibited exculpatory clauses in leases, only to the more populous counties of state, did not constitute declaration by legislature that public policy of state favored freedom of contract for residential leases in counties not covered by Act, and so court was free to declare that exculpatory clauses in residential leases were void as against public policy. T.C.A. §§ 66–28–101 to 66–28–517.

17 Cases that cite this headnote

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Charles W. Burson, Atty. Gen. and Reporter, and Pamela Bingham Broussard, Asst. Atty. Gen., Nashville, for intervenor-appellee.

*755 OPINION

ANDERSON, Justice.

The determinative issue raised in this appeal is whether an exculpatory clause in a residential lease bars recovery against the landlord for negligence which causes the tenant injury. The trial court granted the landlords' motion for summary judgment, holding that the tenant's tort action was barred by the exculpatory clause. The Court of Appeals affirmed. Because we conclude that the exculpatory clause is void as against public policy, we reverse the Court of Appeals and remand.

FACTUAL BACKGROUND

On December 16, 1988, the plaintiff, Linda **Crawford**, rented an apartment from the defendants, Tobe McKenzie and McKenzie Development Corporation. As a condition of rental, **Crawford** was required to sign the defendants' standard form lease, which contained an exculpatory clause providing that:

> [t]enant agrees that the landlord, his agents and servants shall not be liable to tenant or any person claiming through tenant, for any injury to the person or loss of or damage to property for any cause. Tenant shall hold and save landlord harmless for any and all claims, suits, or judgments for any such damages or injuries however occurring.

On February 21, 1989, two months after **Crawford** rented her apartment, a fire started in the apartment of Debra and Larry **Buckner**, who lived in the apartment below the plaintiff. The fire quickly spread to the plaintiff's apartment, blocking her exit through the front, and only, door. To escape the fire, **Crawford** jumped from a window in her second story apartment. When she landed, the plaintiff suffered numerous injuries, partly due to the debris on the ground behind her apartment building.

Crawford later filed a tort action in Bradley County naming the **Buckners**, Tobe McKenzie, and McKenzie Development Corporation as defendants. The complaint alleged that the landlords were negligent in failing to maintain the fire alarm, the premises behind her apartment, and in continuing to allow the **Buckners** to reside at the apartment complex after numerous altercations and complaints. In addition, the plaintiff challenged the constitutionality of the Uniform Residential Landlord and Tenant Act, Tenn.Code Ann. §§ 66–28–101 to –28–517, which prohibits lease provisions limiting a landlord's liability to a tenant. The Act was not applicable to Bradley County at that time because the legislature had limited it to counties of more than 200,000 residents, which included only Davidson, Hamilton, Knox, and Shelby counties at the time of the Act's passage. *See* Tenn.Code Ann. § 66–28–102.[1] The plaintiff alleged that the limited application of the Act denied her equal protection of the law under the Fourteenth Amendment to the U.S. Constitution, and Article XI, § 8, of the Tennessee Constitution.

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The landlord defendants answered that the plaintiff's action was barred by the exculpatory clause of the lease and filed a motion for summary judgment.

At the hearing on the landlords' motion for summary judgment, the trial court concluded the exculpatory clause in the lease was enforceable. The court also found that there was a rational basis for the legislature's decision to limit the Act's application to the largest counties in the state, and therefore upheld the constitutionality of the Act. As a result, the landlords' motion for summary judgment was granted. The Court of Appeals affirmed.

EXCULPATORY LEASE PROVISIONS

[1] An exculpatory clause in the context of a landlord-tenant relationship refers to a clause which deprives the tenant of the right to recover damages for harm caused ***756** by the landlord's negligence by releasing the landlord from liability for future acts of negligence.

The rationale underlying the argument for enforceability of such clauses has often been based upon the doctrine of freedom of contract. Courts employing that reasoning have said:

> that the public policy in apparent conflict with the freedom of contract argument in real-estate lease exculpatory clause cases, namely, that a landlord should be liable for the negligent breach of a duty which is owed to his tenant, is subservient to the doctrine that a person has the right to freely contract about his affairs. Some cases, especially the older ones, have reasoned that the relationship of landlord and tenant is in no event a matter of public interest, but is purely a private affair, so that such clauses cannot be held void on purely public policy grounds.

John D. Perovich, Annotation, *Validity of Exculpatory Clause in Lease Exempting Lessor From Liability,* 49 A.L.R.3d 321, 325 (1973).

However, because of the burden-shifting effect of such clauses which grant immunity from the law, it is not surprising that their validity has been challenged and that courts have reached different conclusions as to their enforceability.

> As early as 1938 Williston recognized that while such exculpatory clauses were recognized as "legal", many courts had shown a reluctance to enforce them. Even then, courts were disposed to interpret them strictly so they would not be effective to discharge liability for the consequences of negligence in making or failing to make repairs. 6 Williston, *A Treatise on the Law of Contracts* § 1751C p. 4968 (Rev. ed. 1938).

McCutcheon v. United Homes Corp., 79 Wash.2d 443, 486 P.2d 1093, 1095 (1971).

For example, courts have held that such clauses may be void as against public policy where the landlord had greater bargaining power so that the tenant must accept the lease as written, or where the tenant was unaware of or did not fully understand the clause's effect, or where the clause was overly broad or was unconscionable. *See* Annotation, *Validity of Exculpatory Clause,* 49 A.L.R.3d at 325–26.

The defendant contends that freedom to contract in the residential lease setting is the majority rule in the United States, and that holding exculpatory provisions in residential leases invalid on public policy grounds would require this court to adopt the minority rule. Our research of the cases in this area, however, demonstrates that there is no true majority rule. We find, as the Washington Supreme Court found, that there is no majority rule, "only numerous conflicting decisions, decisions concerned with contracts of indemnity, cases relating to property damage under business leases, and a disposition of the courts to emasculate such exculpatory clauses by means of strict construction." *McCutcheon v. United Homes Corp., supra,* 486 P.2d at 1096.

[2] **[3]** Tennessee courts have long recognized that, subject to certain exceptions, parties may contract that one shall not be liable for his negligence to another. *See Empress Health & Beauty Spa, Inc. v. Turner,* 503 S.W.2d 188 (Tenn.1973) (customer assumed the risk of injury from negligence of health spa); *Chazen v. Trailmobile, Inc.,* 215 Tenn. 87, 384 S.W.2d 1 (1964) (commercial lease absolved both landlord and tenant from liability for loss resulting from fire); *Moss v. Fortune,* 207 Tenn. 426, 340 S.W.2d 902 (1960) (renter assumed the risk incident to injury from the hiring and riding of a horse); *Dixon v. Manier,* 545 S.W.2d 948 (Tenn.App.1976) (cosmetology customer assumed the risk of injury of a hair-straightening treatment). One exception, for example, is that a common carrier cannot by contract exempt itself from liability for a breach of duty imposed on it for the benefit of the public. *Moss v. Fortune, supra.*

Although the earlier cases recognized that there were exceptions to the rule made for the benefit of the public, no case considered the public interest issue until this Court's

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decision in *Olson v. Molzen,* 558 S.W.2d 429 (Tenn.1977). We held in *Olson* *757 that if an exculpatory provision effects the public interest, it is void as against public policy, despite the general rule that parties may contract that one shall not be liable for his negligence to another. *Id.* at 431–32. We said that an exculpatory contract signed by a patient as a condition of receiving medical treatment is invalid as contrary to public policy and may not be pleaded as a bar to the patient's suit for negligence. *Id.* at 432.

In the most recent case to consider an exculpatory clause, the Court of Appeals, in *Schratter v. Development Enterprises, Inc.,* 584 S.W.2d 459 (Tenn.App.1979), upheld the enforceability of an exculpatory clause in a residential lease under very similar facts to this case. There, a landlord was released by the clause from his agent's negligence which caused a fire in an apartment building, resulting in damage to a tenant. The intermediate court observed, however, that in *Olson* we had adopted a test to determine whether an exculpatory provision affects the public interest, and that several of the enumerated characteristics in the test were present in that case. The court also recognized that many states have, by legislative enactment or judicial decision, limited or prohibited broad exculpatory clauses in residential leases. *Id.,* 584 S.W.2d at 461. Despite the finding that some of the public interest criteria were present, the intermediate court in *Schratter* felt constrained to hold that the exculpatory provision in the tenant's lease barred his recovery, because of their belief that this Court had limited the *Olson* standard to professional service contracts. *Schratter,* 584 S.W.2d at 461.

The plaintiff here contends that the exculpatory provision in her lease falls squarely within the criteria set forth in *Olson.* As a result, the plaintiff argues that we should overrule *Schratter* and hold that the exculpatory provision in her lease is void as against public policy. In order to determine whether an exculpatory provision affects the public interest, we adopted the following criteria in *Olson* from *Tunkl v. Regents of University of California,* 60 Cal.2d 92, 383 P.2d 441, 32 Cal.Rptr. 33 (1963):

> [a.] It concerns a business of a type generally thought suitable for public regulation.
>
> [b.] The party seeking exculpation is engaged in performing a service of great importance to the public, which is often a matter of practical necessity for some members of the public.
>
> [c.] The party holds himself out as willing to perform this service for any member of the public who seeks it, or at least for any member coming within certain established standards.
>
> [d.] As a result of the essential nature of the service, in the economic setting of the transaction, the party invoking exculpation possesses a decisive advantage of bargaining strength against any member of the public who seeks his services.
>
> [e.] In exercising a superior bargaining power the party confronts the public with a standardized adhesion contract of exculpation, and makes no provision whereby a purchaser may pay additional reasonable fees and obtain protection against negligence.
>
> [f.] Finally, as a result of the transaction, the person or property of the purchaser is placed under the control of the seller, subject to the risk of carelessness by the seller or his agents.

Olson, 558 S.W.2d at 431. In adopting these factors, we stated that "[i]t is not necessary that all be present in any given transaction, but generally a transaction that has some of these characteristics would be offensive." *Id.*

[4] Applying the *Olson* criteria to the facts of this case, first, we conclude a residential lease concerns a business of a type that is generally thought suitable for public regulation. Our conclusion is bolstered by the fact that the legislature of this state has seen fit to regulate this area, and that other states, such as Illinois, Maryland, Massachusetts, and New York, have enacted legislation regulating the residential landlord-tenant relationship. *See* John D. Perovich, Annotation, *Validity of* *758 *Exculpatory Clause in Lease Exempting Lessor From Liability,* 49 A.L.R.3d 321 (1973). *See also, Cappaert v. Junker,* 413 So.2d 378 (Miss.1982).

Second, it is clear we no longer live in an agrarian society where land, not housing, was the important part of a rental agreement. Nor do we live in an era of the occasional rental of rooms in a private home or over the corner grocery. Residential landlords offer shelter, a basic necessity of life, to more than a million inhabitants of this state. In 1990 in Tennessee, 32 percent of the total occupied housing units in the state were rental units.[2] Accordingly, it is self-evident that a residential landlord is engaged in performing a service of great importance to the public, which is often a matter of practical necessity for some members of the public. In

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addition, a residential landlord holds itself out as willing to perform a service for any member of the public who seeks it. Therefore, we conclude that the residential landlord-tenant relationship falls within the second and third public interest criteria.

With respect to the fourth public interest criterion, as a result of the essential nature of the service and the economic setting of the transaction, a residential landlord has a decisive advantage in bargaining strength against any member of the public who seeks its services. A potential tenant is usually confronted with a "take it or leave it" form contract, which the tenant is powerless to alter. The tenant's only alternative is to reject the entire transaction.

Moreover, due to its superior bargaining position, a residential landlord confronts the public with a standardized adhesion contract of exculpation, which contains no provision whereby a tenant can pay additional reasonable fees to obtain protection from the landlord's negligence. The lease in this case is a good example. In her affidavit in opposition to the defendants' motion for summary judgment, **Crawford** testified that she was given the defendants' standard lease form to sign, and was never offered the opportunity to pay additional reasonable fees to obtain protection from the landlords' negligence. We determine that the residential landlord-tenant relationship falls within the fifth *Olson* criterion.

Finally, we conclude that by definition a residential lease places the person and the property of the tenant under the control of the landlord, subject to the risk of carelessness by the landlord and his agents. The allegations of this case and the *Schratter* case are common examples of landlord negligence causing injury to either the person or property of the tenant. Therefore, it follows that the landlord-tenant relationship falls within the final public interest criterion set forth in *Olson.*

Accordingly, we find that the residential landlord-tenant relationship here satisfies all six of the public interest criteria adopted in *Olson v. Molzen, supra.* The California Supreme Court has also held that a residential rental agreement meets all six of the criteria. *See Henrioulle v. Marin Ventures, Inc.,* 20 Cal.3d 512, 518–19, 573 P.2d 465, 468–69, 143 Cal.Rptr. 247, 250–51.

[5] However, the defendants insist that a residential lease between a landlord and a tenant is a purely private affair, and not a matter of public interest. We disagree. We rejected this same argument in *Olson* and find persuasive the reasoning of the Washington Supreme Court, which, in response to the very same argument, stated:

> [W]e are not faced merely with the theoretical duty of construing a provision in an isolated contract specifically bargained for by *one landlord and one tenant* as a purely private affair. Considered realistically, we are asked to construe an exculpatory clause, the generalized use of which may have an impact upon thousands of potential tenants.

McCutcheon v. United Homes Corp., 79 Wash.2d 443, 449–50, 486 P.2d 1093, 1097 (1971) (emphasis in original).

Based on the foregoing, we conclude that the exculpatory clause in the residential ***759** lease in this case is contrary to public policy. In reaching this conclusion, we join a growing number of states. As stated previously, the legislature of this state has enacted the Uniform Residential Landlord and Tenant Act, albeit in only a few counties, which prohibits exculpatory provisions in residential leases. In addition, at least four states have limited by statute the freedom of contract concept as applied to exculpatory provisions in residential leases. *See* Ill.Ann.Stat. ch. 80, para. 91 (Smith–Hurd 1987); N.Y. General Obligations Law § 5–321 (McKinney 1989); Md. Real Property Code Ann. § 8–105 (1988); and Mass.Gen.Laws Ann. ch. 186, § 15 (West 1991). Moreover, at least eleven states and the District of Columbia by judicial decision have declared exculpatory lease clauses void as against public policy under the facts developed in those cases. *See Lloyd v. Service Corp. of Alabama,* 453 So.2d 735 (Ala.1984); *Henrioulle v. Marin Ventures, Inc.,* 20 Cal.3d 512, 573 P.2d 465, 143 Cal.Rptr. 247 (1978) (en banc); *Tenants Council of Tiber Island–Carrollsburg Square v. DeFranceaux,* 305 F.Supp. 560 (D.C.1969); *Old Town Development Co. v. Langford,* 349 N.E.2d 744 (Ind.App.1976); *Feldman v. Stein Building & Lumber,* 6 Mich.App. 180, 148 N.W.2d 544 (1967); *Cappaert v. Junker,* 413 So.2d 378 (Miss.1982); *Papakalos v. Shaka,* 91 N.H. 265, 18 A.2d 377 (1941); *Kuzmiak v. Brookchester, Inc.,* 33 N.J.Super. 575, 111 A.2d 425 (1955); *Galligan v. Arovitch,* 421 Pa. 301, 219 A.2d 463 (1966); *Crowell v. Housing Authority of the City of Dallas,* 495 S.W.2d 887 (Texas 1973); *McCutcheon v. United Homes Corp., supra,* 79 Wash.2d 443, 486 P.2d 1093 (1971); *College Mobile Home Park & Sales, Inc. v. Hoffman,* 72 Wis.2d 514, 241 N.W.2d 174 (1976).

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Finally, the defendants argue that declaring public policy in Tennessee is the province of the legislature. Since the legislature has specifically chosen to limit application of the Uniform Residential Landlord and Tenant Act, and its section prohibiting exculpatory provisions in residential leases, to the most populous counties, the defendants contend that the public policy in those counties not covered by the Act still favors freedom of contract. We disagree.

[6] "The public policy of Tennessee 'is to be found in its constitution, statutes, judicial decisions and applicable rules of common law. *Home Beneficial Ass'n. v. White,* 180 Tenn. 585, 177 S.W.2d 545 (1944).' " *Smith v. Gore,* 728 S.W.2d 738, 747 (Tenn.1987) (quoting *State ex rel. Swann v. Pack,* 527 S.W.2d 99, 112 n. 17 (Tenn.1975), *cert. denied,* 424 U.S. 954, 96 S.Ct. 1429, 47 L.Ed.2d 360 (1976)). Primarily, it is for the legislature to determine the public policy of the state, *Hyde v. Hyde,* 562 S.W.2d 194, 196 (Tenn.1978), and only in the absence of any declaration in the Constitution and statutes may public policy be determined from judicial decisions. *Cavender v. Hewitt,* 145 Tenn. 471, 475, 239 S.W. 767, 768 (1921). However, where there is no declaration in the Constitution or the statutes, and the area is governed by common law doctrines, it is the province of the courts to consider the public policy of the state as reflected in old, court-made rules. *Hanover v. Ruch,* 809 S.W.2d 893, 896 (Tenn.1991).

[7] The rule that, subject to certain exceptions, parties are free to contract that one shall not be liable to the other for his negligence, as recognized by the Court of Appeals in *Schratter v. Development Enterprises, Inc., supra,* is a judicial declaration of public policy. *See Chazen v. Trailmobile Inc.,* 215 Tenn. 87, 384 S.W.2d 1 (1964). In addition, the exception to the freedom of contract rule for exculpatory clauses affecting the public interest is also a judicial declaration of public policy. *See Olson v. Molzen, supra.*

We conclude that in the residential landlord-tenant relationship, the public policy against exculpatory clauses affecting the public interest should control lease provisions limiting a landlord's liability to its tenants. Our conclusion is not changed by the fact that in 1975 the legislature limited the coverage of the Uniform Residential Landlord and Tenant Act to counties having a population of more than 200,000 according to the 1970 Census, or any subsequent federal census. On the contrary, we ***760** note that the Act's language permits any county in the state to grow into the population classification and that the legislature, effective July 1, 1992, reduced the population classification to counties having a population of more than 68,000.

[8] We observe that the Act broadly regulates the landlord-tenant relationship, covers much more than just exculpatory lease provisions, and declares public policy for counties which now fit in the population class and for those who "grow into it." Accordingly, we determine that the Act declares no public policy in the area of exculpatory clauses for the least populous counties of the state. Therefore, we conclude the limited application of the Act is not a declaration by the legislature that the public policy of Tennessee favors freedom of contract for residential leases in the counties not covered by the Act.

Accordingly, we hold that under the facts here, the lease clause limiting the residential landlord's liability for negligence to its tenants is void as against public policy. As a result, we expressly overrule the intermediate court decision in *Schratter v. Development Enterprises, Inc.,* 584 S.W.2d 459 (Tenn.App.1979), and any other prior decision, but only to the extent they conflict with this holding. As a result of our conclusion, we pretermit all other issues.

The Court of Appeals' judgment is reversed, and the cause is remanded to the trial court for proceedings consistent with this Opinion. The costs of this appeal are taxed to the defendants, Tobe McKenzie and McKenzie Development Corporation.

DROWOTA, O'BRIEN and DAUGHTREY, JJ., concur.

REID, C.J., dissents.

REID, Chief Justice, dissenting.

The majority correctly acknowledges that residential leases involve a business activity "generally thought suitable for public regulation" and, consequently, "the Legislature of this state has seen fit to regulate this area...." That body has duly considered the matter and has already embarked on an evolving legislative scheme defining the parameters of exculpatory provisions in the context of residential leases. *See* T.C.A. § 66–28–203. Since the legislature is the primary declarant of public policy, *see Hyde v. Hyde,* 562 S.W.2d 194, 196 (Tenn.1978), and is now involved in limiting the application of exculpatory provisions in residential leases, I would defer to the legislature's prerogative to continue to

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declare the public policy in this area of the law. Therefore, I respectfully dissent.

All Citations

839 S.W.2d 754

Footnotes

1 Section 66–28–102 has been amended, effective July 1, 1992, to extend the coverage of the Uniform Residential Landlord and Tenant Act to counties of more than 68,000 residents, except for the excluded counties of Rutherford, Sullivan, Washington, and Williamson counties. *See* 1992 Tenn.Pub.Acts ch. 995.

2 Based upon 1990 Census of Population and Housing, Bureau of the Census, U.S. Department of Commerce, Washington, D.C.

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Hall v. Houston

No. M2002-01371-COA-R3-CV, 2003 WL 21688578 (Tenn. Ct. App. 2003)

Issue:

Acceptance of rent without reservation where default is for nonpayment of rent

2003 WL 21688578
Only the Westlaw citation is currently available.

SEE COURT OF APPEALS RULES 11 AND 12

Court of Appeals of Tennessee.

Mike **HALL** and Connie **HALL**,

v.

Clifford **HOUSTON**.

No. M2002-01371-COA-R3-CV.
|
Feb.2003 Session.
|
July 21, 2003.

Appeal from the Circuit Court for Maury County, No. 9871; Stella Hargrove, Circuit Judge.

Attorneys and Law Firms

David E. Danner, Nashville, Tennessee for the appellants, Clifford **Houston**.

D. Scott Porch, IV, Columbia, Tennessee, for the appellees, Mike **Hall** and Connie **Hall**.

MARIETTA M. SHIPLEY, Sp. J., delivered the opinion of the court, in which BEN CANTRELL and PATRICIA J. COTTRELL, joined.

OPINION

MARIETTA M. SHIPLEY, Sp. J.

***1** Defendant, Clifford **Houston** executed a lease and contract to purchase real property with the plaintiffs Connie and Mike **Hall**. Upon failure to pay the entire amount of the rent and allow an inspection, the plaintiffs filed a detainer warrant, which the general sessions court granted. The case was appealed to the circuit court where the judge affirmed the award of possession to the plaintiffs, and ordered the forfeiture of the initial deposit in the purchase agreement. Defendant, **Houston**, appealed the trial court's decision. We affirm the possession, the judgment for unpaid rent, reverse the deposit award and remand the case for determination of attorney's fees.

This is an action construing a Lease Agreement with Option to Purchase with an accompanying Real Estate Sales Contract. Clifford **Houston**, defendant, buyer/lessee and Connie and Mike **Hall**, plaintiffs, sellers/lessors executed the lease and purchase agreement. When Mr. **Houston** did not pay on a timely basis and refused to allow an inspection of the premises, the **Halls** took out a general sessions detainer warrant. The general sessions judge found that Mr. **Houston** had breached the Lease Agreement only, gave possession of the premises to the **Halls**, ordered a small judgment and attorneys fees. Mr. **Houston** appealed to the circuit court. The trial judge found that Mr. **Houston** had breached both agreements, gave possession of the premises to the **Halls** and a judgment for unpaid rent. In addition, the trial judge ordered a forfeiture of the $2500 initial deposit in the Real Estate Sales Contract and awarded reasonable attorneys fees, which have not yet been determined.

I. BACKGROUND OF THE FIVE DOCUMENTS AT ISSUE

Clifford **Houston**, entered into four documents with the sellers, Connie and Mike **Hall**, on or about October 27 to 29, 2001. Ms. **Hall** testified that Mr. **Houston**, an experienced investor had prepared the documents. The first document is the **REAL ESTATE SALES CONTRACT** for the sale of property at 209 Westfield Drive with a price of $119,000. The contract allows Mr. **Houston** five years to pay off the balance of the note. It requires an initial deposit of $500 on the date of the contract, and $2000 by November 15, 2001. Paragraph 9, entitled **Default by Buyer,** allows for liquidated damages of the initial deposit ($2500) if buyer "fails to abide by the agreements of this contract within the time set forth herein". Paragraph 8 of the contract, entitled **Examination of Title and Time of Closing,** refers to an Addendum. Buyer's Date of Offer is October 29, 2001. The Real Estate Sales Contract does not refer to the Residential Lease with Option to Purchase.

The **ADDENDUM** referred to in the Real Estate Sales Contract is dated October 27, 2001. The Addendum states in pertinent part:

> 1) Purchaser to take title pursuant to first mortgage and second on the property. Any variation in the principal amount due from the amount shown on the contract shall be added or subtracted from the note held by the seller.

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*2 2) Seller agrees to allow purchaser to show property to prospective tenants prior to the closing date. The closing shall take place when an acceptable tenant is found, but in no event prior to a specified date.

3) Seller agrees to turn over all escrow and utility company deposits to purchaser.

The third document is **RESIDENTIAL LEASE WITH OPTION TO PURCHASE,** dated October 29, 2001. The lease does not refer to the Real Estate Sales Contract. The rent is $963 per month. Paragraph 4, entitled **Utilities.** states the Lessee is responsible for utilities. In addition, the hand-written words "assign taxes & Insurance" are added. Paragraph 9 concerns

Entry and Inspection: Lessee shall permit Lessor or Lessor's agents to enter the premises at reasonable times and upon reasonable notice for the purpose of inspecting the premises or for making necessary repairs

Paragraph 11 is entitled ***Security/Option Consideration:***

The security deposit of $ ---N/A----- shall secure the performance of the Lessee's obligation hereunder. Lessor may, but shall not be obligated to, apply all or portions of said deposit on account of Lessee's obligations hereunder. Any balance remaining upon termination date, the deposit shall be returned to Lessee.

Paragraph 18 is entitled ***Default:***

If Lessee shall fail to pay rent when due or perform any term hereof after not less than three (3) days written notice of such default given in the manner required, the Lessor at his/her option may terminate all rights of the Lessee hereunder, unless Lessee, within said time, shall cure such default. * * * * *

Paragraphs 19 through 29 are entitled Option to Purchase, Title, Closing, Prorations, Options and Right to Sell. As stated in the Real Estate Purchase Agreement, the purchase price is $119,000, all cash. There is no duration of time for the option.

The next document is the **PERMISSION TO SUBLET,** which simply grants the "resident" the right to sublet for 60 months, the term ending November 15, 2006.

The parties got off to a rather rocky start. Mr. **Houston** paid the initial deposit of $500.00 on the Buyer's Date of Entry, October 27, 2001. The **Halls** deposited his $2000 check on November 16. It was charged off as insufficient funds on November 21, 2001. On November 28, 2001 Ms. **Hall** purportedly signed the fifth document entitled **DEPOSIT NOTE,** for $2000. Ms. **Hall** said she recognized her signature. However, she stated that she had signed a receipt with blank areas at both the top and bottom The Deposit Note states at the top $2000 and a date of 11/28/01. The wording is as follows:

days after the above date, the undersigned promises to pay to the order of the sum of dollars ($932.95) without interest, payable at [To the side are hand-written words "See Addendum"

In the event that this is not paid when due and suit is instituted for the collection thereof, the undersigned promises to pay the holder of this note reasonable attorney fees for making such collection.

*3 Below the above paragraph are the handwritten words:

See Sales Contract from 10/27/01 and the Addendum Also Lease option purchase is void payment are the 1st and second mortgage of the note.

Signature (Connie **Hall's** signature on the line)

This note is given as a deposit in connection with the agreement between (Connie **Hall** is hand-written in the blank) and (Cliff **Houston** is hand-written in the blank) dated (11-28-01 is hand-written in the blank), covering the real property or premises commonly known as (209 Westfield Dr Columbia Tenn 38401 hand-written in the blank)

This note is void unless agreement is accepted according to its terms.

Per the testimony of Mr. **Houston**, this note was to repay the insufficient funds check and to clarify that the amount of the rent was $932.95 rather than $963 in the Lease Agreement with Option to Purchase. In the hearing in May 2002, Ms. **Hall** said she did not remember this note.[1]

Apparently the rent issue did not resolve between the parties. Mr. or Ms. **Hall** wrote eight letters to Mr. **Houston** between December 27, 2001 and April 15, 2002. The letters either referred to the incorrect amount of rent [$963 as opposed to the proffered amount of $932], late payments of the rent, or unpaid utilities of $37.00. In several of the letters, Ms. **Hall** stated that this was "written notice." On January 17, 2002, after receiving the only written response from Mr. **Houston** on January 15, 2002, in which he disputed the utility bill, she asked for an inspection of the house, which would require notice to his tenants. On February 8, 2002, reminding him

of the late payment, she referred the matter to her attorney, Scott Porch. The final letter on April 15, 2002, which was after the General Sessions Warrant had been issued and heard, stated the familiar late notice for April, the lack of response to the demand for inspection, and the original rental amount of $963.00.

II. STANDARD OF REVIEW

When a civil action is heard by a trial judge sitting without a jury, our review of the matter is *de novo* on the record, accompanied by a presumption of correctness of the factual findings below. *Foster v. Bue, 749 S.W.2d 736, 741 (Tenn.1988);* Tenn. R.App. P. 13(d). We may not reverse the findings of fact made by the trial judge unless they are contrary to the preponderance of the evidence. *Jahn v. Jahn,* 932 S.W.2d 939, 941 (Tenn.Ct.App.1996). This presumption of correctness, however, does not attach to the trial judge's legal determinations or the trial court's conclusions that are based on undisputed facts. *NCNB Nat' l Bank v. Thrailkill,* 856 S.W.2d 150, 153 (Tenn.Ct.App.1993). In this case there is no transcript, but there is a Statement of Proceedings, filed by the Appellees, which constitutes the Statement of the Evidence, per Tennessee Rule of Appellate Procedure 10, and the Judgment of the Court.

III. LEGAL PROCEEDINGS

The **Halls** had filed a general sessions detainer warrant on February 14, 2002 that sought to void the Real Estate Sales Contract and the Residential Lease with Option To Purchase and obtain a judgment for the February 2002 rent. The defendant filed a counter-claim for costs and attorney's fees. The case was heard on March 20, 2002. The general sessions judge found that the defendant was in breach of the Residential Lease with Option To Purchase and granted a judgment for $159.42, plus reasonable attorneys fees, reserved for further proof.

***4** On March 20, 2002 the **Halls** filed an appeal with the circuit court. The trial judge became involved in the case on April 24 and 29, 2002, with oral argument in her chambers and by telephone. She ordered the clerk to endorse the check presented by the defendant and an immediate inspection of the premises. On May 1, 2002, following a hearing, she ordered immediate possession of the premises, found the defendant in breach of both the sales contract and the lease document, due to late payment, incorrect payment, and failure to allow inspection. She awarded the deposit of $2500 to the plaintiff along with attorneys fees and costs.

IV. LEGAL ISSUES

The appellant raises three issues: 1) Did the appellant **Houston** breach the lease when he paid rent pursuant to the language in the Addendum, which allowed for a variable amount of rent, and pursuant to the Deposit Note? 2) Did the appellant **Houston** breach the lease when appellees accepted late payments? 3) Was appellant, **Houston's**, breach a non-material breach? 4) Should the appellant, Clifford **Houston**, be required to forfeit the deposit of $2500 upon breach of the Residential Lease with Option to Purchase?[2]

The real crux of the dispute in this case is whether Mr. **Houston** breached one or two of the documents, the Real Estate Sales Contract and/or the Residential Lease with Option to Purchase. It was clearly the intent of both parties for Mr. **Houston** to rent the premises with the option to purchase. The price for the property set in the Real Estate Sales Contract was for $119,000. The option was for five years. The closing costs, responsibilities, etc. were all set out in that contract. The sales contract required two deposits totaling $2500 in the event of default. The sales contract does not mention making rental payments or inspections by the sellers. The lease contract, which did not refer to the sales contract, provides for a specific amount of rent, $963, but did not require a security deposit. The lease states that a lessee is in default if rent is not paid or any other term in non-compliance after three (3) days' notice of the default. The lessor may terminate "all rights of the Lessee hereunder, unless Lessee, within said time (three days) shall cure such default." The lessor, the **Halls**, sent no less than eight letters following late payments, failure to pay utilities and failure to allow an inspection. Clearly, the trial court found default under the Lease Agreement.

A. Breach of the Residential Lease with Option to Purchase:

The question here is the relationship between the Lease with Option to Purchase Real Estate Sales Contract, the Addendum, and the Deposit Note. One can make a link between the Real Estate Sales Contract and the Addendum, although the dates are two days apart, in reverse order. The Addendum refers to the principal amount of the first and second mortgage fluctuating, and a final addition and subtraction on the note held by the seller (presumably at the time of the closing in 60 months.) The Addendum makes no reference to "rent" or a fluctuating monthly figure. Secondly, the Deposit Note which is purportedly signed by Connie **Hall**

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makes no reference to anything. It is allegedly an acceptance of the $2000 which was returned as a bad check. The figure inserted of $932 has no logical legal significance. The trial court stated she was "very disturbed" by this Deposit Note and stated that it could have been easily altered. Obviously the trial court gave little credence to the Deposit Note. Without the Deposit Note, there is little credible evidence that Mr. **Houston** should have paid $932, rather than $963, as stated in the lease. Mr. **Houston** asserts that the Addendum clearly evidences an intent to pay the lower amount, and thus he cannot have breached the lease. We affirm the trial judge's factual finding that he should have paid $963. The documents do not otherwise support Mr. **Houston's** assertion. We affirm the trial judge's ruling that Mr. **Houston** was clearly in breach of the rental amount.

B. Late Payments Accepted by the Lessor:

***5** The appellant **Houston**, in a two sentence paragraph, argues that T . C.A. 66-28-508 should apply in this case. The application of this statute was not raised in the trial court. Even if it had been raised, this statute does not apply to Columbia, Tennessee by the provisions of the statute itself. T.C.A. 66-28-102. Even if it were applicable, Section 66-28-508, does not waive the landlord's right to receive late payment and still pursue a breach of the lease. Mr. **Houston** asserts that the **Halls** had waived their right to the reservation of the receipt of late payments by executing the Addendum and Deposit Note. We have already affirmed the trial court's decision that the Deposit Note was suspect.

The plaintiff further clarifies this issue in his brief by citing *Cain Partnership Ltd. v. Pioneer Inv. Services Co.*, 914 S.W.2d 452 (Tenn.1996), which addresses the issue concerning the scope of the detainer statute T.C.A. 29-18-104. The court in *Cain* discussed the common law regarding enforcement of a lease and a forfeiture provision. In addition, the court adopted the Restatement of Property 2nd, at section 13.1 stating 'principles of mutuality and fairness should govern the determination and enforcement of the legal rights at issue in this case.' Given that adoption, which allows the landlord to terminate the lease and recover damages, or continue the lease and obtain equitable or legal relief as well as damages, the lease in this case is very clear that after giving three days notice, the lease is breached. Ms. **Hall** gave Mr. **Houston** written notice. He was late for four months, and never allowed the inspection. The **Halls** were "deprived of a significant inducement to the making of the lease" in that they were paying mortgage payments themselves for the property. Clearly the court was correct to declare the lease had been breached. Thus we affirm the trial court's decision on this issue.

C. Material Breach of Lease

The appellant, **Houston**, asserts again that T.C.A. 66-28-505(a) is applicable to this case in that the difference of $30.50 is not a material non-compliance, nor is the failure to allow an inspection. As stated in the prior section, the statute does not apply. However, for the sake of argument, if these were the only issues of non-compliance, the appellant might have an equitable defense. The non-compliance seen in its totality is more blatant. The appellant **Houston** initially paid a deposit with an insufficient funds check, failed to pay the initial utilities payment, never paid the rent on time, did not allow an inspection, and did not obtain insurance on the premises as late as February. The trial court found that the late payment was the basis of the judgment against the appellant **Houston**. We affirm this decision.

D. $2500 Deposit-Security Deposit or Liquidated Damages

Paragraph 9, of the Real Estate Sales Contract provides that there will be liquidated damages of the initial deposit if "buyer fails to abide by the agreements of this contract within the time set herein." The Real Estate Sales Contract has no provision for rent or other monthly payments, only a five year term to pay the entire amount. The Lease with Option to Purchase has no Security Deposit. Thus, the only default, would be failure to pay off the entire amount within five years. There is no reference in the Statement of Proceedings or in the trial court's order as to how the Real Estate Sales Contract was breached. It would be a rather harsh result to forfeit essentially a down payment for a difference in rent of $183.00. Therefore, we cannot find that the $2500 deposits should be forfeited pursuant to the Real Estate Sales Contract, as there is no breach of the Real Estate Sales Contract. We reverse this judgment.

V. JUDGMENT

***6** Thus, we affirm the decision of the trial court that possession will be granted to the **Halls**, as well as a judgment for $220.42 and reasonable attorneys fees. The forfeiture of the $2500 deposit will be reversed. The case is remanded to the trial court for a determination of reasonable attorneys' fees. Costs are taxed to Clifford **Houston**.

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All Citations

Not Reported in S.W.3d, 2003 WL 21688578

Footnotes

1 In his Statement of the Proceedings, the appellee reported that the trial judge stated that she was

> ... very disturbed by this 'Deposit Note', and she held the exhibit up to demonstrate how easily it could be altered to add language above and below the signature line. The judge stated that it was difficult for her to believe that a 'meticulous woman like Mrs. **Hall**,' who had demonstrated her deliberate and meticulous record keeping during the trial, would sign this 'Deposit Note'. The judge told Mr. **Houston** that his behavior bordered on fraud.

2 This issue was not raised by the defendant/appellant, Clifford **Houston**, in his appeal. Nonetheless, per Tennessee Rule of Appellate Procedure 36, we find that the appellant is entitled to such relief.

End of Document

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Johnson v. Hopkins

432 S.W.3d 840 (Tenn. 2013)

Issue:

No bond required where tenant surrenders possession

432 S.W.3d 840
Supreme Court of Tennessee,
at Nashville.

Edith **JOHNSON** et al.

v.

Mark C. **HOPKINS** et al.

No. M2012–02468–SC–S09–CV.
|
Oct. 2, 2013 Session.
|
Dec. 19, 2013.

Synopsis

Background: Landlord brought unlawful detainer action, and tenants surrendered possession of the property. The General Sessions Court, Davidson County, entered default judgment for landlord. Tenants appealed. The Circuit Court, Davidson County, Joseph P. Binkley, Jr., J., denied landlord's motion to dismiss on ground that tenants had not posted bond equal to one year's rent. After landlord's application for interlocutory appeal was denied by the Court of Appeals, Middle Section, landlord's application for permission to appeal was granted.

[Holding:] The Supreme Court, Clark, J., held that tenant who has surrendered possession of the property is not required to post bond for one year's rent; abrogating *Swanson Devs., LP v. Trapp,* 2008 WL 555705, *Amberwood Apartments v. Kirby,* 1989 WL 89761.

Affirmed and remanded

West Headnotes (18)

[1] **Courts** ⇐ Jurisdiction of Cause of Action

Subject matter jurisdiction involves the Supreme Court's lawful authority to adjudicate a controversy brought before it.

19 Cases that cite this headnote

[2] **Courts** ⇐ Jurisdiction of Cause of Action

Courts ⇐ Of cause of action or subject-matter

Courts ⇐ Estoppel arising from submitting to or invoking jurisdiction

Subject matter jurisdiction is conferred by statute or Constitution; the parties cannot confer it by appearance, plea, consent, silence, or waiver.

6 Cases that cite this headnote

[3] **Motions** ⇐ Nature and essentials of orders in general

Any order entered by court lacking jurisdiction over the subject matter is void.

12 Cases that cite this headnote

[4] **Courts** ⇐ Time of making objection

Courts ⇐ Determination of questions of jurisdiction in general

Subject matter jurisdiction is threshold inquiry, which may be raised at any time in any court.

16 Cases that cite this headnote

[5] **Courts** ⇐ Presumptions and Burden of Proof as to Jurisdiction

Where subject matter jurisdiction is challenged, the party asserting that subject matter jurisdiction exists has the burden of proof.

17 Cases that cite this headnote

[6] **Appeal and Error** ⇐ Subject-matter jurisdiction

Courts ⇐ Determination of questions of jurisdiction in general

A determination of subject matter jurisdiction involves questions of law; therefore, rulings on such questions are reviewed de novo on appeal, without any presumption of correctness.

7 Cases that cite this headnote

[7] **Appeal and Error** ⇐ Statutory or legislative law

Statutory construction is a question of law to which de novo review applies on appeal.

5 Cases that cite this headnote

[8] **Forcible Entry and Detainer** ⇐ Nature and Form of Remedy

Unlawful detainer is statutory action unknown at common law. West's T.C.A. § 29–18–104.

6 Cases that cite this headnote

[9] **Statutes** ⇐ Intent

The primary objective when interpreting a statute is to carry out legislative intent without broadening or restricting the statute beyond its intended scope.

15 Cases that cite this headnote

[10] **Statutes** ⇐ Language

Statutes ⇐ Giving effect to entire statute and its parts; harmony and superfluousness

Courts presume that every word in a statute has meaning and purpose and that these words should be given full effect if the obvious intention of the General Assembly is not violated by so doing.

11 Cases that cite this headnote

[11] **Statutes** ⇐ Natural, obvious, or accepted meaning

Statutes ⇐ Context

Words must be given their natural and ordinary meaning in the context in which they appear and in light of the statute's general purpose.

11 Cases that cite this headnote

[12] **Statutes** ⇐ Plain language; plain, ordinary, common, or literal meaning

Statutes ⇐ Absent terms; silence; omissions

When the meaning of a statute is clear, courts apply the plain meaning without complicating the task and enforce the statute as written; at the same time, courts must be circumspect about adding words to a statute that the General Assembly did not place there.

10 Cases that cite this headnote

[13] **Statutes** ⇐ In pari materia

Statutes in pari materia, or those relating to the same subject or having a common purpose are to be construed together, and the construction of one such statute, if doubtful, may be aided by considering the words and legislative intent indicated by the language of another statute.

5 Cases that cite this headnote

[14] **Statutes** ⇐ Conflict

Courts must adopt the most reasonable construction which avoids statutory conflict and provides for harmonious operation of the laws.

2 Cases that cite this headnote

[15] **Statutes** ⇐ Prior or existing law in general

New statutes change pre-existing law only to extent expressly declared.

3 Cases that cite this headnote

[16] **Statutes** ⇐ Earlier and later statutes

Statutes ⇐ Implied Repeal

Statute not repealing directly or by implication any previous law is cumulative to such law; repeals by implication are not favored.

1 Cases that cite this headnote

[17] **Statutes** ⇐ Prior or existing law in general

Supreme Court presumes that Legislature knows the law and makes new laws accordingly.

2 Cases that cite this headnote

[18] **Landlord and Tenant** ⇐ Review

Provision of unlawful detainer statute requiring tenant appealing to circuit court from general sessions court's judgment in favor of landlord to post bond equal to one year's rent does

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not apply if tenant has surrendered possession of the property prior to appeal; abrogating *Swanson Devs., LP v. Trapp,* 2008 WL 555705, *Amberwood Apartments v. Kirby,* 1989 WL 89761. West's T.C.A. § 29–18–130(a), (b)(2); Rules Civ.Proc., Rule 62.05.

10 Cases that cite this headnote

Attorneys and Law Firms

***842** Martin Thomas Walsh, Jr., Nader Baydoun, and Stephen C. Knight, Nashville, Tennessee, for the appellants, Edith **Johnson** and Lisa Miller.

James G. King, Nashville, Tennessee, for the appellees, Mark C. **Hopkins** and Milton Williams.

OPINION

CORNELIA A. CLARK, delivered the opinion of the Court, in which GARY R. WADE, C.J., JANICE M. HOLDER, WILLIAM C. KOCH, JR., and SHARON G. LEE, JJ., joined.

Opinion

CORNELIA A. CLARK, J.

We granted permission to appeal to determine whether a provision of the unlawful detainer statute, which requires that a tenant appealing to the circuit court from a general sessions court's judgment in favor of a landlord must post a bond equal to one year's rent of the premises, applies regardless of whether the tenant has surrendered possession of the property prior to the appeal. We hold that the plain language of Tennessee Code Annotated section 29–18–130(b)(2) (2012) does not require that a tenant appealing to the circuit court from an adverse general sessions court judgment in an unlawful detainer action post a bond corresponding to one year's rent of the premises if the tenant has surrendered possession of the premises prior to the appeal. Accordingly, the cost bond that the tenants have already posted pursuant to Tennessee Code Annotated section 27–5–103(a) (2000) is sufficient to perfect their appeal and confer subject matter jurisdiction on the Circuit Court. We affirm the Circuit Court's judgment denying the landlords' motion to dismiss and remand the case to the Circuit Court for further proceedings consistent with this decision.

I. Factual and Procedural History

This interlocutory appeal began as an unlawful detainer action brought by Edith **Johnson** and Lisa Miller ("Landlords") against Mark C. **Hopkins** and Milton Williams ("Tenants") in the General Sessions Court for Davidson County. The record on appeal is extremely sparse and includes neither the lease nor a description of the property at issue.[1] The following factual and procedural summary is gleaned from the technical record and two sections of Landlords' brief, the latter of which Tenants stipulated as accurate in their own brief.

On June 5, 2012, Landlords filed a detainer warrant—an action to regain possession of the premises and recoup damages—against Tenants. Landlords alleged that Tenants had breached the lease as a result of their failure to pay rent on the premises located at 1520 Hampton Street ***843** in Nashville, Tennessee. Landlords sought possession of the property as well as all damages resulting from the breach of the lease, including unpaid rent and attorneys' fees. According to the warrant, Mr. Williams was served on June 7, 2012, and Mr. **Hopkins** was served on June 11, 2012. The hearing, originally scheduled for June 28, 2012, was postponed by agreement of Tenants and counsel for Landlords three times during the months of June and July, and ultimately was rescheduled for August 9, 2012.

On August 8, 2012, Tenants surrendered possession of the Hampton Street property. Landlords changed the locks on the premises the same day. On August 9, 2012, the date set for the hearing, Tenants did not appear at the hearing. The General Sessions Court for Davidson County entered a default judgment, granting Landlords possession of the property as well as a $42,500 judgment for past due rent and attorneys' fees.[2]

On August 17, 2012, Tenants filed a notice of appeal to the Circuit Court for Davidson County and posted an appeal bond for costs, pursuant to Tennessee Code Annotated section 27–5–103(a) (2000), by depositing $250.00 cash with the Clerk of the General Sessions Court. On August 30, 2012, Landlords moved to dismiss the appeal on the grounds that Tenants failed to comply with the provisions of Tennessee Code Annotated section 29–18–130(b)(2) (2012), requiring the posting of a bond equal to one year's rent, and thus failed to perfect their appeal of the General Sessions Court's judgment. Because Tenants failed to comply with the unlawful detainer statute's

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bond requirement, Landlords argued, the Circuit Court lacked subject matter jurisdiction over the matter. On September 27, 2012, Tenants filed a response to the motion to dismiss, arguing that a bond of one year's rent is only required when a tenant remains in possession of the premises pending appeal. Tenants argued that because they had surrendered possession, they should not be required to post such a bond.

On September 28, 2012, the Circuit Court heard Landlords' motion to dismiss. On October 4, 2012, the Circuit Court entered an order denying Landlords' motion to dismiss, reasoning that a bond for one year's rent was unnecessary because Landlords had already obtained rightful possession of the Hampton Street property when Tenants vacated the premises.

On October 19, 2012, Landlords sought and obtained the Circuit Court's permission to file a Tennessee Rule of Appellate Procedure 9 application for interlocutory appeal as to whether posting a bond equal to one year's rent under Tennessee Code Annotated section 29–18–130(b)(2) is necessary where, prior to seeking appeal, the tenant surrenders the property that is the subject of the underlying unlawful detainer action. On December 19, 2012, the Court of Appeals denied the Landlords' Rule 9 application. Landlords then filed a Tennessee Rule of Appellate Procedure 11 application for permission to appeal, which we granted.

II. Standard of Review

[1] [2] [3] [4] Subject matter jurisdiction involves the court's lawful authority to adjudicate a controversy brought before it. *Chapman v. DaVita, Inc.*, 380 S.W.3d 710, 712 (Tenn.2012); *Meighan v. U.S. Sprint Commc'ns Co.*, 924 S.W.2d 632, 639 (Tenn.1996). Subject matter jurisdiction is conferred by statute or the Tennessee Constitution; the parties cannot confer it by ***844** appearance, plea, consent, silence, or waiver. *In re Estate of Trigg*, 368 S.W.3d 483, 489 (Tenn.2012). Any order entered by a court lacking jurisdiction over the subject matter is void. *Id.* Therefore, subject matter jurisdiction is a threshold inquiry, which may be raised at any time in any court. *Id.*

[5] [6] Where subject matter jurisdiction is challenged, the party asserting that subject matter jurisdiction exists, in this case Tenants, has the burden of proof. *Chapman*, 380 S.W.3d at 712; *Redwing v. Catholic Bishop for the Diocese of Memphis*, 363 S.W.3d 436, 445 (Tenn.2012). A determination of subject matter jurisdiction involves questions of law; therefore, rulings on such questions are reviewed de novo on appeal, without any presumption of correctness. *In re Estate of Trigg*, 368 S.W.3d at 489; *see also Lovlace v. Copley*, 418 S.W.3d 1, 17 (Tenn.2013); *Chapman*, 380 S.W.3d at 712–13.

[7] In this appeal, the existence of subject matter jurisdiction depends upon the construction of a statute. Statutory construction is also a question of law to which de novo review applies on appeal. *Mills v. Fulmarque, Inc.*, 360 S.W.3d 362, 366 (Tenn.2012); *Lind v. Beaman Dodge, Inc.*, 356 S.W.3d 889, 895 (Tenn.2011).

III. Analysis

A. History of the Unlawful Detainer Statute's Bond Provision

[8] This is an unlawful detainer action. Tenn.Code Ann. § 29–18–104 (2012). Unlawful detainer is a statutory action unknown at common law. *Newport Hous. Auth. v. Ballard*, 839 S.W.2d 86, 89 (Tenn.1992); Robert Larry Brown, Note, *Right to a Jury Trial in Forcible Entry and Detainer Actions in General Sessions Courts in Tennessee*, 6 Mem. St. U.L.Rev. 59, 60 (1975) [hereinafter Brown, 6 Mem. St. U.L.Rev.]. The first statute making unlawful detainer actions a part of Tennessee law was enacted in 1821. Act of Oct. 19, 1821, ch. 14, 1821 Tenn. Pub. Acts 16. The 1821 statute also codified the common law actions of forcible entry and forcible detainer. *Id.;* Brown, 6 Mem. St. U.L.Rev. at 62. This statute was designed to "streamline the cumbersome and more formal common law action[s], such as ejectment, used to determine rightful possession of real property." *Newport Hous. Auth.*, 839 S.W.2d at 89. "The statute was intended to prevent bloodshed, violence, and breaches of the peace, too likely to arise from wrongful intrusion into the possession of another...." *Cain P'ship, Ltd. v. Pioneer Inv. Servs. Co.*, 914 S.W.2d 452, 457 (Tenn.1996) (quoting *Childress v. Black*, 17 Tenn. (9 Yer.) 317, 320 (1836)).

Unlawful detainer occurs when the tenant enters by contract, either as "tenant or as assignee of a tenant, or as personal representative of a tenant, or as subtenant, or by collusion with a tenant, and, in either case, willfully and without force, holds over possession from the landlord, or the assignee of the remainder or reversion." Tenn.Code Ann. § 29–18–104. Under the current statute, Tennessee Code Annotated sections 29–18–101 to –134 (2012 & Supp.2013),[3] an unlawful

detainer action may begin, as here, in the general sessions court, *id.* § 29–18–107.[4] The party initiating the unlawful detainer action, here Landlords, must "give bond, with good ***845** security, to pay all costs and damages which shall accrue to the defendant for the wrongful prosecution of the suit." *Id.* § 29–18–111. The action is then tried by the general sessions judge without a jury "and in all respects like other civil suits before the court of general sessions." *Id.* § 29–18–119(a). An unlawful detainer action resolves possessory interests only; the merits of title "shall not be inquired into." *Id.* § 29–18–119(c). If the general sessions judge decides the action in favor of the landlord, then the judgment must order the landlord "restored to possession" of the property, direct "that a writ of possession or restitution issue therefor[,]" and award "the costs of suit." *Id.* § 29–18–124. If the general sessions judge decides that the landlord should recover possession, then the judge "shall be authorized and it shall be the judge's duty to ascertain the arrearage of rent, interest, and damages, if any, and render judgment therefor[.]" *Id.* § 29–18–125. A judgment of the general sessions court awarding a landlord possession is stayed for ten days. *Id.* § 29–18–126. This ten-day stay corresponds to the ten days provided in Tennessee Code Annotated section 27–5–108 (2000 & Supp.2013) for an appeal. *Id.* § 29–18–128.

Parties appealing to the circuit court from a ruling of the general sessions court in an unlawful detainer action must satisfy the bond required for appeal.[5] *Id.* § 29–18–130. The appeal bond provision of the unlawful detainer statute has evolved considerably over time. The appeal bond was originally identical to the bond required to obtain a writ of certiorari. Act of Feb. 7, 1850, ch. 74, § 1, 1849–50 Tenn. Pub. Acts 237, 237. Yet the appeal bond soon came to be regarded as insufficient to protect the interests of landlords, in light of the fact that tenants often remained in possession of the premises during the pendency of an appeal without paying rent. *See Underwood v. Liberty Mut. Ins. Co.,* 782 S.W.2d 175, 177 (Tenn.1989), *overruled on other grounds by Bazner v. Am. States Ins. Co.,* 820 S.W.2d 742, 745–46 (Tenn.1991); *Buchanan v. Robinson,* 62 Tenn. 147, 151–52 (1873); *Clark v. Shoaf,* 302 S.W.3d 849, 855 (Tenn.Ct.App.2008). As a result, the statute was amended in 1870–71 to require that the landlord be immediately restored to possession once a judgment was rendered in his favor in an unlawful detainer action, on the condition that the landlord post a bond for "double the value of one year's rent" should the tenant appeal the judgment. Act of Feb. 9, 1870, ch. 64, § 1, 1869–70 Tenn. Pub. Acts 81, 81–82; Act of Nov. 25, 1871, ch. 65, § 1, 1871 Tenn. Pub. Acts 57, 57.

The 1870–71 amendments neglected to include an appeal bond requirement for tenants, however, so the statute was amended again in 1879 to provide that if a tenant appealed and wished to stay the writ of possession, she would be required to execute a bond equal to that required of a landlord who sought to obtain possession while the tenant appealed. Act of Mar. 11, 1879, ch. 85, §§ 1–2, 1879 Tenn. Pub. Acts 111, 111–12. This provision required the party in possession to execute a bond "so as to protect the other party as to rents and damages that may be due the other party or parties."[6] *Id.* § 1, 1879 Tenn. Pub. Acts at 112.

***846** In 1981, however, the Legislature repealed the statute that codified the 1879 amendment. Act of May 20, 1981, ch. 449, § 1(6), 1981 Tenn. Pub. Acts 667, 668 (repealing Tenn.Code Ann. § 29–18–132). As a result of the repeal, Tennessee Rule of Civil Procedure 62.05 became the governing law for the bond necessary to stay the writ of possession pending appeal in unlawful detainer actions. Tenn.Code Ann. § 29–18–132 (Supp.1981) (citing the repeal of section 29–18–132 by the 1981 Act and referring to Tenn. R. Civ. P. 62 as the governing law).

The language of Tennessee Rule of Civil Procedure 62.05 as of 1981 is the same in all relevant respects to the language of the current version of Rule 62.05, which provides:

> A bond for stay shall have sufficient surety and:
>
> (1) If an appeal is from a judgment directing the payment of money, the bond shall be conditioned to secure the payment of the judgment in full, interest, damages for delay, and costs on appeal....
>
> (2) If an appeal is from a judgment ordering the assignment, sale, delivery or *possession of personal or real property,* the bond shall be conditioned to secure obedience of the judgment and *payment for the use, occupancy, detention and damage or waste of the property from the time of appeal until delivery of possession of the property and costs on appeal....* A party may proceed as an indigent person without giving any security as provided in Rule 18 of Tennessee Rules of Appellate Procedure.

Tenn. R. Civ. P. 62.05 (emphasis added).

Two years later, the Legislature amended the unlawful detainer statute and added the bond requirement of section 29–18–130(b)(2) at issue in this appeal. To understand the

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meaning of the 1983 amendment, it is helpful to consider section 29–18–130 in its entirety:

> (a) When judgment is rendered in favor of the [landlord], in any action of ... unlawful detainer, brought before a judge of the court of general sessions, and a writ of possession is awarded, the same shall be executed and the [landlord] restored to the possession immediately.
>
> (b)(1) If the [tenant] pray an appeal, then, in that case, the [landlord] shall execute bond, with good and sufficient security, in double the value of one (1) year's rent of the premises, conditioned to pay all costs and damages accruing from the wrongful enforcement of such writ, and to abide by and perform whatever ***847** judgment may be rendered by the appellate court in the final hearing of the cause.
>
> (b)(2) In cases where the action has been brought by a landlord to recover possession of leased premises from a tenant on the grounds that the tenant has breached the contract by failing to pay the rent, and a judgment has been entered against the tenant, subdivision (b)(1) shall not apply. In that case, if the [tenant] prays an appeal, the [tenant] shall execute bond, or post either a cash deposit or irrevocable letter of credit from a regulated financial institution, or provide two (2) good personal sureties with good and sufficient security in the amount of one (1) year's rent of the premises, conditioned to pay all costs and damages accruing from the failure of the appeal, including rent and interest on the judgment as provided for herein, and to abide by and perform whatever judgment may be rendered by the appellate court in the final hearing of the cause. The [landlord] shall not be required to post a bond to obtain possession in the event the [tenant] appeals without complying with this section. The [landlord] shall be entitled to interest on the judgment, which shall accrue from the date of the judgment in the event the [tenant's] appeal shall fail.

Tenn.Code. Ann. § 29–18–130.

In this Court, Landlords continue to argue that this statute requires all tenants to post a bond equal to one year's rent when appealing an adverse judgment, whether or not they have surrendered the premises. Landlords therefore claim that the Circuit Court lacked subject matter jurisdiction in this case because Tenants failed to satisfy the bond requirement for appealing prescribed by the plain language of section 29–18–130(b)(2).

Tenants respond that the bond requirement applies only to tenants who remain in possession of the property during an appeal. Because they had surrendered possession of the property prior to appealing, Tenants assert that they were not required to post a bond equivalent to one year's rent and that they satisfied the only statutory bond applicable to them by depositing the $250.00 cash bond with the Clerk of the General Sessions Court for Davidson County.

The dispute between the parties about the meaning of this statute is also presented in a series of unpublished decisions of the Court of Appeals. Some panels of the Court of Appeals have held that a statutory bond for rent is not required when the tenant has surrendered possession of the premises, as the bond provision "is intended to protect the landlord or plaintiff and to provide a source from which rents and damages which accrue during the pendency of the appeal and while the [tenant] is still in possession of the premises can be collected." *Mason v. Wykle,* No. 03A01–9508–CV–00262, 1996 WL 87455, at *2 (Tenn.Ct.App. Feb. 29, 1996); *accord Sturgis v. Thompson,* 415 S.W.3d 843, 846 n. 4 (Tenn.Ct.App.2011); *Valley View Mobile Home Parks, LLC v. Layman Lessons, Inc.,* No. M2007–01291–COA–R3–CV, 2008 WL 2219253, at *2–3 (Tenn.Ct.App. May 27, 2008).

However, other panels of the Court of Appeals have concluded that the statutory language applies to all tenants appealing adverse judgments, regardless of whether they retain possession of the premises during the appeal. *See Swanson Devs., LP v. Trapp,* No. M2006–02310–COA–R3–CV, 2008 WL 555705, at *5 (Tenn.Ct.App. Feb. 29, 2008); *Amberwood Apartments v. Kirby,* No. 89–121–II, 1989 WL 89761, at *1, *3 (Tenn.Ct.App. Aug. 9, 1989).

***848** *B. Statutory Construction*

[9] **[10]** **[11]** **[12]** As we determine whether section 29–18–130(b)(2) applies only to tenants who retain possession of the premises during an appeal or to all tenants, we are guided by the following familiar rules of statutory construction. A court's primary aim "is to carry out legislative intent without broadening or restricting the statute beyond its intended scope." *Lind,* 356 S.W.3d at 895. Courts presume that every word in a statute has meaning and purpose and that these words "should be given full effect if the obvious intention of the General Assembly is not violated by so doing." *Id.* Words "must be given their natural and ordinary meaning in the context in which they appear and in light of the

statute's general purpose." *Mills,* 360 S.W.3d at 366. When the meaning of a statute is clear, "[courts] apply the plain meaning without complicating the task" and enforce the statute as written. *Lind,* 356 S.W.3d at 895. At the same time, courts "must be circumspect about adding words to a statute that the General Assembly did not place there." *Coleman v. State,* 341 S.W.3d 221, 241 (Tenn.2011).

[13] **[14]** We are also cognizant that "statutes 'in pari materia'—those relating to the same subject or having a common purpose—are to be construed together, and the construction of one such statute, if doubtful, may be aided by considering the words and legislative intent indicated by the language of another statute." *Graham v. Caples,* 325 S.W.3d 578, 582 (Tenn.2010) (quoting *Wilson v. **Johnson** Cnty.,* 879 S.W.2d 807, 809 (Tenn.1994)). Courts must adopt the most "reasonable construction which avoids statutory conflict and provides for harmonious operation of the laws." *Carver v. Citizen Utils. Co.,* 954 S.W.2d 34, 35 (Tenn.1997). Even though " 'the rules of civil procedure are not statutes, the same rules of statutory construction apply.' " *Lind,* 356 S.W.3d at 895 (alteration in original) (quoting *Thomas v. Oldfield,* 279 S.W.3d 259, 261 (Tenn.2009)).

[15] **[16]** **[17]** Additionally, "new statutes change pre-existing law only to the extent expressly declared." *State v. Dodd,* 871 S.W.2d 496, 497 (Tenn.Crim.App.1993); *see also In re Deskins' Estates,* 214 Tenn. 608, 381 S.W.2d 921, 922 (1964). A statute " 'not repealing directly or by implication any previous law, is cumulative to such law' and 'repeals by implication are not favored.' " *McDaniel v. Physicians Mut. Ins. Co.,* 621 S.W.2d 391, 394 (Tenn.1981) (alteration in original) (quoting *Hibbett v. Pruitt,* 162 Tenn. 285, 36 S.W.2d 897, 900 (1931)). Indeed, we presume that the Legislature knows the law and makes new laws accordingly. *Lee Med., Inc. v. Beecher,* 312 S.W.3d 515, 527 (Tenn.2010).

[18] Applying these rules, we conclude that the bond requirement of section 29–18–130(b)(2) is not jurisdictional and applies only to those tenants in an unlawful detainer action who wish to stay the writ of possession after a general sessions court's judgment in favor of the landlord and retain possession of the property during the appeal. Considering section 29–18–130 as a whole, it is clear that subsections (a) and (b)(1) contemplate that a landlord will obtain possession of the property soon after being awarded the writ of possession. Section 29–18–130(a) states that when the general sessions court awards a writ of possession to a landlord, the writ shall be executed "immediately." Tenn.Code Ann. § 29–18–130(a). Thus, predicated upon the premise that the landlord has regained possession of the property, section 29–18–130(b)(1) requires the landlord in possession of the property to give a bond for "double the value of one (1) year's rent," if a tenant appeals. *Id.* § 29–18–130(b)(1). This bond, which must be "conditioned to pay all costs and damages ***849** accruing from the wrongful enforcement of such writ [of possession]," protects the tenant who has been wrongfully dispossessed. *Id.* Precisely because the tenant has surrendered possession of the property, the statute requires the landlord to post a bond for double the value of a year's rent if the tenant appeals.

The plain language of section (b)(2), on the other hand, enacted in 1983, presumes that the tenant has retained possession of the premises. Under this section, if a tenant appeals a judgment for a landlord, she must post a bond for "one (1) year's rent of the premises, *conditioned to pay all costs and damages accruing from the failure of the appeal, including rent* and interest on the judgment as provided for herein." *Id.* § 29–18 –130(b)(2) (emphasis added). The plain language of section (b)(2) refers to damages that "accru [e]" "from the failure of the appeal," with reference specifically to "rent." The natural and ordinary meaning of the language as written refers to "rent" that the tenant is "accruing" while the appeal is pending. However, rent can be accruing against the tenant during the appeal only if the tenant has remained in possession of the property; a tenant cannot be held liable for rent if she is not in possession of the property.[7]

Thus, the plain language of section (b)(2) requiring the posting of a bond equal to one year's rent is based on the premise that the tenant remains in possession of the property during the appeal. This reading of the statute's plain language is reinforced by another portion of section (b)(2), which states that the "[landlord] shall not be required to post a bond *to obtain possession* in the event the [tenant] appeals without complying with this section," i.e. without posting the bond. *Id.* § 29–18–130(b)(2) (emphasis added). The ordinary and plain meaning of this language indicates that the landlord has not "obtain[ed] possession" of the premises and that the entirety of section (b)(2) applies to situations where the landlord has not regained possession of the premises. Specifically, this portion of section (b)(2) relieves the landlord of the obligation of posting the bond prescribed in section (b)(1), which is ordinarily necessary to regain possession, and allows the landlord to regain possession immediately if the tenant in possession fails to post a bond of one year's rent when appealing a judgment for the landlord.

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The language of section 29–18–130(b)(2), which contemplates that a tenant may appeal without posting bond, indicates that the bond is not jurisdictional but rather is non-jurisdictional and designed to stay the landlord's writ of possession. In contrast, Tennessee Code Annotated section 27–5–103(a) prescribes the jurisdictional cost bond, which is always required of a party seeking to appeal from general sessions to circuit court. This bond requirement is not merely a formality but rather a necessity; without it, the appeal cannot be perfected. *Bernatsky v. Designer Baths & ***850** Kitchens, LLC,* No. W2012–00803–COA–R3–CV, 2013 WL 593911, at *3 (Tenn.Ct.App. Feb. 15, 2013); *Carter v. Batts,* 373 S.W.3d 547, 551 (Tenn.Ct.App.2011).

Our reading of the plain language of section 29–18–130(b)(2) as prescribing a non-jurisdictional bond requirement for staying the writ of possession pending appeal is also harmonious and consistent with the plain language of Tennessee Rule of Civil Procedure 62.05, which relates to the same subject—bonds required to secure a stay pending appeal. The Tennessee Rules of Civil Procedure "govern procedure in the circuit or chancery courts in all civil actions," and "apply after appeal or transfer of a general sessions civil lawsuit to circuit court." Tenn. R. Civ. P. 1. Thus, Rule 62.05 applies to Tenants' appeal to Circuit Court. Rule 62.05 states plainly that when an appeal is taken from a judgment "ordering the ... possession of personal or real property," the bond to secure a stay pending appeal shall "secure obedience of the judgment and payment for the use, occupancy, detention and damage or waste of the property *from the time of appeal until delivery of possession of the property* and costs on appeal." Tenn. R. Civ. P. 62.05(2) (emphasis added). Where real property is concerned, Rule 62.05 requires a bond in an amount sufficient to cover rent and waste to the property only "until delivery of possession of the property." *Id.* Once possession of the property has been relinquished, Rule 62.05 does not require that the bond include an amount sufficient to cover rent of the property during an appeal.[8]

Reading section 29–18–130(b)(2) together with Rule 62.05, as we are required to do, we conclude that the plain language of the statute merely supplements the general language of the rule by specifying the precise amount of rent (one year's rent) that is sufficient for the bond when a tenant in an unlawful detainer action wishes to retain possession of property pending an appeal.

In light of section 29–18–130(b)(2)'s plain references to "accruing," "rent," and a landlord who has not yet "obtain[ed] possession" of the premises, and as a consequence of reading the statute harmoniously with Tennessee Rule of Civil Procedure 62.05, we conclude that Tennessee Code Annotated section 29–18–130(b)(2) prescribes the non-jurisdictional appeal bond required only of a tenant who has retained possession of the premises and wishes to stay execution of a landlord's writ of possession pending appeal. This statute does not apply to a tenant who has surrendered possession of the premises at issue prior to an appeal of an adverse judgment. Interpreting the statute to require a bond of all tenants who appeal an adverse judgment, regardless of possession, would amount to reading a requirement into the statute that was not explicitly placed there by the Legislature, which courts should not do. *Coleman,* 341 S.W.3d at 241.[9]

***851 IV. Conclusion**

As a consequence of reading the plain language of the statute and construing it harmoniously with Tennessee Rule of Civil Procedure 62.05, we agree with the Circuit Court that Tennessee Code Annotated section 29–18–130(b)(2) does not require a tenant who has surrendered possession of the property to post a bond for one year's rent when appealing an adverse judgment of the general sessions court in an unlawful detainer action. We therefore affirm the judgment of the Circuit Court denying the Landlords' motion to dismiss the Tenants' appeal and remand this matter to the Circuit Court for further proceedings consistent with this decision. The costs of this appeal are taxed to Landlords, Edith **Johnson** and Lisa Miller, and their surety, Baydoun & Knight, PLLC, for which execution may issue if necessary.

All Citations

432 S.W.3d 840

Footnotes

1 The record does not reflect whether the property is commercial or residential. The distinction is unnecessary in this appeal, however, because the appeal bond requirements are the same. The Uniform Residential Landlord and Tenant Act contains no independent appeal bond requirements. *See* Tenn.Code Ann. §§ 66–28–101 to –521 (2004 & Supp.2013).

2 The record does not indicate how the $42,500 judgment of the General Sessions Court was allocated between past due rent and attorneys' fees.

3 The text of the unlawful detainer statute has not changed since this case was resolved by the courts below. Thus, quotations and citations in this opinion refer to the current statute.

4 The circuit court also has original jurisdiction over unlawful detainer actions. Tenn.Code Ann. § 29–18–108.

5 Another provision of the unlawful detainer statute provides for judicial review in the circuit court pursuant to writs of certiorari and supersedeas, which stay the execution of the writ of possession. Tenn.Code Ann. § 29–18–129. This provision of the statute is not at issue in this appeal because Tenants appealed as of right to the Circuit Court pursuant to Tennessee Code Annotated section 29–18–128.

6 Decisions that followed made it clear that when a tenant surrendered possession of the premises and sought judicial review through appeal of an adverse judgment in an unlawful detainer action, no bond covering rent was required. *See Elliott v. Lewis,* 225 Tenn. 96, 463 S.W.2d 698, 700 (1971); *Hawkins v. Alexander,* 91 Tenn. 359, 18 S.W. 882, 882 (1892) (holding that a cost bond or pauper's oath was sufficient to perfect an appeal where the tenant surrendered possession pending appeal). However, we emphasize that an unlawful detainer action is not the only remedy available to landlords. Where a tenant fails to perform "a valid promise contained in the lease," such as to pay rent, and that promise was a "significant inducement to the making of the lease," the landlord may choose either to "terminate the lease and recover damages"—usually accomplished by bringing an unlawful detainer action in order to regain possession of the premises —or to continue the lease and seek "appropriate equitable and legal relief, including (a) recovery of damages, and (b) recovery of the reasonable cost of performing tenant's promise." *Cain,* 914 S.W.2d at 456, 459; *id.* at 464 (O'Brien, J., concurring) (recognizing that the unlawful detainer action itself amounts to the landlord's termination of the lease); *Matthews v. Crofford,* 129 Tenn. 541, 167 S.W. 695, 698 (1914) (holding that service of process in the unlawful detainer suit operated as constructive re-entry sufficient to terminate the lease).

7 *See Matthews,* 167 S.W. at 697 (observing that once a tenant has surrendered possession during the pendency of an appeal of an unlawful detainer action by writ of certiorari, she is no longer liable for the rent of the premises accruing after the surrender). *See also Nashville Record Prods., Inc. v. Mr. Transmission, Inc.,* 623 S.W.2d 281, 284 (Tenn.Ct.App.1981) (affirming trial court's holding disallowing award for rent from time landlord had possession and use of premises onward); *Galbreath v. Harris,* 779 S.W.2d 392, 394 (Tenn.Ct.App.1989) (holding that " '[g]enerally, liability for future rent under a lease is extinguished by cancellation of the lease, as where the lease is cancelled in legal proceedings or by mutual agreement of the parties. However, the tenant remains liable for rent due or accruing before the cancellation becomes effective.' ") (quoting 52 C.J.S. *Landlord & Tenant* § 491 (1968)).

8 However, if a tenant who relinquishes possession wishes to stay the judgment of the general sessions court "directing the payment of money," the tenant must post a bond, pursuant to Rule 62.05(1), "conditioned to secure the payment of the judgment in full, interest, damages for delay, and costs on appeal." Tenn. R. Civ. P. 62.05(1). This bond must be posted in addition to the cost bond required by Tennessee Code Annotated section 27–5–103(a).

9 Although our conclusion is based on the statute's plain language, we note that the legislative history of Tennessee Code Annotated section 29–18–130(b)(2) also indicates that the 1983 amendment was intended to apply only when a tenant appeals a judgment for the landlord and remains in possession of the premises. Senator Leonard C. Dunavant, the Senate sponsor, explained that the amendment was needed because

> if a person is ousted from a piece of property or as a renter because he is not paying his rent and he appeals it, he can sit there until the suit is heard and never pay his rent and all that will happen is that he will be ousted again. And this seems unfair.

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Hearing on S.B. 217 on the Senate Floor, 93d Gen. Assemb. (Tenn. Mar. 17, 1983) (statement of Sen. Leonard C. Dunavant). The bill's House sponsor, Chris Turner, offered a similar rationale:

> Sometimes, after the landlord has gotten his judgment and it's just for nonpayment of rent, then the other party can appeal and sometimes it takes as much as a year to get that heard in circuit court. So this just provides that bond be put up so rent would be paid the landlord.

Hearing on H.B. 888 on the House Floor, 93d Gen. Assemb. (Tenn. Apr. 13, 1983) (statement of Rep. Chris Turner).

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McKeever v. Matlock

No. M2004-01846-COA-R3-CV, 2005 WL 2477526 (Tenn. Ct. App. 2005) **URLTA**

Issue:

Reservation of Rights

2005 WL 2477526
Only the Westlaw citation is currently available.

SEE COURT OF APPEALS RULES 11 AND 12

Court of Appeals of Tennessee.

Barbara **McKEEVER**, et al.

v.

Roy **MATLOCK**, et al.

No. M2004-01846-COA-R3-CV.
|
July 15, 2005 Session.
|
Oct. 6, 2005.

Appeal from the Circuit Court for Davidson County, No. 03-C-3448; Marietta Shipley, Judge.

Attorneys and Law Firms

Thurman T. McLean, Jr., Madison, Tennessee, for the appellant, Barbara **McKeever**, et al.

Michele E. Cooper, Kelly A. Cashman-Grams, Nashville, Tennessee, for the appellees, Roy **Matlock**, et al.

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and FRANK G. CLEMENT, JR., J ., joined.

MEMORANDUM OPINION[1]

PATRICIA J. COTTRELL, J.

***1** Former lessee appeals grant of summary judgment dismissing her wrongful ouster lawsuit against former landlord. We affirm.

This appeal pertains to an alleged wrongful ouster of a tenant after landlord evicted tenant pursuant to an agreed order between the parties. Tenant claimed landlord's acceptance of rent during the pendency of the agreed order prevented landlord from enforcing the order. The trial court granted landlord summary judgment. We find that the landlord was entitled to judgment as a matter of law.

I. Facts

Barbara **McKeever** and her then husband, Michael **McKeever**, rented their home from the Roy **Matlock**, Sr. and Martha **Matlock** Joint Revocable Living Trust, Roy **Matlock**, Sr. and Martha **Matlock**, Trustees ("**Matlock**"). The lease agreement dated April of 2000 was signed by both Barbara **McKeever** and her husband.

The lease provided that the monthly rental payments were due on the 1st of each month and that failure to make the payment by the 10th resulted in automatic termination of the lease. The lease further provided that upon termination, the **McKeevers** were obligated to immediately surrender the rental property to **Matlock**. The lease also provided in paragraph 14 that acceptance by landlord of rent paid after legal proceedings had begun was with reservation:

> In the event any monies are paid after legal proceedings have been instigated, it is agreed by LESSEES and LESSORS that these monies are accepted by LESSORS with reservations.

Apparently unbeknownst to Ms. **McKeever**, her husband failed to make rental payments for the months of April and May of 2003. Mr. and Ms. **McKeever** separated about this time. Mr. **McKeever** is not a party to this lawsuit. It should be noted that **Matlock** has never received rent for these two (2) months.

As a result of the unpaid rent, **Matlock** initiated proceedings to evict the **McKeevers**, and a judgment was entered against them for possession of the premises on May 19, 2003. Ms. **McKeever** appealed the General Sessions judgment to Circuit Court. In an effort to resolve the matter, Ms. **McKeever** and **Matlock** entered into an Agreed Order on June 27, 2003, allowing Ms. **McKeever** to remain in possession of the premises if, within 7 days of the Agreed Order, she 1) qualified for a loan to purchase the property for $141,900 and 2) paid **Matlock** earnest money of $10,000. According to the terms of the Agreed Order, failure to meet these conditions would result in another writ being immediately issued to evict her from the property.

Ms. **McKeever** made the June rental payment on an unspecified date that **Matlock** accepted with express reservation. Thereafter, Ms. **McKeever** paid her July rent on July 17 and her August rent on August 15. Thus, both the July and August rental payments were late according to the

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terms of the lease. **Matlock** accepted the July and August rent without specifically expressing reservation.

There is no dispute that Ms. **McKeever** was unable to meet the conditions of the Agreed Order, and she was evicted from her home pursuant to that order on August 22, 2003. It appears that no further appeal was taken of the eviction suit.

***2** Thereafter, in December of 2003, Ms. **McKeever** brought this suit against **Matlock** seeking monetary damages claiming the August 2003 eviction constituted an unlawful ouster, outrageous conduct, and negligence. According to Ms. **McKeever**, her eviction was wrongful since **Matlock** "condoned" her defaults under Tenn.Code Ann. § 66-28-508 by accepting the July and August rental payments without expressing reservation.

The trial court granted summary judgment to **Matlock**, and Ms. **McKeever** appeals.

II. Standard Of Review

Our review of a trial court's summary judgment is *de novo* with no presumption of correctness since the trial court's decision is a question of law. *Scott v. Ashland Healthcare Ctr., Inc.,* 49 S.W.3d 281, 285 (Tenn.2001). Summary judgment should be granted only when the moving party demonstrates that there are no genuine issues of material fact and that he or she is entitled to judgment as a matter of law. *Webber v. State Farm Mutual Automobile Insurance Company,* 49 S.W.3d 265, 269 (Tenn.2001). We must consider the evidence in the light most favorable to the non-moving party, and we must resolve all inferences in the non-moving party's favor. *Doe v. HCA Health Services, Inc.,* 46 S.W.3d 191, 196 (Tenn.2001).

III. Analysis

The parties entered into an Agreed Order stating that unless Ms. **McKeever** met the conditions in the order, a writ of restitution to evict her from the house would be issued immediately based on the May 19, 2003 general sessions court judgment. Ms. **McKeever** does not dispute that she did not meet the conditions of this Agreed Order. The writ that was issued and which resulted in her eviction was issued pursuant to the Agreed Order and was based on the defaults occurring in April and May. She does not dispute that **Matlock** never received the rental payments due in April and May of 2003. As a practical matter, those concessions leave her with very little grounds to contest the eviction. Her lawsuit hinges on whether the acceptance by **Matlock** of July and August rent waives her prior breach of the lease.

Ms. **McKeever** contends that paragraph 14 of the lease governing reservation by the landlord is an unlawful waiver of tenant's right under the Uniform Residential Landlord and Tenant Act, ("URLTA"), Tenn.Code Ann. §§ 66-28-201(a).[2] Therefore, according to the argument, since the rental payments were accepted without express reservation and since the waiver in the lease was unenforceable, then pursuant to the waiver provision of URLTA, **Matlock** waived her breach and thus lacked grounds to terminate her lease.

Ms. **McKeever** argues that because she made a payment in August, albeit a late one, she could not be evicted in August. She relies on Tenn.Code Ann. § 66-28-508, which provides:

> If the landlord accepts rent without reservation and with knowledge of a tenant default, the landlord by such acceptance condones the default and thereby waives such landlord's right and is estopped from terminating the rental agreement as to that breach.

***3** This reliance is misplaced. We conclude that the July and August payments were accepted with reservation. **Matlock's** acceptance of the July and August rental payments was automatically made with reservation pursuant to paragraph 14 of the lease since litigation had been initiated. Ms. **McKeever** was on notice of this provision and was aware that legal proceedings had been instituted, having participated in them. Ms. **McKeever** does not dispute that if paragraph 14 is operative then the July and August payments were accepted with reservation.

Ms. **McKeever** argues, however, that paragraph 14 is an unlawful waiver of her rights under the URLTA prohibited by Tenn.Code Ann. § 66-28-201(a) which provides:

> (a) The landlord and tenant may include in a rental agreement, terms and conditions not prohibited by this chapter or other rule of law including rent, term of the agreement, and other provisions governing the rights and obligations of parties. **A rental agreement cannot provide that the tenant agrees to waive or forego rights or remedies under this chapter.** The landlord or the landlord's agent shall advise in writing that the landlord is not responsible for, and will not provide, fire or casualty insurance for the tenant's personal property. (emphasis added).

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According to Ms. **McKeever**, paragraph 14 of the lease is an unlawful attempt to have her forego her right under Tenn.Code Ann. § 66-28-508, quoted above.

We disagree. We think a landlord and tenant can agree to a term such as the one at issue. The only thing agreed to was that monies paid after legal proceedings were initiated were always accepted with reservation. We find no right given to a tenant in the URLTA that this provision waives. There is no right to pay rent late or not to pay. There is no right to force the landlord to accept payments without reservation. Under the URLTA, a landlord retains the right to accept payments with reservation, *i.e.,* without giving up available legal remedies. The fact that the parties agreed ahead of time to the landlord's acceptance with reservation under certain circumstances does not waive any right the tenant has under the Act.

Matlock never waived the payments due in April or May, but only agreed to forego eviction based on those breaches if Ms. **McKeever** performed in accordance with the Agreed Order, which would have resulted in a sale of the house to her. **Matlock** retained the right to evict for the April and May breaches if she failed to perform. Under the Agreed Order, the eviction was based on the general sessions court judgment, supported by the prior defaults. Acceptance of the July and August rent did not affect the enforceability of the Agreed Order.

Accordingly, the trial court is affirmed and costs of appeal are taxed to appellant, Barbara **McKeever**.

All Citations

Not Reported in S.W.3d, 2005 WL 2477526

Footnotes

1 Tenn. R. Ct.App. 10 states:

> This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

2 Ms. **McKeever** also makes some allegations that after she was unable to comply with the Agreed Order, Mr. **Matlock** said he would revise the lease. There is no allegation that the lease was, in fact, revised.

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Mora v. Vincent

2017 WL 1372862 (Tenn. Ct. App. Apr. 13, 2017) **URLTA**

Issue:

Tenant entitled to reasonable attorney's fees if eviction violates URLTA.

2017 WL 1372862
Only the Westlaw citation is currently available.

SEE COURT OF APPEALS RULES 11 AND 12

Court of Appeals of Tennessee,
AT KNOXVILLE.

Freddy **MORA**, et al.

v.

David **VINCENT**, et al.

No. E2016–00327–COA–R3–CV

January 26, 2017 Session

04/13/2017

Appeal from the Chancery Court for Bradley County, No. 2011–CV–143, Jerri S. Bryant, Chancellor

Attorneys and Law Firms

Freddy **Mora**, Cleveland, Tennessee, pro se appellant.

Laurie H. Hallenberg, Cleveland, Tennessee, for the appellees, David **Vincent** and Teresa **Vincent**.

Mitchell L. Meeks, Chattanooga, Tennessee, for the appellee, John Christopher German.

D. Michael Swiney, C.J., delivered the opinion of the court, in which Charles D. Susano, Jr. and John W. McClarty, JJ., joined.

MEMORANDUM OPINION[1]

D. Michael Swiney, C.J.

Freddy **Mora** ("Plaintiff"), pro se, appeals the February 4, 2016 judgment of the Chancery Court for Bradley County ("the Trial Court") in this suit alleging violations of Tenn. Code Ann. § 66–28–101, *et seq.*, the Uniform Residential Landlord and Tenant Act. Plaintiff's brief on appeal severely fails to comply with Tenn. R. App. P. 27. We, therefore, find that Plaintiff has waived his issues on appeal. David **Vincent** and Teresa **Vincent** ("Defendants") raise an issue regarding the Trial Court's award to Plaintiff of attorney's fees. We find and hold that while the award of attorney's fees was proper, there is nothing in the record before us on appeal showing any evidence which the Trial Court could have relied upon in determining the amount of attorney's fees. Nor is there anything in the record showing that the Trial Court considered the factors contained in Rule 8, RPC 1.5 of the Rules of the Supreme Court or the applicable case law in determining the amount of reasonable attorney's fees. Given all this, we vacate the amount awarded in attorney's fees and remand this case to the Trial Court for further proceedings to determine the amount of reasonable attorney's fees to be awarded to Plaintiff.

***1** Plaintiff Freddy **Mora** and Nadya **Mora**[2] sued David **Vincent** alleging, among other things, violations of Tenn. Code Ann. § 66–28–101, *et seq.*, the Uniform Residential Landlord and Tenant Act, in connection with an agreement for the **Moras** to lease/purchase real property located in Cleveland, Tennessee. The **Moras** later amended their complaint to name Teresa **Vincent** and John Christopher German[3] as additional party defendants.

The case was tried without a jury, and all parties were represented by attorneys at trial. After trial, the Trial Court entered its judgment on February 4, 2016, finding and holding, *inter alia*, that the defendants had violated the Uniform Residential Landlord and Tenant Act, that the plaintiffs were entitled to the return of their security deposit and personal property that remained on the premises, that the plaintiffs were entitled to an award of attorney's fees in the amount of $7,500, that the plaintiffs had failed to prove their other claims, and that the defendants had failed to prove their counterclaim. Plaintiff Freddy **Mora** appealed the Trial Court's judgment to this Court.

Plaintiff is pro se on appeal. As this Court explained in *Young v. Barrow*:

> Parties who decide to represent themselves are entitled to fair and equal treatment by the courts. *Whitaker v. Whirlpool Corp.*, 32 S.W.3d 222, 227 (Tenn. Ct. App. 2000); *Paehler v. Union Planters Nat'l Bank, Inc.*, 971 S.W.2d 393, 396 (Tenn. Ct. App. 1997). The courts should take into account that many pro se litigants have no legal training and little familiarity with the judicial system. *Irvin v. City of Clarksville*, 767 S.W.2d 649, 652 (Tenn. Ct. App. 1988). However, the courts must also be mindful of the boundary between fairness to a pro se litigant and unfairness to the pro se litigant's adversary. Thus, the courts must not excuse pro se litigants from complying with

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the same substantive and procedural rules that represented parties are expected to observe. *Edmundson v. Pratt*, 945 S.W.2d 754, 755 (Tenn. Ct. App. 1996); *Kaylor v. Bradley*, 912 S.W.2d 728, 733 n. 4 (Tenn. Ct. App. 1995).

Young v. Barrow, 130 S.W.3d 59, 62–63 (Tenn. Ct. App. 2003).

Plaintiff's brief on appeal severely fails to comply with Tenn. R. App. P. 27. Rule 27 of the Tennessee Rules of Appellate Procedure specifies that an appellant's brief must contain, *inter alia*:

***2** (1) A table of contents, with references to the pages in the brief;

(2) A table of authorities, including cases (alphabetically arranged), statutes and other authorities cited, with references to the pages in the brief where they are cited;

* * *

(4) A statement of the issues presented for review;

(5) A statement of the case, indicating briefly the nature of the case, the course of proceedings, and its disposition in the court below;

(6) A statement of facts, setting forth the facts relevant to the issues presented for review with appropriate references to the record;

(7) An argument, which may be preceded by a summary of argument, setting forth:

(A) the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record (which may be quoted verbatim) relied on; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);

(8) A short conclusion, stating the precise relief sought.

Tenn. R. App. P. 27(a).

While Plaintiff's brief contains a page titled "TABLE OF CONTENTS," this page does not contain any references to the pages in the brief. Plaintiff's brief fails to contain any of the other content required by Tenn. R. App. P. 27(a) as listed above. Plaintiff's brief on appeal contains no table of authorities. This lack of a table of authorities, however, is not all that surprising as the brief fails to cite any legal authority whatsoever.

Instead of containing the sections required by Tenn. R. App. P. 27(a), Plaintiff's brief contains lists of page and line numbers, which appear to be references to the transcript from the trial. Some of these numbers are followed by allegations about why Plaintiff believes that the statements and testimony contained on those pages is incorrect in some respect. Some of the references to the transcript are references to statements made by, or questions asked by, the attorneys at trial, which do not constitute evidence.

Perhaps the only thing that is clear from Plaintiff's brief is that Plaintiff is unhappy with the outcome of the trial in some way. Plaintiff's brief, however, does not contain a statement of the issues as required by Tenn. R. App. P. 27(a)(4), and thus, it is impossible to tell from the brief what appealable issue or issues Plaintiff wishes to raise. We will not undertake to search the record and then revise Plaintiff's brief in its entirety so as to create issues of claimed errors by the Trial Court when Plaintiff raises no such specific claimed errors because to do so would have this Court serve as Plaintiff's attorney.

We are not unmindful of Plaintiff's pro se status and have given him the benefit of the doubt whenever possible. Nevertheless, we cannot write Plaintiff's brief for him, and we are not able to create arguments or issues where none otherwise are set forth. Likewise, we will not dig through the record in an attempt to discover arguments or issues that Plaintiff may have made had he been represented by counsel. To do so would place Defendants in a distinct and likely insurmountable and unfair disadvantage as this Court would be acting as Plaintiff's attorney.

***3** A party's failure to comply with the appellate brief requirements set forth in Tenn. R. App. P. 27 can have serious consequences, as we have warned repeatedly:

> Courts have routinely held that the failure to make appropriate references to the record and to cite relevant authority in the argument section of the brief as required by Rule 27(a)(7) constitutes a waiver of the issue. *See State v. Schaller*, 975 S.W.2d 313, 318 (Tenn. Crim. App. 1997); *Rampy v. ICI Acrylics, Inc.*, 898 S.W.2d 196, 210 (Tenn. Ct. App. 1994); *State v. Dickerson*, 885 S.W.2d 90, 93 (Tenn. Crim. App. 1993). Moreover, an issue is waived where it is simply raised without any argument regarding its merits.

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> *See Blair v. Badenhope*, 940 S.W.2d 575, 576–577 (Tenn. Ct. App. 1996); *Bank of Crockett v. Cullipher*, 752 S.W.2d 84, 86 (Tenn. Ct. App. 1988).... This Court is under no duty to verify unsupported allegations in a party's brief, or for that matter consider issues raised but not argued in the brief. *Duchow v. Whalen*, 872 S.W.2d 692, 693 (Tenn. Ct. App. 1993) (*citing Airline Const. Inc., [sic] v. Barr*, 807 S.W.2d 247 (Tenn. Ct. App. 1990)).

Bean v. Bean, 40 S.W.3d 52, 55–56 (Tenn. Ct. App. 2000).

Plaintiff failed to comply in any significant way with Tenn. R. App. P. 27, and this failure makes it impossible for this Court to conduct any realistic review of the Trial Court's judgment. As such, we find and hold that Plaintiff has waived any issues he may have attempted to raise on appeal.

Although not stated exactly as such, Defendants raise two issues on appeal: 1) whether the Trial Court erred in awarding Plaintiff $7,500 in attorney's fees; and 2) whether Plaintiff's appeal is frivolous entitling Defendants to an award of attorney's fees on appeal.

The Trial Court found and held that the defendants' eviction of the plaintiffs was in violation of the Uniform Residential Landlord and Tenant Act. Pursuant to Tenn. Code Ann. § 66–28–504, a tenant may recover "actual damages sustained by the tenant, and punitive damages when appropriate, plus a reasonable attorney's fee" in the case of an eviction in violation of the Uniform Residential Landlord and Tenant Act. Tenn. Code Ann. § 66–28–504 (2015).

In their brief on appeal, Defendants do not argue that Plaintiff was not entitled to an award of attorney's fees. Rather, they argue that the record is devoid of any evidence in support of the amount of attorney's fees that the Trial Court awarded. We discern no error in the Trial Court's determination that an award of attorney's fees to Plaintiff was proper. Thus, we review this issue solely to determine if the Trial Court erred in determining the amount of attorney's fees.

As this Court explained in *Killingsworth v. Ted Russell Ford, Inc.*:

> There is no fixed mathematical rule in this jurisdiction for determining reasonable fees and costs. This being the case, an appellate court will normally defer to a trial court's award of attorney's fees unless there is "a showing of an abuse of [the trial court's] discretion." *Threadgill v. Threadgill*, 740 S.W.2d 419, 426 (Tenn. Ct. App. 1987); *see also Sanders*, 989 S.W.2d at 345. In evaluating the lower court's exercise of discretion in a non-jury setting, we review its award *de novo*. We are not authorized to disturb the trial court's award unless we find that the evidence preponderates against the trial court's factual findings. Tenn. R. App. P. 13(d).

***4** *Killingsworth v. Ted Russell Ford, Inc.*, 104 S.W.3d 530, 534 (Tenn. Ct. App. 2002).

Whether an attorney's fee is reasonable is determined by considering the Rules of Professional Conduct 1.5 contained in Rule 8 of the Rules of the Supreme Court, which provides, in pertinent part:

> The factors to be considered in determining the reasonableness of a fee include the following:
>
> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) the fee customarily charged in the locality for similar legal services;
>
> (4) the amount involved and the results obtained;
>
> (5) the time limitations imposed by the client or the circumstances;
>
> (6) the nature and length of the professional relationship with the client;
>
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
>
> (8) whether the fee is fixed or contingent;
>
> (9) prior advertisements or statements by the lawyer with respect to the fees the lawyer charges; and
>
> (10) whether the fee agreement is in writing.

R. Sup. Ct. 8, RPC 1.5.

As best as we can tell from the record now before us, the only evidence presented to the Trial Court regarding the attorney's fees that were being charged to Plaintiff appeared in Exhibit 4, which is a typed listing detailing the plaintiffs' claimed damages including attorney's fees in the amount of $27,412.50. In its memorandum opinion incorporated into

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the judgment by reference, the Trial Court stated with regard to Exhibit 4 that "his exhibit itself is not credible. It is not supported. It is not quantifiable." Furthermore, we can find nothing in the record on appeal to indicate that the Trial Court considered the factors set forth in R. Sup. Ct. 8, RPC 1.5 or any applicable case law in arriving at the amount of reasonable attorney's fees to award to plaintiffs.

As we are unable to determine what facts the Trial Court based the amount of the attorney's fee award upon and whether the Trial Court considered the factors set forth in R. Sup. Ct. 8, RPC 1.5 or the applicable case law in determining the amount of reasonable attorney's fees, we vacate the amount of attorney's fees awarded and remand this case to the Trial Court for further hearing on the proper amount of reasonable attorney's fees to be awarded to Plaintiff.

We next consider the issue raised by Defendants regarding whether Plaintiff's appeal is frivolous. " 'A frivolous appeal is one that is 'devoid of merit,' or one in which there is little prospect that [an appeal] can ever succeed.' " *Morton v. Morton*, 182 S.W.3d 821, 838 (Tenn. Ct. App. 2005) (quoting *Industrial Dev. Bd. of the City of Tullahoma v. Hancock*, 901 S.W.2d 382, 385 (Tenn. Ct. App. 1995)). In pertinent part, Tenn. Code Ann. § 27–1–122 addresses damages for frivolous appeals stating:

> When it appears to any reviewing court that the appeal from any court of record was frivolous or taken solely for delay, the court may, either upon motion of a party or of its own motion, award just damages against the appellant, which may include, but need not be limited to, costs, interest on the judgment, and expenses incurred by the appellee as a result of the appeal.

***5** Tenn. Code Ann. § 27–1–122 (2000).

As discussed more fully above, Plaintiff's brief on appeal is so severely deficient that this Court is unable to determine even what issues Plaintiff is attempting to raise on appeal. As such, Plaintiff's appeal is devoid of merit with little prospect that the appeal could ever succeed. Given this, we hold Plaintiff's appeal frivolous and remand this case to the Trial Court for a determination of an award of damages for frivolous appeal from Plaintiff, Freddy **Mora**, to Defendants, David **Vincent** and Teresa **Vincent**.

The judgment of the Trial Court is affirmed, in part, and vacated only as to the amount of attorney's fees awarded to Plaintiff, but not as to the award of reasonable attorney fees. This cause is remanded to the Trial Court for further proceedings to determine the correct amount of reasonable attorney's fees to be awarded to Plaintiff. The costs on appeal are assessed against the appellant, Freddy **Mora**.

All Citations

Slip Copy, 2017 WL 1372862

Footnotes

1 Rule 10 of the Rules of the Court of Appeals provides: "This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated 'MEMORANDUM OPINION,' shall not be published, and shall not be cited or relied on for any reason in any unrelated case."

2 Nadya **Mora** is not a party to this appeal.

3 David **Vincent** and Teresa **Vincent** filed a brief on appeal. John Christopher German ("German") neither filed a brief on appeal nor filed anything showing that he joined in the brief filed by the **Vincents**. On November 28, 2016, this Court entered an order noting that German had not filed a brief and directing German to file a brief or show cause why the appeal should not be submitted for decision upon the record and briefs filed by the other parties to the appeal. The case was submitted for decision upon the record and the briefs filed by Plaintiff Freddy **Mora** and Defendants David **Vincent** and Teresa **Vincent**.

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Ross v. Broadway Towers

228 S.W.3d 113 (Tenn. Ct. App. 2006) **URLTA**

Issues:

Specificity of Notice

Acceptance of rent by landlord without reservation of rights may be permitted where tenant is in subsidized housing

228 S.W.3d 113
Court of Appeals of Tennessee,
Eastern Section, at Knoxville.

Arthur Jack ROSS, et al.

v.

BROADWAY TOWERS, INC.

No. E2006–00033–COA–R3–CV.
|
Nov. 7, 2006 Session.
|
Dec. 14, 2006.
|
Order on Petition to Rehear Jan. 5, 2007.
|
Permission to Appeal Denied by
Supreme Court June 25, 2007.

Synopsis

Background: Landlord, which had contracted with federal Department of Housing and Urban Development (HUD) to provide subsidized housing to the elderly and disabled, filed detainer warrant against elderly tenant and his live-in aide. The General Sessions Court, Knox County, entered judgment of possession for landlord. Tenant petitioned for writ of certiorari and supersedeas. After trial, the Circuit Court, Knox County, Wheeler A. Rosenbalm, J., ordered tenant and his live-in aide to vacate the premises. Tenant and aide appealed.

Holdings: The Court of Appeals, D. Michael Swiney, J., held that:

[1] live-in aide's criminal conduct five years before occupancy was a ground for eviction, and

[2] federal law preempted Tennessee statute regarding a landlord's waiver of a tenant's default.

Judgment of General Sessions Court affirmed in part and vacated in part; petition for rehearing denied.

West Headnotes (3)

[1] **Appeal and Error** ⇐ De novo review

Legal issues are reviewed under a pure de novo standard of review, according no deference to the conclusions of law made by the lower courts.

[2] **Landlord and Tenant** ⇐ Illegal conduct

Conduct of live-in aide for elderly tenant in federally-subsidized housing for the elderly and disabled, which led to her conviction for felony forgery, based on attempting to obtain money illegally from her elderly mother's bank account by using forged legal documents, constituted criminal activity that threatened other residents' health, safety, or right to peaceful enjoyment of premises, as basis for evicting tenant and aide pursuant to lease, which mirrored federal regulations regarding eviction of tenants in federally-subsidized housing, though such conduct had occurred five years before tenant entered into lease. Housing Act of 1959, § 202, 12 U.S.C.A. § 1701q; 24 C.F.R. §§ 5.859(a)(1, 2), 880.607(b)(iii).

2 Cases that cite this headnote

[3] **Landlord and Tenant** ⇐ Illegal conduct

States ⇐ Housing; landlord and tenant

Federal statute and regulations governing federally-subsidized housing for the elderly and disabled, requiring eviction if tenant, member of tenant's household, tenant's guest, or person under tenant's control engages in criminal activity that threatens other residents' health, safety, or right to peaceful enjoyment of premises, preempted provision of Tennessee Uniform Residential Landlord and Tenant Act stating that if landlord accepts rent without reservation and with knowledge of tenant's default, then landlord condones tenant's default and is estopped from terminating the lease based on that default; application of Tennessee statute would stand as obstacle to accomplishment of federal public policy of providing subsidized

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housing that is safe and crime-free for all tenants. Housing Act of 1959, § 202, 12 U.S.C.A. § 1701q; 24 C.F.R. §§ 5.859(a)(1, 2), 880.607(b)(iii); West's T.C.A. § 66–28–508.

2 Cases that cite this headnote

Attorneys and Law Firms

***114** Kendra J. Mansur, Knoxville, Tennessee, for the Appellants, Arthur Jack Ross and Barbara Wheeler Ross.

Donald K. Vowell, Knoxville, Tennessee, for the Appellee Broadway Towers, Inc.

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and SHARON G. LEE, J., joined.

OPINION

D. MICHAEL SWINEY, J.

Broadway Towers, Inc. ("Broadway Towers") provides federally subsidized housing for the elderly and disabled. Applicable federal regulations permit Broadway Towers to conduct criminal background checks on applicants and their family members or caretakers who will be residing with the applicant at the facility. Mr. Jack Ross applied for residency at Broadway Towers and also sought permission for his live-in aid, Ms. Barbara Wheeler, to reside on the premises with him. Ms. Wheeler signed an authorization for Broadway Towers to conduct a criminal background check using the name "Barbara M. Wheeler." Both Mr. Ross and Ms. Wheeler were approved to live on the premises. Broadway Towers later discovered that Ms. Wheeler had a felony forgery conviction under the name "Barbara M. Norwood." The felony forgery conviction resulted from Ms. Wheeler's attempt to obtain money illegally from her elderly mother's bank account by using forged legal documents. Upon learning of Ms. Wheeler's felony forgery conviction, Broadway Towers served a notice of noncompliance on Mr. Ross requiring him and Ms. Wheeler to vacate the premises. ***115** When Mr. Ross and Ms. Wheeler refused to vacate the premises, this lawsuit was filed. The Trial Court ordered Mr. Ross and Ms. Wheeler to vacate the premises. We affirm.

Background

Pursuant to a contract with the federal Department of Housing and Urban Development ("HUD") and in accordance with Section 202 of the federal Housing Act of 1959, as amended, Broadway Towers provides subsidized housing to the elderly and disabled. Mr. Jack Ross is currently eighty-five years old, and for several years has had numerous health issues which require a live-in aid to help care for his daily needs. In November of 2004, Mr. Ross and Broadway Towers entered into a document titled "202 ELDERLY/HANDICAPPED LEASE" (the "Lease"). Pursuant to the Lease, Mr. Ross' monthly rent payment totaled $475, with Mr. Ross paying $259 and HUD paying the remaining $216. The Lease provided that pursuant to HUD regulations, Broadway Towers could terminate the Lease "based upon either material noncompliance with this Agreement, material failure to carry out obligations under any State landlord or tenant act, or other good cause." After setting forth the procedure to be utilized in the event of termination by either party, the Lease goes on to provide that Broadway Towers could terminate the lease for eight specific reasons. The provision pertinent to this appeal provides that the Lease can be terminated for:

> (4) Criminal activity by a tenant, any member of the tenant's household, a guest or another person under the tenant's control:
>
> (a) That threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises); or
>
> (b) That threatens the heath, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises.

In addition to the contents of the Lease, Mr. Ross acknowledged that he received and was explained the contents of a document which set forth the rules and regulations of the property. Among other things, this document provides that:

> A resident will be held directly responsible for the actions of their household members, family members, caretakers/attendants, guest and/or visitors .... Resident acknowledges and agrees to inform and explain all Rules and Regulations to family members, caretakers/attendants, guest and/or visitors.

When he entered into the Lease, Mr. Ross was being provided living assistance by Ms. Barbara Wheeler, who is currently sixty-one (61) years old. Mr. Ross sought approval from Broadway Towers for Ms. Wheeler to continue to provide this assistance and live on the premises with Mr. Ross. Ms. Wheeler signed an authorization for Broadway Towers to conduct a criminal records background check. Ms. Wheeler signed her full name as: Barbara (Bobbie) Maurine Wheeler. A criminal records check was conducted using the name "Barbara M. Wheeler" which showed no felony convictions or other criminal activity under that name.

The manager of Broadway Towers, Ms. Barbara Everence, described the following event which happened approximately five and one-half months after Mr. Ross and Ms. Wheeler moved into Broadway Towers:

> Mr. Ross appeared to be confused when he was in the common areas of the apartment complex. Several different residents made a comment of that, that ***116** Mrs. Wheeler was in jail and wasn't taking care of him.

Broadway Towers then contacted the Sheriff's Department and learned that Ms. Wheeler indeed was in jail. Upon further inquiry, Broadway Towers learned that Ms. Wheeler had a criminal record under the name "Barbara Norwood." Among other things, Ms. Wheeler had pled guilty to a Class E felony after she forged a document in an attempt to withdraw money from her elderly mother's bank account. Ms. Wheeler's illegal attempt to withdraw money from her mother's bank account took place on June 30, 2000, and the Affidavit of Complaint provided by Ms. Wheeler's mother provides as follows:

> The Defendant committed the offense of Forgery ... on or about Friday June 30, 2000. The above named Defendant did attempt to obtain cash by means of transferring a forged document in the form of a Power of Attorney. The amount in the account was $30,000. The Defendant attempted to withdraw money from her mother's account by presenting a forged power of attorney where she had forged her mother's signature. The Defendant then filled out a Joint Survivorship Agreement and also forged the Affiant's name to it. The Defendant then tried to remove her mother's money from her account. This did happen at ... [the] Rohm–Haas Credit Union in Knoxville .... The witness ... knew Defendant and called Affiant to check on Power of Attorney and was informed by Affiant that she did not sign Power of Attorney and did not give permission for Defendant to get money from her acct.

Ms. Wheeler was indicted on four felony counts of forgery. On February 9, 2004, Ms. Wheeler pled guilty to one Class E felony count of forgery. Ms. Wheeler was sentenced to two years in the Tennessee Department of Corrections. However, it was agreed that Ms. Wheeler's two year sentence would be suspended upon her payment of court costs and her being placed on probation until January 23, 2011. Ms. Wheeler was declared "infamous" and ordered to provide a biological sample for DNA analysis.

Broadway Towers obtained an accurate copy of Ms. Wheeler's criminal history on April 28, 2005.

Mr. Ross and Ms. Wheeler were married on May 5, 2005.[1]

Upon learning of Ms. Wheeler's criminal background, Broadway Towers issued Mr. Ross a thirty day notice of material noncompliance (the "Notice"). Mr. Ross was informed that his lease would be terminated effective June 9, 2005, for a material non-compliance with the Lease. The Notice provided that the Lease was being terminated because of "[c]riminal activity by a tenant, any member of the tenant's household, a guest or another person under the tenant's control." The Notice also referenced the rules and regulations which provided that a "resident will be held directly responsible for the actions of their household members, family members, caretakers/attendants, guests and/or visitors." The Notice also stated:

> You are hereby notified that you are now in default of your lease due to the following actions(s):
>
> > Your live-in aide/wife has a felony conviction which prohibits her from residing at Broadway Towers Apartments due to our one-strike policy which you signed upon moving in to our facility.

***117** Although Mr. Ross was informed that his lease would terminate on June 9, 2005, he submitted a rent payment on June 3, 2005. As Mr. Ross explained, "I just put it in the slot and they took it." After Mr. Ross and Ms. Wheeler refused to vacate the premises, Broadway Towers filed a detainer warrant in the Knox County General Sessions Court. The Sessions Court entered a judgment for possession in favor of Broadway Towers. Mr. Ross then filed a Petition for Writ of Certiorari and Supersedeas in the Circuit Court. Following a trial, the Circuit Court issued a Memorandum Opinion stating, in relevant part, as follows:

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In this case, very briefly, it appears that Mr. Ross applied for an apartment at Broadway Towers ... and ultimately learned on or about November the 2nd, 2004 that an apartment was available. And as a consequence, a lease was made with Mr. Ross for the use and possession of the apartment premises at Broadway Towers.

At that time, Mr. Ross certified with the appropriate medical evidence that he had the need of a live-in aid and requested then Barbara Wheeler, or Barbara Wheeler Norwood as the case may be, be permitted to live with him as his live-in aid, and that request was granted. At or about that time, Broadway Towers, following its regular practice, attempted to secure information about any criminal history that Barbara Wheeler might then have. There was considerable delay in obtaining information about Ms. Wheeler's criminal history.

But ultimately, on or about April 28th, 2005, Broadway Towers received information from the Criminal Court Clerk's office of this county indicating that Ms. Wheeler had what one might consider, a rather considerable criminal history or criminal record. The records furnished to Broadway Towers indicated that she had been convicted of disorderly conduct on November 21st of 2000 and that she had been charged on or about November the 16th, 2004 with two counts of assault, which had been bound over to the grand jury and which cases apparently are still pending.

Moreover, those records indicated that on February the 9th, 2004, she [was] convicted by the Criminal Court of this county for forgery. The underlying records indicated that she had apparently attempted to obtain $30,000 or thereabouts from a credit union that belonged to her mother, and her attempt to secure those funds was by the device of forgery.

The records further indicated that on March the 11th, 2005, the probation that had been granted to her in connection with her conviction of forgery was revoked. And so as a result of this history, and in its attempt to screen applicants as it is entitled to do for occupancy at Broadway Towers, the Broadway Towers became somewhat concerned. And on May the 9th of 2005, Broadway Towers issued a notice to Mr. Ross that because of the forgery conviction, a felony of Mrs. Wheeler, he would be required to terminate his lease arrangement with that apartment complex on June the 9th of 2005 ....

The notice that Broadway Towers gave to Mr. Ross to terminate his tenancy referred to only one part of Mrs. Ross' criminal history. It stated that Mr. Ross was notified that he was in default under his lease, due to "your live in maid/wife has a felony conviction which prohibits her from residing at Broadway Towers due to our one strike policy which you signed upon moving in to our facility."

***118** The defendants have taken issue with the adequacy of that notice. And certainly a question is raised about whether the Broadway Towers Incorporated is entitled to rely on other parts of the criminal history of Mrs. Ross when that criminal history was not specified in the notice given to Mr. Ross to terminate.

However, the Court notes that under the regulations that apply to these subsidized housing cases the landlord is only required to state the reasons for termination with "enough specificity so as to enable the tenant to prepare a defense [to] the grounds for termination." And in any event, it would appear that the defendants were clearly advised that Broadway Towers was at least concerned in this case about Mrs. Ross' conviction for forgery.

It appears to the Court and the Court finds in these cases that operators of subsidized housing projects of this kind in this case are entitled to screen applicants, and as a matter of fact, they are required to place in their lease terms and certain provisions that enable the owner or manager of the subsidized housing property to terminate lease agreements with tenants that have been engaged in criminal activity that would threaten the safety or health of other tenants, or the peaceful enjoyment of the premises by other tenants. And it would appear in this case that most probably, if Mrs. Ross had disclosed the fact that she had gone by the name of Norwood, that her criminal record would have been made evident to Broadway Towers earlier and she would not have been permitted to occupy the premises in the first place ....

[T]he Plaintiff, Broadway Towers, is entitled to screen applicants. And so the character of the people that they admit for occupancy is a pertinent consideration under the federal regulations that apply to these kinds of cases. There's no question that Mrs. Ross was guilty of the offense of forgery, and there's no question that her probation was revoked by the Court with respect to that conviction on March the 11th, 2005.

The Court perhaps should add that the federal regulations provide that these agreements in these cases must also

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> contain a provision that the lease can be terminated if a tenant or others affected by the lease have had probation revoked or are fleeing in an attempt to avoid sanctions of the criminal court.
>
> So there are ample grounds here to terminate this lease. And it would appear to the Court that it is a fair inference that Mrs. Ross' conviction and her criminal history threatened the safety or health or peaceful enjoyment of the premises by other tenants in the sense that these elderly people living there would no doubt be concerned if they learned that someone occupying the premises with them had been guilty of this kind of theft crime. And I submit that it would not make any difference to those tenants whether that crime occurred during the lease or before the lease ....
>
> In any event, I find in this case that Broadway Towers, Incorporated has established that they had a right to terminate the lease, and that the notice was appropriate. And in this case, I find that the regulations which permit termination under these circumstances are for the benefit of all occupants of the subsidized housing project; and that the landlord has a duty to enforce those regulations and enforce those lease provisions for the benefit of other tenants; and that they are not entitled to waive the right of other tenants to insist upon the enforcement of those regulations. ***119** And hence, I conclude that the acceptance of rent for the month of June 2005 allegedly, inadvertently, by Broadway Towers in this case was not a waiver as contemplated by the Tennessee Residential Landlord and Tenant Act.

The Trial Court then entered a final judgment giving Mr. Ross and Ms. Wheeler until January 1, 2006 in which to vacate the premises. It was also ordered that Mr. Ross was to pay rent through that date.

Mr. Ross appeals, raising the following issues, which we quote:

> I. Whether the Trial Court erred in granting the detainer warrant when federal regulations require Broadway Towers to evict only for the reasons listed on the termination notice, and the act of forgery committed by Mrs. Wheeler Ross more than five years ago does not constitute criminal activity for which the complex can evict.
>
> II. Whether the Trial Court erred in granting the detainer warrant when Broadway Towers had signed a lease with Mr. Ross, and there were no allegations in the lease termination notice of any breaches of the lease by either Mr. Ross or Mrs. Wheeler Ross that occurred during the lease term.
>
> III. Whether the Trial Court erred in granting the detainer warrant when Broadway Towers accepted rent without reservation in June 2005, after giving Mr. Ross a lease termination notice on May 9, 2005.

Discussion

[1] The factual findings of the Trial Court are accorded a presumption of correctness, and we will not overturn those factual findings unless the evidence preponderates against them. *See* Tenn. R.App. P. 13(d); *Bogan v. Bogan,* 60 S.W.3d 721, 727 (Tenn.2001). With respect to legal issues, our review is conducted "under a pure *de novo* standard of review, according no deference to the conclusions of law made by the lower courts." *Southern Constructors, Inc. v. Loudon County Bd. Of Educ.,* 58 S.W.3d 706, 710 (Tenn.2001).

In many respects, the relevant portions of the lease mirror the pertinent federal regulations. For example, the federal regulations provide that a lease "must" provide for termination of the lease for the following:

> (1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises); or
>
> (2) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises.

24 C.F.R. § 5.859(a).

The federal regulations also provide that the property owner cannot terminate a lease except for several specifically listed causes, one of which is "[c]riminal activity by a covered person in accordance with" section 5.859. 24 C.F.R. § 880.607(b)(iii). The regulations go on to provide that while the property owner need only state the reasons for termination of the lease with "enough specificity so as to enable the tenant to prepare a defense," 24 C.F.R. § 247.4(a)(2), the owner "may not rely on any grounds which are different from the reasons set forth in the notice." 24 C.F.R. § 880.607(c)(3).

Mr. Ross' first issue is twofold. Mr. Ross initially claims that Broadway Towers can evict only for the reasons listed on the

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termination notice and, because only *120 Ms. Wheeler's felony conviction is listed on the notice, the Trial Court improperly considered Ms. Wheeler's other alleged criminal activity. Next, Mr. Ross claims that Ms. Wheeler's forgery conviction for conduct which occurred more than five years ago does not constitute criminal activity for which Broadway Towers can evict. We will discuss these two issues in reverse order.

[2] Broadway Towers is a subsidized housing facility for elderly and disabled residents. If Ms. Wheeler will forge legal documents in an attempt to steal a substantial amount of money from her own elderly mother, then the other elderly and/or disabled residents of the premises cannot be excluded as potential future victims of Ms. Wheeler. Due to the nature of Ms. Wheeler's forgery conviction, there is no question but that she has engaged in criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents, which also unfortunately includes Mr. Ross.

The fact that the forgery took place roughly five years ago does not minimize the existence of the clear threat posed by Ms. Wheeler. The regulations authorized Broadway Towers to obtain the criminal history of Ms. Wheeler. *See* 24 C.F.R. § 5.855. These regulations do not provide any time limitation as to how far back the property owner may go when requesting a criminal history. We note, however, that the property owner "may establish a period before the admission decision during which an applicant must not have engaged" in the criminal activity that would threaten the health or safety of the other residents. 24 C.F.R. § 5.855(b). The criminal records authorization signed by Ms. Wheeler is unclear on how far back Broadway Towers goes when conducting a criminal records check. The reason for this is because the authorization states it will go back "three (5) years." Although it is unclear whether the records check will go back "three" or "(5)" years, the result in this case is the same because Ms. Wheeler actually was convicted of the forgery only nine months before she signed the authorization. We conclude that Ms. Wheeler's felony forgery committed more than five years ago but for which Ms. Wheeler was convicted less than one and one-half years before the Notice was given and only nine months before she signed the criminal history authorization does indeed constitute criminal activity for which Broadway Towers could evict.

The next issue is whether the Trial Court improperly considered Ms. Wheeler's other criminal activity. Mr. Ross was notified that the Lease was being terminated because of Ms. Wheeler's criminal activity, specifically the "felony conviction which prohibits her from residing at Broadway Towers Apartments due to our one-strike policy which you signed upon moving in to our facility." When Broadway Towers obtained an accurate copy of Ms. Wheeler's criminal history, it discovered that Ms. Wheeler's criminal past involved more than the felony conviction. Again, we note that the federal regulations provide that the property owner "may not rely on any grounds which are different from the reasons set forth in the notice." 24 C.F.R. § 880.607(c)(3). Based on the clear language of the regulations, we believe the Trial Court should not have relied on anything in Ms. Wheeler's past other than the felony conviction. In its memorandum opinion, the Trial Court certainly mentioned Ms. Wheeler's other criminal activity, some of which still was pending in the criminal court system at that time.[2] *121 What is not clear is whether the Trial Court actually relied on anything other than the felony conviction when ultimately concluding that Broadway Towers had sufficient grounds to terminate the Lease. We vacate that portion of the Trial Court's judgment which discusses any aspect of Ms. Wheeler's criminal history other than her felony conviction. However, we affirm the ultimate determination made by the Trial Court because, as found by the Trial Court, "the defendants were clearly advised that Broadway Towers was at least concerned in this case about Mrs. Ross' conviction for forgery," and the felony conviction, standing alone, is more than sufficient for Broadway Towers to terminate the Lease. A fair reading of the Trial Court's Memorandum Opinion shows Mrs. Wheeler's felony conviction certainly formed the primary and quite possibly the exclusive basis for the Trial Court's determination.

Mr. Ross' next issue is his claim that the Trial Court erred in granting the detainer warrant when the termination notice contained no allegation of any breach by either Mr. Ross or Ms. Wheeler that occurred during the term of the Lease. We disagree. The federal regulations set forth above clearly entitle Broadway Towers to screen applicants and deny an application based on certain criminal conduct. In the Trial Court's memorandum opinion, the Trial Court correctly noted that had Ms. Wheeler "disclosed the fact that she had gone by the name of Norwood, [then] her criminal record would have been made evident to Broadway Towers earlier and she would not have been permitted to occupy the premises in the first place." The record fully supports this finding. Ms. Wheeler should not be permitted to escape the consequences of her misconduct simply because she gave a different name

when providing her name for purposes of Broadway Towers conducting a criminal records check. If Ms. Wheeler had provided the name "Barbara Norwood," then she never would have been allowed to live in Broadway Towers in the first place. Therefore, it matters not that Mr. Ross and Ms. Wheeler did not engage in any conduct during the term of the Lease that would be considered in violation of that Lease. As found by the Trial Court and as supported by the record, the regulations involved in this case are for the benefit not only of Mr. Ross but also for all the other occupants of the subsidized housing project. To accept the Ross' position means that if a prospective tenant who clearly would not have been accepted to live in the subsidized housing project if her true criminal history was known manages to slip through, for whatever reason, then that tenant must be allowed to remain and all the other occupants of the subsidized housing project just have to accept the additional risk from her being allowed to continue living on the premises. Such a holding would be contrary to the intent of the regulations to protect all the occupants of the subsidized housing project.

[3] The final issue is Mr. Ross' claim that because Broadway Towers accepted Mr. Ross' June 2005 rent payment without any reservation of rights, Broadway Towers has effectively condoned the alleged default and is estopped from terminating the Lease. Mr. Ross relies on Tenn.Code Ann. § 66–28–508 which is part of Tennessee's Uniform Residential Landlord and Tenant Act and which states:

> If the landlord accepts rent without reservation and with knowledge of a tenant ***122** default, the landlord by such acceptance condones the default and thereby waives such landlord's right and is estopped from terminating the rental agreement as to that breach.

At the outset, we note that at least some rent would have been due through the 9th of June, even if the Lease was terminated and Mr. Ross moved from the premises on that date. Therefore, Broadway Towers would have been entitled to keep at least a portion of this rent payment. When rejecting Mr. Ross' argument on this issue, the Trial Court essentially determined that Broadway Towers had a "duty to enforce [the federal] regulations and enforce those lease provisions for the benefit of other tenants; and that they are not entitled to waive the right of other tenants to insist upon the enforcement of those regulations." In short, the Trial Court determined that the policies behind the federal regulations trumped the Landlord and Tenant Act in this regard. We agree.

In *Scarborough v. Winn Residential L.L.P./Atlantic Terrace Apartments,* 890 A.2d 249 (D.C.Ct.App.2006), the District of Columbia Court of Appeals was confronted with the application of a provision in the District of Columbia Code which required landlords to give tenants a thirty day notice to correct a violation before the tenant could be evicted. The Court of Appeals needed to decide if the provision in the D.C.Code took precedence over HUD regulations, or vice versa. The landlord in *Scarborough* was attempting to evict a tenant because of the tenant's possession of an unregistered firearm. The landlord claimed the tenant's possession of the firearm endangered the health and safety of the residents in the subsidized housing facility. *Id.* at 252. The tenant claimed she could not be evicted because the landlord failed to comply with a D.C. Code provision which required a thirty day notice to correct the violation. The D.C. Court of Appeals stated:

> Strictly speaking, the issue is not one of federal pre-emption of state action, but whether, "[i]n matters of the present sort, a congressional statute [and regulations] of national application prevail[ ] over a statute applying only to the District of Columbia." *In re Estate of Couse,* 850 A.2d 304, 305 n. 1 (D.C.2004), quoting *District of Columbia v. Wolverton,* 112 U.S.App. D.C. 23, 24 n. 3, 298 F.2d 684, 685 n. 3 (1961). But, as no difference of substance has been suggested between that question and the issue of federal pre-emption, we apply the latter doctrine.
>
> Courts have identified three ways in which a federal statute can pre-empt state law: by express pre-emption, where statutory language "reveals an explicit congressional intent to pre-empt state law," *Barnett Bank of Marion County v. Nelson,* 517 U.S. 25, 31, 116 S.Ct. 1103, 134 L.Ed.2d 237 (1996); by field pre-emption, in which "federal law so thoroughly occupies a legislative field 'as to make reasonable the inference that Congress left no room for the States to supplement it,' " *Cipollone* [*v. Liggett Group, Inc.*], 505 U.S. [504,] 516, 112 S.Ct. 2608, 120 L.Ed.2d 407 [(1992)] (citation and quotation marks omitted); and by implied or conflict pre-emption, which applies " 'where compliance with both federal and state regulations is a physical impossibility, ... or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objecti[ves] of Congress.' " *Boggs v. Boggs,* 520 U.S. 833, 844, 117 S.Ct. 1754, 138 L.Ed.2d 45 (1997) (citations omitted) ....
>
> The parties agree that this case does not involve express or field pre-emption, nor is compliance with both ***123** D.C.Code § 42–3505.01(b) and federal law a "physical

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impossibility." The question, rather, is whether application of the District's cure opportunity for criminal violations that threaten the safety or peace of other tenants would "stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." It is clear to us that it would.

Among the many conditions imposed by the Mod Rehab program (and by HUD's other housing assistance programs) are that specific provisions must appear in the written lease agreements with individual tenants. As relevant here, 42 U.S.C. § 1437f(d)(1)(B) states:

> Contracts to make assistance payments entered into by a public housing agency with an owner of existing housing units shall provide (with respect to any unit) that—
>
> * * *
>
> (iii) during the term of the lease, *any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants* ... engaged in by a tenant of any unit ... or any guest or other person under the tenant's control, "*shall be cause for termination of tenancy.*" [Emphasis added.]

In enacting this provision, as in enacting a parallel provision for public housing, *see* 42 U.S.C. § 1437d(*l*)(6), Congress declared that "the Federal Government has a duty to provide public and other federally assisted low-income housing that is decent, safe, and free from illegal drugs." 42 U.S.C. § 11901(1) (emphasis added).

* * *

Applying the cure provision of D.C.Code § 42–3505.01(b) would stand as a pronounced obstacle to the exercise of this authority. Not for nothing are lease provisions of the kind involved here described as manifesting a federal "One–Strike Policy." The only way to make sense of the idea of "correct[ing]" criminal activity would be to require the tenant not to engage in such activity again. But, as HUD points out in the government's brief *amicus curiae,* "this interpretation quickly renders the eviction provision a virtual nullity, because the grounds for eviction-the criminal act-would be washed away by a simple promise not to commit another crime." The very ease of thwarting the landlord's right to evict for commission of such a crime would frustrate the purpose of an anticrime provision that permits eviction for "any" criminal activity threatening in the sense defined.

> It is true ... that termination of a tenancy after criminal activity is not automatic under federal law; housing providers have discretion whether to exercise the right of eviction. *See Rucker,* 535 U.S. at 133–34, 122 S.Ct. 1230, 152 L.Ed.2d 258. But the cure opportunity provided by § 42–3505.01(b), if applicable to violations of "an obligation of tenancy" dangerously criminal in nature, would substitute for the landlord's discretion a mandatory second-strike opportunity for a tenant to stay eviction by discontinuing, or not repeating, the criminal act during the thirty days following notice. We do not believe Congress meant to permit that obligatory re-setting of the notice clock ....

Scarborough, 890 A.2d at 255–57.

We agree with the rationale in *Scarborough.* Even assuming, without deciding, that Broadway Towers can be said to have accepted the rent without reserving its rights and with full knowledge of the default ***124** [3], we think Tenn.Code Ann. § 66–28–508 has no application *to this case* given the facts of this case. Specifically, we believe the federal public policy in providing subsidized housing that is safe and crime-free for all the tenants is paramount to any policy at issue in Tenn.Code Ann. § 66–28–508. In light of the facts presented in this case, we conclude that even if the provisions of Tenn.Code Ann. § 66–28–508 were triggered, application of that statute is preempted by the federal regulations because it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Scarborough,* 890 A.2d at 255 (quoting *Boggs v. Boggs,* 520 U.S. 833, 844, 117 S.Ct. 1754, 138 L.Ed.2d 45 (1997)). Accordingly, the Trial Court correctly determined that Broadway Towers' acceptance of the June 2005 rent check cannot be held as a waiver to its enforcement of the Lease provisions for the benefit of all the other tenants residing at that complex.

In conclusion, we affirm the Trial Court's judgment awarding possession of the apartment to Broadway Towers. Mr. Ross and Ms. Wheeler will have thirty days after the mandate is issued in this case in which to vacate the premises. In the meantime, Mr. Ross is to pay rent in accordance with the terms of the Lease.

Conclusion

The judgment of the Trial Court is affirmed, and this cause is remanded to the Trial Court for collection of the costs below.

Costs on appeal are taxed to the Appellants, Arthur Jack Ross and Barbara Wheeler Ross, and their surety, if any.

ORDER ON PETITION TO REHEAR

Appellants, Arthur Jack Ross and Barbara Wheeler Ross, filed a Petition to Rehear pursuant to Rule 39 of the Tennessee Rules of Appellate Procedure. Under Rule 39(a), "[a] rehearing will not be granted to permit reargument of matters fully argued." All matters raised in the Petition to Rehear were fully argued by the parties, considered by this Court, and sufficiently addressed in out Opinion. We find, contrary to Appellants' insistence, that our Opinion does not misapprehend any material facts in the record or propositions of law.

Appellants' Petition to Rehear is a DENIED. Costs related to this Petition to Rehear are assessed to the Appellants, Arthur Jack Ross and Barbara Wheeler Ross.

All Citations

228 S.W.3d 113

Footnotes

1 For the sake of consistency, we will continue to refer to Mr. Ross' now wife as Ms. Wheeler, as opposed to Mrs. Ross.

2 While this appeal was pending, Ms. Wheeler filed a motion to consider post-judgment facts which contained certified documents showing the assault charges brought against Ms. Wheeler had been dismissed. Due to our resolution of the various issues, this issue is moot.

3 We note that the Trial Court found that Broadway Towers inadvertently accepted the rent check when it was placed through the slot in the door. This suggests a finding that the rent was not accepted with full knowledge of the alleged default. However, due to our conclusion that the state statute is preempted in this case, we need not decide whether the Trial Court's conclusion in this regard was correct.

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Ruff v. Reddoc Mgmt., LLC

No. M2012-0609-COA-R3-CV, 2011 WL 5999047 (Tenn. Ct. App. 2011) **URLTA**

Issue:

Dismissal of detainer warrant for failure to provide proper notice

2011 WL 5999047
Only the Westlaw citation is currently available.

SEE COURT OF APPEALS RULES 11 AND 12

Court of Appeals of Tennessee.

John **RUFF**

v.

REDDOCH MANAGEMENT, LLC, et al.

No. M2010–02609–COA–R3–CV.
|
Sept. 21, 2011 Session.
|
Nov. 30, 2011.

Appeal from the Circuit Court for Shelby County, No. CT00391208; James F. Russell, Judge.

Attorneys and Law Firms

John **Ruff**, Memphis, Tennessee, Pro Se.

Roger Alden Stone and Lisa Nicole Stanley, Memphis, Tennessee, for the appellees, **Reddoch** Management, LLC, and Adams Rentals.

RICHARD H. DINKINS, J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P. J., M. S., and ANDY D. BENNETT, J., joined.

MEMORANDUM OPINION[1]

RICHARD H. DINKINS, J.

***1** Tenant filed suit against his former landlord and the current owner of premises that tenant leased alleging, *inter alia,* breach of contract and violations of the Uniform Residential Landlord and Tenant Act. Trial court dismissed tenant's claim against the former landlord holding that the landlord was exempt from suit pursuant to Tenn.Code Ann. § 66–28–305. The court dismissed the claim against the current owner because tenant failed to comply with the fourteen day pre-suit notice requirement at Tenn.Code Ann. § 66–28–501(a). Finding no error, we affirm the trial court.

I. Facts and Procedural History

On April 1, 1997, John **Ruff** signed a one-year lease for an apartment located at 3805 Carnes # C, Memphis, Tennessee ("the premises") with Adams Rentals; the monthly rent was $250.00. After the expiration of the lease in April 1998, Mr. **Ruff** continued to occupy the premises, paying $250.00 each month for the following ten years. On February 29, 2008, Adams Rentals sold the property to **Reddoch** Management, LLC ("**Reddoch**"). On April 3, 2008, **Reddoch** posted a notice on Mr. **Ruff's** door which stated as follows:

> Please be advised this is you [sic] 30day [sic] notice to vacate the property. The new owners are renovating and selling the property. You need to be out of the property no later than 4/30/2008. If you have any questions concerning this please feel free to contact our office.

Mr. **Ruff** paid his rent through the month of April 2008; however, **Reddoch** did not accept his payment of rent for May 2008. By letter dated April 16, 2008 sent to Mr. **Ruff**, **Reddoch** reaffirmed its intent to renovate the property and again gave Mr. **Ruff** notice to vacate the premises.

On May 2, 2008, Mr. **Ruff**, proceeding *pro se,* filed suit against Adams Rentals and Reedy & Company Realtors in Shelby County General Sessions Court (the "**Ruff** suit") alleging an "unlawful conspiracy," breach of rental agreement, and breach of the Uniform Residential Landlord and Tenant Act ("URLTA"); he sought to "maintain indefinite possession" of the property without having to pay "any monetary rent whatsoever" as well as punitive and compensatory damages. On May 23, 2008, Mr. **Ruff** filed an "amended alias" adding **Reddoch** to the suit. Although not reflected in the record, according to **Reddoch's** brief on appeal, Mr. **Ruff's** lawsuit proceeded to a hearing on August 1, 2008 at which the trial court dismissed his case without prejudice. Mr. **Ruff** did not re-file his case but appealed the dismissal to the Shelby County Circuit Court on August 4, 2008; the case was assigned to Division 6 of that court.

Reddoch filed a forcible entry and detainer action against Mr. **Ruff** on May 16, 2008 in the Shelby County General Sessions Court (the "**Reddoch** suit'). On June 25, the court held a hearing in the **Reddoch** suit and granted judgment to **Reddoch** for $894.66 and possession of the property. Mr. **Ruff** subsequently vacated the premises and appealed the judgment to the circuit court; the case was assigned to Division 2 of that court. On October 20, 2008, the court in Division 6 entered an order transferring the **Ruff** suit to Division 2, and on May 15, 2009, the court in Division 2 entered an order consolidating the two appeals.

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*2 On June 15, 2010, **Reddoch** filed a Motion for Summary Judgment in both cases, supported by affidavits of Jim Reedy, President of **Reddoch**, and Adrienne Furr, employee of **Reddoch**, a statement of undisputed facts, the lease for the premises, deed to the property, and testimony of Tina Tant, an employee of **Reddoch**, and testimony of Mr. **Ruff** given at the hearing in General Sessions Court on June 25, 2008. Mr. **Ruff** filed a response to the motion, supported by his affidavit, with exhibits, and the affidavit of Lester Waldon.[2]

The trial court entered a Memorandum Opinion and Order Dismissing Cases on July 27, 2010, in which it determined, with regard to the **Ruff** suit, that Adams Rentals was exempt from suit pursuant to Tenn.Code Ann. § 66–28–305 and that Mr. **Ruff's** claim against **Reddoch** was "fatally flawed" because he did not provide **Reddoch** with fourteen days notice required by Tenn.Code Ann. § 66–28–501, before commencing the action. The trial court dismissed the **Reddoch** suit *sua sponte,* finding that the April 3 and April 16, 2008 letters did not comply with the notice of termination requirement at Tenn.Code Ann. § 66–28–512(b) and that, as a consequence, **Reddoch** could prove no set of facts that would entitle it to a money judgment against Mr. **Ruff**.[3]

On August 26, 2010, Mr. **Ruff** filed a Motion to Alter or Amend, which the trial court denied. Mr. **Ruff** appealed to this Court raising a number of issues.

II. Standard of Review

Summary judgment is appropriate when the moving party demonstrates that there are no genuine issues of material fact and that it is entitled to a judgment as a matter of law. *King v. Betts,* —— S.W.3d ——, 2011 WL 5617758, at *12 (Tenn. Nov. 18, 2011). A trial court's decision on a motion for summary judgment enjoys no presumption of correctness on appeal. *Draper v. Westerfield,* 181 S.W.3d 283, 288 (Tenn.2005); *BellSouth Adver. & Publ. Co. v. Johnson,* 100 S.W.3d 202, 205 (Tenn.2003); *Scott v. Ashland Healthcare Ctr., Inc.,* 49 S.W.3d 281, 284 (Tenn.2001); *Penley v. Honda Motor Co.,* 31 S.W.3d 181, 183 (Tenn.2000). We review the summary judgment decision as a question of law. *Finister v. Humboldt Gen. Hosp., Inc.,* 970 S.W.2d 435, 437 (Tenn.1998); *Robinson v. Omer,* 952 S.W.2d 423, 426 (Tenn.1997). Accordingly, this court must review the record *de novo* and make a fresh determination of whether the requirements of Tenn. R. Civ. P. 56 have been met. *Eadie v. Complete Co., Inc.,* 142 S.W.3d 288, 291 (Tenn.2004); *Blair v. West Town Mall,* 130 S.W.3d 761, 763 (Tenn.2004); *Staples v. CBL & Assoc.,* 15 S.W.3d 83, 88 (Tenn.2000).

III. Analysis

The substantive issues raised on appeal by Mr. **Ruff** are premised upon his contention that paragraph eight of the lease he signed on April 1, 1997 entitled him to uninterrupted and indefinite possession of the property. Paragraph eight states: "The LESSOR hereby covenants that if LESSEE shall keep and perform all of the covenants of this lease on the part of the LESSEE to be performed, LESSOR will guarantee to LESSEE the uninterrupted possession of the said premises." Mr. **Ruff** contends that **Reddoch** breached this portion of the lease when it required him to vacate the premises.

*3 Pursuant to paragraph three of the lease agreement, the duration of Mr. **Ruff's** lease was for one year—from April 4, 1997 to April 30, 1998. The lease expired, by its terms, on April 30, 1998; thereafter, paragraph eight was no longer in effect. Further, the covenant in paragraph eight is a covenant of possession and does not define the duration of tenancy or otherwise extend the original term of the lease.

Mr. **Ruff's** argument that he is entitled to relief under the URLTA is likewise without merit. Pursuant to Tenn.Code Ann. § 66–28–501(a), "the tenant may recover damages, obtain injunctive relief and recover reasonable attorney's fees for any noncompliance by the landlord with the rental agreement or any section of this chapter upon giving fourteen (14) days' written notice." Mr. **Ruff** filed suit against **Reddoch** on May 23, 2008 without giving the fourteen days' written notice as required by Tenn.Code Ann. § 66–28–501(a). The trial court did not err in dismissing the case for Mr. **Ruff's** failure to provide the requisite notice.

Finally, we affirm the trial court's holding that Adams Rentals is "specifically exempted from suit" pursuant to Tenn.Code Ann. § 66–28–305, which states as follows:

> Unless otherwise agreed, a landlord who conveys premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser, landlord or agent, or both, is relieved of liability under the rental agreement and this chapter as to events occurring subsequent to written notice to the tenant of the conveyance and transfer of the security deposit to the bona fide purchaser.

Because Adams Rentals sold the property to **Reddoch**, a bona fide purchaser, Adams Rentals is relieved of liability, and the trial court did not err in dismissing it from the suit.

We have considered the other issues raised by Mr. **Ruff**, specifically his contentions that the **Reddoch** suit was barred by the "prior suit pending" doctrine and that the general sessions and circuit courts should have granted his motions to recuse. The claims and issues in both the **Ruff** and **Reddoch** suits were consolidated in one proceeding, and the trial court appropriately considered the matter in accordance with the facts presented and the applicable law; the prior suit pending doctrine did not apply. We have also reviewed the record and the motion to recuse filed in the trial court and find no basis to conclude that the court was biased against Mr. **Ruff** or was unfair in any respect; the trial court properly disposed of the issues in the case.

IV. Conclusion

Based on the foregoing, we affirm the judgment of the trial court. Costs of the appeal are taxed to the appellant, John **Ruff**, for which execution may issue if necessary.

All Citations

Not Reported in S.W.3d, 2011 WL 5999047

Footnotes

1 Tenn. R. Ct.App. 10 states:

> This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

2 These affidavits appear in the record as the "Affidavit of John **Ruff** of Undisputed Material Facts" and "Affidavit of Lester Waldon of Undisputed Material Facts."

3 The court further held that the "fundamental issue of the unlawful detainer action, *i.e.*, that of possession, is now moot."

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Thompson v. Groves

No. W2012-01764-COA-R3-CV, 2013 WL 5433479 (Tenn. Ct. App. 2013) **URLTA**

Issue:

Landlord failure to provide proper notice to tenant does not deprive court of jurisdiction

2013 WL 5433479
Only the Westlaw citation is currently available.

SEE COURT OF APPEALS RULES 11 AND 12

Court of Appeals of Tennessee.

Robb **THOMPSON**

v.

Brian W. **GROVES**.

No. W2012–01764–COA–R3–CV.

|

Aug. 13, 2013 Session.

|

Sept. 26, 2013.

An Appeal from the Chancery Court for Shelby County, No. CH–12–0770; Kenny W. Armstrong, Chancellor.

Attorneys and Law Firms

Joseph D. Barton, Millington, Tennessee, for the Defendant/Appellant, Brian W. **Groves**.

Gary E. Veazey, Memphis, Tennessee, for the Plaintiff/Appellee, Robb **Thompson**.

HOLLY M. KIRBY, J., delivered the opinion of the Court, in which ALAN E. HIGHERS, P.J., W.S., and J. STEVEN STAFFORD, J., joined.

OPINION

HOLLY M. KIRBY, J.

***1** This is a collateral attack on an order entered by a general sessions court. The plaintiff tenant leased residential property from the defendant landowner. The tenant fell behind in his rent, so the landowner filed a forcible entry and detainer action in general sessions court against the tenant and obtained a judgment for the past-due rent. The tenant did not appeal that judgment. Months later, the tenant filed the instant lawsuit in chancery court to set aside the general sessions court judgment. The tenant alleged in the chancery court complaint that the general sessions court did not have subject matter jurisdiction to adjudicate the FED action because the landowner did not give the tenant a statutorily-required notice of termination of the lease. The chancery court below agreed with the tenant and set aside the general sessions judgment as void for lack of subject matter jurisdiction. The landowner now appeals. We reverse the decision of the chancery court and remand with directions to dismiss the tenant's lawsuit in its entirety.

Facts and Proceedings Below

In November 2010, Plaintiff/Appellee Robb **Thompson** ("Tenant") entered into a lease agreement with Defendant/Appellant Brian W. **Groves** ("Owner") to lease residential property. The initial term of the lease was 12 months, expiring in November 2011. Under the lease agreement, at the end of the initial 12–month, term, the lease converted to a month-to-month tenancy.

After several months, Tenant fell behind in his rent. In October 2011, Owner filed a forcible entry and detainer ("FED") warrant against Tenant in the Shelby County General Sessions Court. In the FED warrant, Owner sought $6,700 in back rent plus future accrued rent, damages, and attorney fees.

Owner did not give Tenant written notice that he planned to terminate Tenant's lease before Owner filed the FED action in the General Sessions Court. Tennessee's Uniform Residential Landlord and Tenant Act addresses such notice in Tennessee Code Annotated § 66–28–512, entitled "Termination of periodic tenancy—Holdover remedies." That statute provides:

> (a) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least ten (10) days prior to the termination date specified in the notice.
>
> (b) The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty (30) days prior to the periodic rental date specified in the notice.
>
> (c) If a tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession, back rent and reasonable attorney's fees as well as any other damages provided for in the lease. If the tenant's holdover is willful and not in good faith, the landlord, in addition, may also recover actual damages sustained by the landlord, plus reasonable attorney's fees. If

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the landlord consents to the tenant's continued occupancy, § 66–28–201(c) shall apply.

*2 Tenn.Code Ann. § 66–28–512 (Supp.2012).

According to Owner, the General Sessions case was reset for a hearing at a later date to give the parties time to try to settle the matter and also in recognition that Owner had not given Tenant 30 days' notice that he would be terminating the lease pursuant to Section 66–28–512(b). On December 1, 2011, while the FED action was pending, Owner gave Tenant written notice of his intent to terminate the lease. It is undisputed that the December 1, 2011 written notice was the first written notice of termination given to Tenant.

In January 2012, the General Sessions Court conducted a hearing.[1] On January 9, 2012, the General Sessions Court rendered a judgment in favor of Owner against Tenant in the amount of $9,933. Tenant did not appeal the General Sessions Court judgment.

Subsequently, Owner took action to execute on his judgment against Tenant. After he did so, the parties allegedly entered into a post-judgment settlement agreement in which Owner agreed to cease his collection efforts if Tenant gave Owner his vehicle in satisfaction of Tenant's debt. Later, however, the parties disputed the settlement.

On May 7, 2012, Tenant filed the instant lawsuit in the Chancery Court below. The complaint was a collateral attack on the validity of the January 9, 2012 General Sessions Court judgment. In the complaint, Tenant asked the Chancery Court to set aside the General Sessions Court judgment based on the argument that the General Sessions Court did not have subject matter jurisdiction over the FED action. Tenant claimed that the General Sessions Court lacked subject matter jurisdiction over the FED action because Owner did not provide Tenant with written notice that he would be terminating the lease prior to the filing of the FED action. Tenant alleged:

> 8. Pursuant to T.C.A. § 66–28–512(c), notice is required by [Owner] to [Tenant] upon default, and told to vacate the premise [sic]. Without such notice, the General Sessions Court had no subject matter jurisdiction.
>
> 9. Prior to any notice being given to Plaintiff by Defendant, a General Sessions forcible entry and detainer action was filed.... Plaintiff asserts such complaint is void as a result of subject matter jurisdiction of the General Sessions Court, and therefore such judgment is a void judgment and should be set aside as a nullity.

Tenant asked the Chancery Court to declare the General Sessions Court judgment void and to set it aside, and he also asked that Owner be required to return Tenant's vehicle that allegedly was wrongfully obtained by Owner pursuant to the allegedly void General Sessions judgment. Tenant also sought an award of attorney fees and costs.

Owner admitted in his answer that the General Sessions FED action was filed before he gave notice to Tenant that he would be terminating the lease. He denied, however, that Owner's failure to give pre-suit notice of termination of the lease deprived the General Sessions Court of jurisdiction over the case.

*3 On May 31, 2012, the Chancery Court entered an order temporarily enjoining Owner from "attempting to execute on the assets of [Tenant] or collecting a money judgment as rendered against [Tenant]" in the General Sessions Court order.

On June 6, 2012, Owner filed a "Motion to Dismiss or to Enforce Settlement." Owner insisted in his motion that the General Sessions Court did indeed have subject matter jurisdiction over the FED action pursuant to Tennessee Code Annotated § 66–28–105. Owner argued that Tenant could have asserted lack of notice as an affirmative defense, but lack of notice did not impact the power of the General Sessions Court to preside over the matter. Owner also asked the Chancery Court to order Tenant "to honor this last settlement agreement."[2] In support of his motion, Owner submitted his own affidavit, a copy of the alleged settlement agreement, and the December 1, 2011 written notice of termination of the lease.

On July 13, 2012, the Chancery Court conducted a hearing on Owner's motion to dismiss.[3] On July 20, 2012, the Chancery Court entered an order denying Owner's motion to dismiss. The order said only that Owner's motion "is not well founded and thereby denied." In the same order, the Chancery Court granted Tenant the relief requested in his complaint. The Chancery Court set aside the General Sessions Court judgment on the basis that "the failure of [Owner] to provide a 30 day written notice prior to the filing of the forcible entry and detainer warrant in the General Sessions Court deprive[d] the General Sessions Court of subject matter jurisdiction in such court." In support of its decision, the Chancery Court cited *Frost v. Shehane,* No. M2008–01480–COA–R3–CV, 2009 WL 1939820 (Tenn.Ct.App. July 6,

2009). The Chancery Court held that the General Sessions Court judgment was "a nullity." It stated that the award of affirmative relief to Tenant after the hearing on Owner's motion to dismiss was based on Tenant's complaint and the documents attached to the complaint.[4] Finally, the Circuit Court assessed costs against Owner. Owner now appeals.[5]

Issue on Appeal and Standard of Review

On appeal, Owner argues that the Chancery Court erred as a matter of law in concluding that the General Sessions Court lacked subject matter jurisdiction to render the January 9, 2012 judgment in his favor. "Whether a court has subject matter jurisdiction over a case is a question of law that we review *de novo* with no presumption of correctness." *Morgan Keegan & Co., Inc. v. Smythe,* 401 S.W.3d 595, 602 (Tenn.2013) (citing *Word v. Metro Air Servs., Inc .,* 377 S.W.3d 671, 674 (Tenn.2012) (citing *Northland Ins. Co. v. State,* 33 S.W.3d 727, 729 (Tenn.2000))).

Analysis

Owner argues that the Chancery Court erred in setting aside the General Sessions Court judgment for lack of subject matter jurisdiction. Owner contends that Tennessee's Landlord and Tenant Act clearly bestows subject matter jurisdiction over FED actions on the general sessions courts: "The general sessions and circuit courts of this state shall exercise original jurisdiction over any landlord or tenant with respect to any conduct in this state governed by this chapter." Tenn.Code Ann. § 66–28–105(a) (2004). In holding that Owner's failure to give notice of termination deprived the General Sessions Court of jurisdiction over Owner's FED action, Owner contends, the Chancery Court "failed to differentiate between subject-matter jurisdiction and potential affirmative defenses available to be pled by [Tenant]" in the FED action. Owner argues that the Chancery Court's reliance on *Frost* is misplaced, because that case does not address whether the 30–day notice under Section 66–28–512(b) is mandatory or whether it affects subject matter jurisdiction.[6]

***4** In response, Tenant claims that the Chancery Court correctly concluded that the General Sessions Court lacked subject matter jurisdiction over the FED action based on Owner's "failure to follow the statutorily defined method of enforcement," *i.e.* failure to provide pre-suit notice of the termination of the lease under the Landlord and Tenant Act.[7] He makes the sweeping assertion that, because the FED action was initiated before Owner gave Tenant written notice, "the entire lawsuit is defective and therefore deprived the General Sessions Court of its subject matter jurisdiction by failure to follow the clear and concise statutory law of the State of Tennessee." Tenant cites only the language of the Landlord and Tenant Act, and cites no other authority to support this position.

Tenant has pointed to no language in the Landlord and Tenant Act indicating that the notice provisions in the Act affect the jurisdiction of the General Sessions Court to adjudicate an FED warrant, and we have found none. To the contrary, Section 66–28–105(a) of the Landlord and Tenant Act specifically gives the general sessions and circuit courts jurisdiction over such FED actions. The notice provision in the Landlord and Tenant Act requires either the landlord or the tenant to provide 30 days' notice before terminating a month-to-month lease. The notice provision is intended to protect the rights of the parties under the lease; it does not implicate the authority of the General Sessions Court to hear the matter.

In holding that the General Sessions Court lacked jurisdiction over Owner's FED action, the Chancery Court cited the case of *Frost v. Shehane.* After reviewing *Frost,* we must respectfully conclude that it is inapposite in this appeal. As in the instant case, the landlords in *Frost* did not give the tenants the statutory notice. The appellate court in *Frost* held that Section 66–28–512 requires the landlord "to deliver written notification ... of ... noncompliance with the Lease in order to start the 30 day time period, after which [the landlord] could terminate the Lease and seek damages." *Frost,* 2009 WL 1939820, at *3. Nothing in the appellate court's analysis indicated that the landlords' failure to give notice affected the lower court's jurisdiction to adjudicate the landlords' FED action; rather, the appellate court held only that the lack of notice affected the relief available to the landlords. Thus, *Frost* supports Owner's argument that the failure to give notice under the Landlord and Tenant Act is a defense to be asserted by the party who was not notified. Lack of proper notice does not deprive a general sessions court of jurisdiction to adjudicate the rights and liabilities of the parties to the FED action, including the effect of a defense such as failure to give notice. Therefore, there is no basis for Tenant's collateral attack on the January 9, 2012 order of the General Sessions Court, and we must respectfully hold that the Chancery court erred in denying Owner's motion to dismiss Tenant's complaint and in granting the relief sought by Tenant.

*5 Accordingly, we reverse the Chancery Court's order denying Owner's motion to dismiss and holding that the January 9, 2012 General Sessions judgment is a nullity, and remand with directions to dismiss Tenant's lawsuit *in toto.* Our decision pretermits any other issues raised on appeal not specifically addressed herein.[8]

Conclusion

The decision of the Chancery Court is reversed and the case is remanded with directions to dismiss the case in its entirety. Costs on appeal are to be taxed to the Appellee Robb **Thompson**, for which execution may issue, if necessary.

All Citations

Not Reported in S.W.3d, 2013 WL 5433479

Footnotes

1 Owner claims that Tenant did not appear before the General Sessions Court, and that the judgment rendered was a default judgment. This assertion cannot be confirmed from the appellate record in this cause. Regardless, it is not relevant to our analysis.

2 Owner did not file a separate counterclaim to enforce the parties' settlement agreement, but instead pled in the alternative, asking the Chancery Court to either dismiss Tenant's complaint or enforce the parties' settlement agreement.

3 The appellate record does not include a transcript of that hearing.

4 The record indicates that the Chancery Court hearing was on Owner's motion to dismiss Tenant's complaint. The Chancery Court's order did not explain the procedural mechanism for awarding affirmative relief to Tenant in the absence of any motion for summary judgment or other motion by Tenant for affirmative relief without a trial on the merits.

5 On February 6, 2013, the Chancery Court entered a consent order that purported to amend its prior order *nunc pro tunc* to June 15, 2012, to resolve any ancillary issues and make the matter final and appealable. After that, on April 12, 2013, the Chancery Court entered an "Order of Final Judgment" that made its prior orders final pursuant to Tennessee Rule of Civil Procedure 54.02. The Chancery Court noted in its April 12 order that its prior orders did not adjudicate any monetary amounts the parties owed to one another, if any. The Chancery Court observed that Owner did not file a countercomplaint against Tenant; it stated that the Chancery Court "decline[d] to address" any amount Tenant owed to Owner and said that issue remained to be determined "in a separate proceeding." The Chancery Court then went on to say that "any claims that are not adjudicated are hereby dismissed with no prejudice to either party." For purposes of this appeal, we view the order declaring the General Sessions judgment a nullity to be final and appealable, and we are not required on appeal to interpret any further effects of the trial court's orders or decipher the status of any other claims by either party.

6 It is unnecessary in this appeal for us to address whether Tenn.Code Ann. § 66–28–512 is applicable to the facts of this case.

7 It appears that Tenant now relies on Section 66–28–505 in addition to Section 66–28–512 in arguing that failure to give pre-suit notice of termination of the lease deprives the General Sessions Court of subject matter jurisdiction over the FED claim. Our analysis regarding the effect of notice under Section 66–28–512 on subject matter jurisdiction would also apply to notice required under Section 66–28–505.

8 As we have indicated in note 5 *supra,* the trial court entered a consent order on February 6, 2013 addressing ancillary issues. We need not address the propriety of that order. We note, however, that all of the relief sought by Tenant in his Chancery Court complaint is premised on his assertion that the General Sessions judgment is void, an assertion now held to be without merit.

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Wessington House Apartments v. Clinard

No. M1999-010290COA-R-CV, 2001 WL 605105 (Tenn. Ct. App. 2001)

Issue:

Landlord must establish Tenant knew or should have known of guest's activity

2001 WL 605105
Only the Westlaw citation is currently available.

SEE COURT OF APPEALS RULES 11 AND 12

Court of Appeals of Tennessee.

WESSINGTON HOUSE APARTMENTS,

v.

Ashley **CLINARD**.

No. M1999-01029-COA-R3-CV.
|
June 5, 2001.

Appeal from the Circuit Court for Sumner County, No. 18637-C; Thomas Goodall, Judge.

Attorneys and Law Firms

David M. Pollard, Jr., Goodlettsville, TN, for appellant Ashley **Clinard**.

Thomas F. Bloom, Nashville, TN, for appellee, **Wessington House Apartments**.

Drake Holliday, Legal Aid Society of Middle Tennessee, Nashville, TN, and David Kozlowski, Legal Services of South Central Tennessee, Inc., Tullahoma, TN, for Amicus Curiae, Tennessee Association of Legal Services.

COTTRELL, J., delivered the opinion of the court, in which KOCH, and CAIN, JJ., joined.

Opinion

COTTRELL.

***1** Appellee, a privately owned, government subsidized **apartment** complex filed an unlawful detainer action seeking to evict appellant, Ashley **Clinard**, after a small amount of marijuana was found in her **apartment**. A guest admitted to having the marijuana despite Ms. **Clinard's** expressed prohibition against drugs in her **apartment**. The circuit court entered a judgment for possession of the premises against the defendant, interpreting provisions of the lease, one required by federal law and the other allowed by Tennessee law, to permit eviction of a tenant for drug related actions of a guest, even without the knowledge of the tenant. Based upon the Tennessee Supreme Court's decision in *Memphis **Housing** Authority v. Thompson,* 38 S.W.3d 504 (Tenn.2001), holding that a tenant may not be evicted for drug related criminal activities of a guest, under federally-required lease provisions, unless the tenant knew or should have known of the activity and failed to take reasonable steps to prevent it, and because the evidence shows that Ms. **Clinard** had no reason to know that her guest had marijuana in her **apartment**, we conclude the eviction based on that provision must be reversed. Additionally, because we find that temporary mere presence of a small amount of marijuana does not constitute "a violent act" or "a real and present danger to the health, safety or welfare of the life or property of other tenants or persons," we conclude that state law does not authorize the summary eviction. Accordingly, we reverse the trial court.

OPINION

Defendant Ashley **Clinard**, a single mother of a toddler and a full-time college student,[1] was a tenant in **Wessington House Apartments**, a privately owned, government subsidized **apartment** complex in Hendersonville.

Ms. **Clinard** signed a lease which allowed the landlord to terminate the lease within three days "if the tenant or any other persons on the premises with the tenant's consent willfully or intentionally commits a violent act or behaves in a manner which constitutes or threatens to be a real and present danger to the health, safety or welfare of the life or property of other tenants or persons on the premises." She also signed a "Lease Addendum for Drug Free **Housing**" in which she agreed that a single violation of the prohibition against "drug related criminal activity" by a member of her household "or a guest or other person(s) under [her] control" would be cause for summary eviction.

On the night of June 20, 1998, Ms. **Clinard** had three guests over to watch videos and permitted them to spend the night. The police awakened Ms. **Clinard** after midnight, asking for permission to search her car and her **apartment** for stereos and speakers which had been removed from a burglarized car.[2] Ms. **Clinard** consented to the search. While searching the **apartment**, officers lifted a cushion on the sofa where Greg Darden, one of the guests, had been sleeping. Underneath the sofa cushion, they found a "Crown Royal" bag containing a small amount of marijuana, described as one joint or less. Mr. Darden confessed to possessing the

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marijuana and was issued a misdemeanor citation in lieu of arrest.[3]

*2 Shortly thereafter, **Wessington House** gave Ms. **Clinard** notice that it intended to enforce the three day termination of tenancy provision in the lease. When Ms. **Clinard** refused to vacate the **apartment**, **Wessington House** filed a detainer warrant against her in General Sessions Court. The General Sessions Court dismissed the action at the close of plaintiff's proof and **Wessington House** appealed to the Circuit Court.

At that trial, **Wessington House** admitted that it had no proof that Ms. **Clinard** knew Mr. Darden possessed drugs, but argued that such knowledge was not a prerequisite for eviction. Both Ms. **Clinard** and Mr. Darden testified that Ms. **Clinard** did not know the marijuana was in the **apartment**, and that she had told Mr. Darden and other friends not to bring drugs there. Ms. **Clinard** said that she opposed drug use because her father had used drugs.

Mr. Darden testified that he had not intended to bring the marijuana to Ms. **Clinard's apartment**, but that he had found the joint in his pocket after he changed clothes at her **apartment** and had put it into the bag with his belongings. He had inadvertently left it in the pocket of the pants he had been wearing when someone had given the marijuana to him the day before. When asked what he intended to do with the marijuana, Mr. Darden said he had planned to give it to "this girl who gets high." He said he had stopped using marijuana about a year earlier because his employer gave weekly drug tests.[4]

The trial court ruled that "[t]he Lease, Lease Addendum, and the Statute do not require any showing by **Apartments** that the Defendant had knowledge of the acts of a guest," and issued a writ of possession in favor of **Wessington House**. Ms. **Clinard** appeals.

I. Analysis

The trial court based its decision on the "contractual violation of the Lease Contract, and [the] contractual violation of the Lease Addendum for Drug-Free **Housing**" and the "violation of applicable State Law, T.C.A. § 66-28-517." Thus, we must examine both the federal law basis and the state law basis.

A. Federal Law Basis

As noted above, **Wessington House** is privately owned but receives assistance payments from the federal government. As such, certain provisions are included in the lease pursuant to federal law. Ms. **Clinard's** lease contained a "Lease Addendum for Drug Free **Housing**," which provided:

> 1. Tenant, any member of the tenant's household, or a guest or other person(s) under the tenant's control shall not engage in criminal activity, including drug related criminal activity, on or near the project premises. "Drug Related Criminal Activity" means the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as defined in Section 102 of the Controlled Substance Act [21 H.S.C. 802]).
>
> 2. Tenant, any member of the tenant's household, or a guest or other person(s) under tenant's control shall not engage in any act intended to facilitate criminal activity, including drug related criminal activity on or near project premises.
>
> * * *
>
> *3 6. VIOLATION OF THE ABOVE PROVISIONS SHALL BE A MATERIAL VIOLATION OF THE LEASE AND GOOD CAUSE FOR TERMINATION OF THE TENANCY. A Single violation of any of the provisions of this addendum shall be deemed a serious violation and a material non-compliance with the lease. It is understood and agreed that a single violation shall be good cause for termination of the lease. Unless otherwise provided by law, proof of violation shall not require criminal conviction, but shall be by a preponderance of the evidence....

This language was added to the lease because of federal law requirements that leases used by privately-owned Section 8 **housing** landlords include provisions that:

> during the term of the lease, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenant, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises, or any drug-related criminal activity on or near such premises, engaged in by a tenant of any unit, any member of the tenant's household, or any guest or other person under the tenant's control shall be cause for termination of tenancy.

42 USC § 1437f(d)(1)(B)(iii).

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Our Supreme Court has recently addressed the issue of whether a similar lease provision, based on the same federal law requirements, creates strict liability for a tenant or whether eviction based on such a provision requires a showing of knowledge or reason to know on the part of the tenant in *Memphis **Housing** Authority v. Thompson,* 38 S.W.3d 504 (Tenn.2001).[5] In that case the tenant, Ms. Thompson, lived in federally funded public **housing** rather than private **housing** with public assistance. The controlling federal statute in *Thompson* required that each public **housing** agency utilize leases which included a provision that any drug-related criminal activity by the tenant or a guest under the tenant's control was cause for termination, in language mirroring the provision applicable in the case before us.[6]

Ms. Thompson's lease included a provision designed to implement the statute, which required her

> [t]o refrain from and cause household members, guests, or persons under the resident's control from engaging in any criminal activity or unlawful activity that threatens the health, safety or right to a peaceful enjoyment of the ... premises ... which includes but is not limited to any drug-related criminal activity on or off the premises.

38 S.W.3d at 506. The lease could be terminated on three days' notice for a violation of that provision. *Id.*

Ms. Thompson was a single mother with three young children. The father of her youngest child was "hanging out with his friends" near her **apartment** when she saw him and asked him to babysit while she did laundry. While she was gone, the Memphis police executed a search warrant, raided the **apartment** and found 0.4 grams of cocaine in the father's possession. He admitted the drugs were his, and he was arrested. Ms. Thompson was not questioned or detained. She consistently maintained that she had no knowledge of the father's illegal drug activity until after his arrest.

***4** Shortly after the father's arrest, Ms. Thompson received a "Three Day Notice of Termination of Lease," which advised her that she was being evicted because of her violation of the lease provision prohibiting drug related activity on the premises. Ms. Thompson refused to leave and Memphis **Housing** Authority brought an unlawful detainer action against her in General Sessions Court. That court entered a judgment for possession in favor of Memphis **Housing** Authority, and Ms. Thompson appealed to the Circuit Court, which granted the plaintiff's motion for summary judgment and issued a writ of possession in favor of Memphis **Housing** Authority. Ms. Thompson appealed to the Court of Appeals, which affirmed the trial court, holding that Ms. Thompson had an "affirmative obligation to ensure that her guests did not engage in drug-related criminal activity while in her **apartment**" and that she was responsible for the violation of the lease. *Id.* at 507. The Tennessee Supreme Court granted Ms. Thompson's application for permission to appeal to determine "whether these federally mandated lease provisions allow a public **housing** authority to evict a tenant based upon the drug-related activities of a 'guest or other person under the tenant's control' regardless of whether the tenant had knowledge of the illegal activity." *Id.*

The Court surveyed similar cases in other jurisdictions, finding a split among the courts. *Id.* at 509-10. Those courts which applied the "knew or should have known" standard found portions of the mandated provisions to be ambiguous, particularly the phrase "under the tenant's control," and looked to the legislative history for guidance. *Id.* Particularly persuasive to the courts which did not impose strict liability was the congressional committee report which accompanied the 1990 Cranston-Gonzalez Affordable **Housing** Act. It stated:

> The committee anticipates that each case will be judged on its individual merits and will require the wise exercise of humane judgment by the [public **housing** authority] and the eviction court. For example, eviction would not be the appropriate course if the tenant had no knowledge of the criminal activities of his/her guests or had taken reasonable steps under the circumstances to prevent the activity.

Id. at 511 (quoting S.Rep. No.316, 101st Cong., 2d Sess. 179 (1990)).

Our Supreme Court noted the North Carolina Court of Appeals' statements regarding the committee report:

> [The] clearly expressed legislative intent [is] that eviction is appropriate only if the tenant is personally at fault for a breach of the lease, i.e., if the tenant had knowledge of the criminal activities, or if the tenant had taken no reasonable steps under the circumstances to prevent the activity. The legislative history makes clear that Congress did not intend the statute to impose a type of strict liability whereby the tenant is responsible for all criminal acts regardless of her knowledge or ability to control them.

***5** *Id.* (quoting *Charlotte Hous. Auth. v. Patterson,* 464 S.E.2d 68, 72 (N.C.App.1995)).

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The Court also noted that 24 C.F.R. § 966.4(*l*)(5)(i), which provides, "In deciding to evict for criminal activity, the [public **housing** authority] shall have discretion to consider all of the circumstances of the case ...," was sometimes cited as supporting the view that eviction was not required in all circumstances. *Id.*

Our Supreme Court found the lease terms ambiguous, and because of the ambiguity,[7] the Court looked to the legislative history and the federal regulation for the legislature's intent in passing the law and concluded:

> neither federal law nor the lease provisions impose a standard of strict liability for the drug-related criminal activities of Thompson's guests or other persons under her control. The phrase "under the resident's control" permits eviction only if MHA establishes that Thompson knew or should have known of the drug-related criminal activity "of a guest or other person" and failed to take reasonable steps to prevent or halt it. Not only is this construction consistent with federal legislative history and HUD regulations, it is consistent with Tennessee law which requires that ambiguous terms in a lease be construed against the drafter of the instrument ...
> *Id.* at 512-13.

Under the standard announced by the Court,

> both the public **housing** authority and the eviction court will be required to carefully consider the facts when an eviction is sought because of the drug-related criminal activities of a guest or other person under the tenant's control. In determining whether a tenant knew or should have known of the illegal conduct, courts should consider whether the guest or other person had a prior criminal record and, if so, whether the tenant had notice of the prior criminal record.... [A] tenant's duty to take reasonable steps to prevent or halt illegal activity may on occasion require the tenant to seek outside intervention from social service agencies or law enforcement officials. When a tenant has taken such measures, however, the tenant should not be held responsible for illegal activities that nevertheless occur.

Id. at 513 (citations omitted). The Court then remanded the case for consideration of the motion for summary judgment in light of the announced standard. *Id.*

The only real difference between *Thompson* and the case before us is that Ms. **Clinard** lived in privately owned **housing**, while Ms. Thompson lived in publicly owned **housing**. The statutory language found in the sections dealing with each type of **housing** is essentially the same, and *Thompson* controls our disposition of the first issue in this appeal.

Accordingly, we modify the trial court's conclusion that no showing was required that Ms. **Clinard** knew of her guest's activities, and hold that **Wessington House** had the burden of establishing that Ms. **Clinard** had knowledge or should have had knowledge of her guest's possession of marijuana or other drug-related activity.

***6** In our review of the trial court's findings of fact, we must review those findings *de novo* upon the record, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn.R.App.P. 13(d) In the case before us, the undisputed evidence showed that Ms. **Clinard** did not know that her friend had marijuana with him and also shows that she had specifically prohibited drugs in her **apartment**. The evidence preponderates against the trial court's finding that "it was clearly foreseeable, in fact, predictable, that the Defendant's guest, a known drug user, could have drugs on or about the premises." There is no evidence that the guest had used drugs in over a year or that Ms. **Clinard** had any reason to believe he would have been in possession of drugs at the time. He had been a guest in her home before and testified he had never taken drugs there before. Additionally, Ms. **Clinard** had made it clear to friends and guests that she would not allow drugs in her **apartment**. Without some reason to suspect that Mr. Darden would violate that prohibition on the occasion in question, we are not convinced she was required to do more. Based upon our Supreme Court's holding in *Thompson,* that eviction is permitted "only if [the landlord] establishes that [the tenant] knew or should have known of the drug-related criminal activity 'of a guest or other person' and failed to take reasonable steps to prevent or halt it," we must reverse the trial court's grant of the writ of possession based on the lease addendum.

B. State Law Basis

The trial court also based its grant of possession on its conclusion that "[t]he Lease ... and the Statute do not require any showing by **Apartments** that the Defendant had knowledge of the acts of a guest." Ms. **Clinard's** lease contains a provision, to which the court referred, allowing the landlord to terminate the lease within three days from the date written notice is delivered:

> ... if the Tenant or any other persons on the premises within [sic] the Tenant's consent willfully or intentionally commits a violent act or behaves in a manner which constitutes or threatens to be a real and present danger to the health, safety or welfare of the life or property of other Tenants or persons on the premises.

This provision tracks the language of Tenn.Code Ann. § 66-28-517(a) which states:

> A landlord may terminate a rental agreement within three (3) days from the date written notice is delivered to the tenant if the tenant or any other person on the premises with the tenant's consent willfully or intentionally commits a violent act or behaves in a manner which constitutes or threatens to be a real and present danger to the health, safety or welfare of the life or property of other tenants or persons on the premises.

Necessary to the trial court's holding that the lease may be terminated based on the above provision and statute without a showing of knowledge is its implicit conclusion that Mr. Darden's placing a single marijuana cigarette in a bag underneath a cushion constituted either an intentional "violent act" or a "real and present danger" to other tenants or persons on the premises.

*7 The quoted statute and lease govern summary termination, with only three days' notice. The ability of a landlord to evict a tenant with so little warning, contrary to other termination provisions,[8] is limited to the most egregious situations involving potential danger to other tenants. Thus, summary termination is allowed if a tenant or guest commits an intentional violent act or behaves in a manner which "constitutes or threatens to be a real and present danger to the health, safety or welfare of the life or property of other tenants or persons on the premises." There is no evidence to support a finding that Mr. Darden committed a violent act. The question, therefore, is whether there is evidence to support a finding that possession of one marijuana cigarette, found inside a bag and under a sofa cushion, was or threatened to be a danger to other tenants.

Cases under Tennessee's statute are few. In *Fairview Limited v.. Daniel,* No. 03A01-9703-CV-00071, 1997 WL 304125 at *2-3 (Tenn.Ct.App. June 5, 1997) (perm. app. denied Jan. 5, 1998), this court held that the statute allowed eviction of tenant who threatened the lives of others, assaulted a police officer, and created a disturbance in the common area of the **apartments**, stating, "there is little doubt that the conduct of the appellant was within the prohibition of the statute: she committed a violent act and threatened the lives of other persons on the premises." *Id.* at *3. Because Mr. Darden's conduct did not include any violent act, the *Fairview* case is of little assistance.

The statutory provision at issue was an amendment to the Tennessee Uniform Residential Landlord Tenant Act. Some other states have enacted somewhat similar provisions, allowing summary termination of leases in cases in which tenants pose threats to others on the premises. Thus, other state courts have interpreted similar language in other factual situations. For example, use of the premises for illegal drug sales warranted eviction in *Spence v.. O'Brien,* 446 N.E.2d 1070, 1073 (Mass.Ct.App.1983). *See also City of New York v. Wright,* 636 N.Y.S.2d 33, 34-35 (N.Y.App.Div.1995) (eviction proceeding of tenant who had "35 jumbo vials of crack cocaine, drug paraphernalia, cash and a gun" was to protect the "health, safety and welfare of the other tenants").

However, in ***Housing*** *Authority of Decatur v. Brown,* 349 S.E.2d 501 (Ga.Ct.App.1986), the court held that possession of marijuana did not pose such a threat as to allow summary eviction. In that case, the tenant was arrested with a small amount of marijuana, ostensibly for personal use. *Id.* at 503. The **Housing** Authority, several months later, served the tenant with notice contending that he violated a provision of his lease that allowed termination with ten days' notice "in cases where the tenant created or maintained a threat to the health or safety or other tenants." *Id.* The trial court dismissed the possessory warrant, and the Georgia appellate court affirmed, based in part on the conclusion "that the mere violation of marijuana possession even on two occasions [neither] creates a hazardous situation for other tenants nor interferes with their peaceable possession." *Id*.

*8 Similarly, in ***Housing*** *Authority of Jersey City v. Myers,* 685 A.2d 532 (N.J.Super.1996), the Superior Court of New Jersey dismissed a summary dispossession action. The **Housing** Authority of Jersey City sought to terminate the tenancy of a man who was arrested for possession of controlled dangerous substance paraphernalia after he was found to have three empty glassine bags in his possession. *Id.* at 532. While the case was decided under federal law, the court noted that summary eviction was allowed only where criminal activity threatened the health of other tenants. *Id.* at 534. While noting that some criminal activity would rise to the level to require summary eviction, the court determined that each case should be determined on its own facts. *Id.* Because the **Housing** Authority could not show that the tenant was a

threat to the other tenants, the court dismissed the complaint. *Id.*

In the case before us, Mr. Darden was not accused of selling marijuana or of using it. There is no evidence he attempted to do either at the **apartment**. He had a very small amount hidden inside a bag underneath the sofa cushion. Had the police not entered the **apartment** and found the marijuana, its presence would have gone unnoticed by Ms. **Clinard** and her neighbors. There was no evidence drugs had ever been present in the **apartment** before. We conclude that Mr. Darden's possession of the marijuana did not trigger the termination provisions of the statute or of the lease, and the issuance of the writ of possession was improper based on those grounds. While not discounting the dangers posed by drugs in our society, we cannot conclude that the undiscovered presence of a single marijuana cigarette rises to the level of "real and present danger" anticipated by the statute or the lease provision which allows eviction on only three days' notice.

We also conclude that a finding that the tenant knew or should have known of the prohibited activity is a prerequisite for eviction under this particular lease provision and Tenn.Code Ann. § 66-28-517(a). In *Investors Diversified Property Management, Inc. v. Brown,* No. 87-360-II, 1988 WL 102781 (Tenn.Ct.App. Oct. 7, 1988) (no Tenn.R.App.P. 11 application filed), this court applied the "knew or should have known" standard to an identical contract provision. 1988 WL 102781 at *2. In that case, as in the one before us, the tenant lived in privately owned **housing** subsidized by the federal government. The tenant's child assaulted another child, an intentional "violent act," which also constituted a "real and present danger to the health, safety or welfare" of the other child, and the landlord sought to evict the tenant and her children. This court found that the landlord did not have good cause to evict the tenant and her family because the tenant "did not know, nor did she have cause to know, that her eleven-year-old son ... had a tendency to commit such a violent or dangerous act." *Id.* While acknowledging that the son's act was "abhorrent," this court was of the opinion that there was not " 'good cause' to evict an entire family for a single offense ... when the mother had no warning of the act, no opportunity to stop it, and no chance to remedy her child's conduct." *Id.* at *3.

***9** We interpret *Brown* as establishing the same "knew or should have known" standard for summary lease termination under Tenn.Code Ann. § 66-28-517(a) as *Thompson* established for summary termination under the federal drug free **housing** statutes, including whether the tenant took reasonable action to prevent or halt the violent or dangerous conduct. Therefore, for the same reasons we have determined that the eviction of Ms. **Clinard** under federally imposed lease terms was unwarranted, we likewise determine that it was also improper under the lease provision authorized by state law.

II. Conclusion

We reverse the judgment of the trial court and remand this cause for such further proceedings as may be necessary. Costs are taxed to the appellee, **Wessington House Apartments**, for which execution may issue if necessary.

All Citations

Not Reported in S.W.3d, 2001 WL 605105

Footnotes

1 She attended Volunteer State Community College, and was pursuing an associates degree in nursing, maintaining a 3.0 grade point average.

2 Earlier in the evening, Ms. **Clinard** had noticed a car belonging to a friend parked close to her **apartment** and left a note on the car, asking the friend to call her. A police officer apparently saw her near the car. The car on which Ms. **Clinard** had left the note was later burglarized. Ms. **Clinard's** observed presence was the reason police came to her **apartment**.

3 As a first offender entering a guilty plea to simple possession, Mr. Darden was fined $500 and placed on probation. He was also permanently banned from the **Wessington House Apartments**.

4 The trial court, seeking to determine Mr. Darden's "credibility," asked him if he had used drugs recently and if he would be willing to take a drug test. When Mr. Darden asserted his willingness to take the test, the court ordered one of its

officers to take him to another room and test him. A few minutes later, the court officer announced that Mr. Darden had tested negative for drug use.

5 In their briefs and at oral argument, both sides recognized the significance of the intermediate appellate court decision in *Thompson* and were aware that permission to appeal had been requested. A few days after the argument herein, the Tennessee Supreme Court granted permission to appeal in *Thompson.*

6 42 U.S.C. § 1437d(*l*)(6)provides that public **housing** agencies shall utilize leases which:

> provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public **housing** tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy.

7 In examining the lease provisions, the Court noted that ambiguous provisions must be construed against the drafter. 38 S.W3d at 511. The lease provided that cause for termination of tenancy existed if "any members of the household, a guest, or other person under the resident's control" engaged in "drug-related criminal activity on or off the premises." *Id.* The Court interpreted the provision to refer to "four separate categories of people: (1) the resident ...; (2) household members; and (3) guests or (4) other persons under the resident's control." *Id.* at 511-12. The Court then found the phrase "under the tenant's control," to refer to only the last two categories, guests or other persons. *Id.* The Court interpreted the language as clearly imposing strict liability upon the resident or household members for drug related activity, but found "under the resident's control" to be ambiguous.

8 For example, the Tennessee Uniform Residential Landlord and Tenant Act allows a landlord to terminate a lease for a breach or noncompliance by giving a thirty-day notice. Tenn.Code Ann. § 66-28-505(a). Lease provisions may provide for greater notice.

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West v. West, No. E2020000780-COA-R3-CV

2021 WL 1426950 (Tenn. Ct. App. 2021)

Issue:

Unlawful detainer warrants are proper only when there is a contractual landlord-tenant relationship.

2021 WL 1426950
Only the Westlaw citation is currently available.

SEE COURT OF APPEALS RULES 11 AND 12

Court of Appeals of Tennessee,
AT KNOXVILLE.

William Maurice **WEST**, Jr.

v.

Julie A. **WEST**

No. E2020-00780-COA-R3-CV
|
February 23, **2021** Session
|
FILED 04/15/**2021**

Appeal from the Circuit Court for Knox County, No. C-18-123818, Kristi M. Davis, Judge

Attorneys and Law Firms

David A. Lufkin, Knoxville, Tennessee, for the appellant, Julie A. **West**.

Stephen Kent Garrett, Corryton, Tennessee, for the appellee, William Maurice **West**, Jr.

Andy D. Bennett, J., delivered the opinion of the Court, in which John W. McClarty and Thomas R. Frierson, II, JJ., joined.

OPINION

Andy D. Bennett, J.

***1** A decedent's son brought an action for unlawful detainer against the decedent's widow in general sessions court in an effort to take possession of property left to the son in the decedent's will. After the general sessions court dismissed the son's case, he requested a de novo appeal in circuit court. The son prevailed in the circuit court proceeding, and the widow appealed. Because the widow did not occupy the property pursuant to a landlord-tenant contract, the son does not have a cause of action for unlawful detainer. We, therefore, conclude that the circuit court erred in awarding possession of the property to the son. The judgment of the circuit court is reversed and the case is remanded for entry of an order of dismissal.

Factual and Procedural Background

Billy Maurice **West** died in May 2013, leaving Julie Ann **West** ("Widow"), his surviving spouse, and William Maurice **West**, Jr. ("Son"), his son by a prior marriage and his only other heir. Although Widow was initially named the personal representative pursuant to the most recent will, Son filed a will contest based on an earlier will that was executed in 2003. The probate (chancery) court ultimately admitted the earlier will to probate and Son was appointed the personal representative. The 2003 will devised the property where the decedent and Widow had lived ("the Property") to Son.

Son filed a detainer warrant against Widow in general sessions court in 2016. Widow filed a request for continuance and a motion to dismiss. In her pleadings, Widow raised the pendency of the will contest and her petition for the right of homestead in the Property. According to Widow, the parties agreed to place the detainer action on hold. Son acknowledges that the parties entered into such an agreement but asserts that the conditions of the hold had occurred prior to his filing of the second detainer warrant (described below) and that any such agreement was rescinded by his counsel's letter of May 2, 2018.

On May 9, 2018, Son filed a second detainer warrant against Widow in general sessions court, and Widow filed a petition for writ of certiorari and supersedeas, citing both detainer cases. The general sessions court dismissed both pending detainer warrants on June 19, 2018. Son filed a de novo appeal in circuit court, and Widow filed a "renewed" motion to dismiss. On October 17, 2018, the trial court entered a judgment of possession in favor of Son. Widow filed a motion for new trial or to alter or amend the judgment on November 7, 2018.

On November 29, 2018, the chancellor in the estate case determined that Widow's petition for assignment of homestead and right to elective share (filed in January 2018) was timely filed and that Widow was, therefore, entitled to pursue her rights as surviving spouse. Widow filed a copy of the chancellor's opinion and order with the circuit court on December 12, 2018. The circuit court entered an order on December 18, 2018, denying Widow's motion for new trial or to alter or amend the judgment.

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In Widow's first appeal, this Court issued an opinion in March 2020 vacating the trial court's decision and remanding for the issuance of sufficient findings of fact and conclusions of law. *See* ***West*** *v.* ***West***, No. E2018-02277-COA-R3-CV, 2020 WL 1488582, at *5 (Tenn. Ct. App. Mar. 26, 2020). On remand, the trial court entered an order on April 23, 2020, titled Findings of Fact, Conclusions of Law, and Judgment. The court found that Son was entitled to possession of the property by virtue of the probate court order "validat[ing] the will that gives him ownership of the property." Further, the court determined, "The fact that [Widow] is seeking to elect against the will and obtain a homestead exemption and elective share does not grant her a right to possession of the property." Son was granted a judgment of possession. The court also ruled that, because of its decision, Widow's pending "fiat" (requesting a release of the appeal bond she had posted) was moot. Widow filed a motion to amend, for a new trial, or to alter and amend the judgment, and the trial court denied the motion by order entered on June 3, 2020. Widow appeals.

***2** In this appeal, Widow raises a number of issues: (1) whether the trial court had jurisdiction in this matter; (2) whether Son had standing to file this litigation in an individual capacity; (3) whether the detainer filings and their appeal to the trial court were a collateral attack on the exclusive jurisdiction of the probate division of the chancery court; (4) whether the trial court violated Tenn. R. Civ. P. 12 and Widow's due process rights by failing to allow her the requisite time to file an answer after the court denied her motion to dismiss; (5) whether the trial court violated Tenn. Rs. Civ. P. 62.01 and 62.02 by not allowing a full thirty days to appeal or file further pleadings after its December 14, 2018 decision on the judgment of possession; and (6) whether the trial court violated Widow's due process rights by refusing to release her cash bond filed in the first appeal after this court vacated the trial court's judgment and taxed the costs of the first appeal to Son.

Analysis

Widow argues that the general sessions court was without jurisdiction to decide the case because Son's complaint(s) did not state a cause of action for unlawful detainer. We have determined that this issue is determinative and requires reversal of the trial court's decision.

The determination of whether a court has subject matter jurisdiction is a question of law. *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000). Subject matter jurisdiction addresses "a court's power to adjudicate a particular case or controversy." *Bernatsky v. Designer Baths & Kitchens, LLC*, No. W2012-00803-COA-R3-CV, 2013 WL 593911, at *2 (Tenn. Ct. App. Feb. 15, 2013). To determine whether a court has subject matter jurisdiction, we look to the Tennessee Constitution, statutes, and the common law. *Id.*

The cause of action for unlawful detainer was created by statute as a means of "streamlin[ing] the cumbersome and more formal common law action, such as ejectment, used to determine rightful possession of real property." *Newport Hous. Auth. v. Ballard*, 839 S.W.2d 86, 89 (Tenn. 1992). Tennessee Code Annotated § 29-18-104 provides:

> Unlawful detainer is where the *defendant enters by contract*, either as tenant or as assignee of a tenant, or as personal representative of a tenant, or as subtenant, or by collusion with a tenant, and, in either case, willfully and without force, holds over the possession from the landlord, or the assignee of the remainder or reversion.

(Emphasis added). An unlawful detainer action "may resolve possessory interests only, not the merits of title." *Rutherford Wrestling Club, Inc. v. Arnold*, No. M2013-02348-COA-R3-CV, 2015 WL 1955369, at *8 (Tenn. Ct. App. Apr. 30, 2015) (citing *Johnson v. Hopkins*, 432 S.W.3d 840, 845 (Tenn. 2013)). Interpreting Tenn. Code Ann. § 29-18-104, the courts have held that "a landlord/tenant relationship, established by contract, is the baseline requirement for maintaining an unlawful detainer action." *CitiFinancial Mortg. Co., Inc. v. Beasley*, No. W2006-00386-COA-R3-CV, 2007 WL 77289, at *7 (Tenn. Ct. App. Jan. 11, 2007); *see also Arnold*, 2015 WL 1955369, at *8.

In the present case, Widow did not enter the property "by contract, either as tenant or as assignee of a tenant, or as personal representative of a tenant, or as subtenant, or by collusion with a tenant." Tenn. Code Ann. § 29-18-104. Rather, she remained on the Property after her husband's death. As explained more fully below, we conclude that an action for unlawful detainer was not proper in this case because Widow's claim to possession is not based upon a contractual landlord-tenant relationship.

In *Springfield v. Stamper*, 214 S.W.2d 345 (Tenn. Ct. App. 1948), Eva Stamper sued Charlie Springfield to gain possession of a piece of property. The general sessions court entered judgment in favor of Mr. Springfield, and Ms.

Stamper appealed to the circuit court, which entered judgment in her favor. *Springfield*, 214 S.W.2d at 345. Mr. Springfield appealed the judgment of the circuit court. *Id.* Although the warrant contained ambiguous wording as to the cause of action being pursued by Ms. Stamper, the appellate court concluded that the action was for unlawful detainer and that, "hence, entry upon contract is of the gravamen of the action." *Id.* at 346-47. Ms. Stamper traced her claim to the property back to Mack Windham, whom she alleged to be the brother of her grandmother. *Id.* at 345-46. Mr. Springfield asserted the right to possession based upon a 1933 deed covering part of the property from Lizzie Windham (Mack Windham's widow) to Frances Springfield (Mr. Springfield's mother), and upon a 1946 instrument conveying the entire piece of property from Lizzie Windham to Charlie and Frances Springfield. *Id.* at 346.

***3** To resolve the case, the *Springfield* court relied upon *Shepperson v. Burnette*, 92 S.W. 762, 762 (Tenn. 1906), a case involving property originally owned by Jane Sutton, the wife of Alfred Sutton. Upon Jane's death, Alfred took the property as a tenant by the curtesy[1] and later conveyed it to Flem Burnette. *Shepperson*, 92 S.W. at 762. The Sutton children brought an action for unlawful detainer against Amanda Burnette, Flem's widow. *Id.* Noting that "one essential element of the definition [of unlawful detainer] is that the defendant or the one under whom he claims must have entered by contract," the Court in *Shepperson* determined that the unlawful detainer action by the Sutton children "could not lie" because "neither the estate was created nor was possession secured by contract." *Id.*

Based upon the *Shepperson* precedent, the court in *Springfield* concluded that the circuit court erred in awarding judgment on Ms. Stamper's claim for unlawful detainer. *Springfield*, 214 S.W.2d at 347-48. The court considered Lizzie Windham's tenancy to be "predicated upon unassigned homestead and dower," *id.* at 348, and reasoned that her rights were "analogous, in the sense here considered, to tenancy by the curtesy," *id.* at 347. Even if Ms. Windham's rights had matured to a life estate, "she could not by contract, deed or assignment create such an entry on the premises by the defendant as would, upon a holding over, give rise to an unlawful detainer action by a remainderman." *Id.* at 348. Because Mr. Springfield's possession did not originate from a landlord-tenant relationship contract, an action for unlawful detainer was not proper. *See id.*

The same reasoning precludes the unlawful detainer action in the case before us. Widow did not come into possession of the Property by virtue of a contract establishing a landlord-tenant relationship. A general sessions court is a court of limited jurisdiction with only the authority provided by statute. *Ware v. Meharry Med. Coll.*, 898 S.W.2d 181, 183-84 (Tenn. 1995). Thus, the general sessions court lacked subject matter jurisdiction to decide the case.

A somewhat different question is presented as to the status of Son's de novo appeal in circuit court—namely, whether the circuit court has subject matter jurisdiction over a de novo appeal from general sessions court where the general sessions court lacked subject matter jurisdiction. In this case, however, we need not address the jurisdictional issue because, even if the circuit court had subject matter jurisdiction to decide Son's de novo appeal, the complaint for unlawful detainer should have been dismissed for failure to state a claim upon which relief can be granted pursuant to Tenn. R. Civ. P. 12.02(6).

Conclusion

The judgment of the trial court is reversed and remanded for an order dismissing the complaint. Costs of this appeal are assessed against the appellee, William Maurice **West**, Jr., and execution may issue if necessary.

All Citations

Slip Copy, 2021 WL 1426950

Footnotes

1 At common law, tenancy by the curtesy was "a husband's right, upon his wife's death, to a life estate in the land that his wife owned during their marriage, assuming that a child was born alive to the couple." Black's Law Dictionary (11th ed. 2019); *see also Pattison v. Baker*, 255 S.W. 710, 711 (Tenn. 1923). This estate was "alienable by the husband and subject to execution for his debts, and giving to him control of the profits in the wife's land." *Pattison*, 255 S.W. at 711.

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Section 5

Miscellaneous Issues

Section 5 – Miscellaneous Issues

1. **Violence Against Women Act** **34 U.S.C. § 12491**

2. **Recovery of Damages by Landlord**

   ***Tennessee Homes v. Welch*, M2021-01383-COA-R3-CV, 2022 WL 3332662 (Tenn. Ct. App. August 12, 2022)**
   Procedure for evaluating and applying liquidated damages clause in lease.

Violence Against Women Act

34 U.S.C. §12491

34 U.S.C.A. § 12491

Formerly cited as 42 USCA § 14043e-11

§ 12491. Housing protections for victims of domestic violence, dating violence, sexual assault, and stalking

Effective: September 1, 2017 to September 30, 2022

(a) Definitions

In this subpart:

(1) Affiliated individual

The term "affiliated individual" means, with respect to an individual—

(A) a spouse, parent, brother, sister, or child of that individual, or an individual to whom that individual stands in loco parentis; or

(B) any individual, tenant, or lawful occupant living in the household of that individual.

(2) Appropriate agency

The term "appropriate agency" means, with respect to a covered housing program, the Executive department (as defined in section 101 of Title 5) that carries out the covered housing program.

(3) Covered housing program

The term "covered housing program" means—

(A) the program under section 1701q of Title 12;

(B) the program under section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013);

(C) the program under subtitle D of title VIII of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12901 et seq.);

(D) the program under subtitle A of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360 et seq.);

(E) the program under subtitle A of title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12741 et seq.);

(F) the program under paragraph (3) of section 1715*l*(d) of Title 12 that bears interest at a rate determined under the proviso under paragraph (5) of such section 1715*l*(d);

(G) the program under section 1715z-1 of Title 12;

(H) the programs under sections 1437d and 1437f of Title 42;

(I) rural housing assistance provided under sections 1484, 1485, 1486, 1490m, and 1490p-2 of Title 42; and

(J) the low income housing tax credit program under section 42 of Title 26.

(b) Prohibited basis for denial or termination of assistance or eviction

(1) In general

An applicant for or tenant of housing assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.

(2) Construction of lease terms

An incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as—

(A) a serious or repeated violation of a lease for housing assisted under a covered housing program by the victim or threatened victim of such incident; or

(B) good cause for terminating the assistance, tenancy, or occupancy rights to housing assisted under a covered housing program of the victim or threatened victim of such incident.

(3) Termination on the basis of criminal activity

(A) Denial of assistance, tenancy, and occupancy rights prohibited

No person may deny assistance, tenancy, or occupancy rights to housing assisted under a covered housing program to a tenant solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, if the tenant or an affiliated individual of the

tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking.

(B) Bifurcation

(i) In general

Notwithstanding subparagraph (A), a public housing agency or owner or manager of housing assisted under a covered housing program may bifurcate a lease for the housing in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant of the housing.

(ii) Effect of eviction on other tenants

If public housing agency or owner or manager of housing assisted under a covered housing program evicts, removes, or terminates assistance to an individual under clause (i), and the individual is the sole tenant eligible to receive assistance under a covered housing program, the public housing agency or owner or manager of housing assisted under the covered housing program shall provide any remaining tenant or resident an opportunity to establish eligibility for the covered housing program. If a tenant or resident described in the preceding sentence cannot establish eligibility, the public housing agency or owner or manager of the housing shall provide the tenant or resident a reasonable time, as determined by the appropriate agency, to find new housing or to establish eligibility for housing under another covered housing program.

(C) Rules of construction

Nothing in subparagraph (A) shall be construed—

(i) to limit the authority of a public housing agency or owner or manager of housing assisted under a covered housing program, when notified of a court order, to comply with a court order with respect to—

(I) the rights of access to or control of property, including civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, or stalking; or

(II) the distribution or possession of property among members of a household in a case;

(ii) to limit any otherwise available authority of a public housing agency or owner or manager of housing assisted under a covered housing program to evict or terminate assistance to a tenant for any violation of a lease not premised on the act of violence in question against the tenant or an affiliated person of the tenant, if the public housing agency or owner or manager does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate;

(iii) to limit the authority to terminate assistance to a tenant or evict a tenant from housing assisted under a covered housing program if a public housing agency or owner or manager of the housing can demonstrate that an actual and imminent threat to other tenants or individuals employed at or providing service to the property would be present if the assistance is not terminated or the tenant is not evicted; or

(iv) to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, sexual assault, or stalking.

(c) Documentation

(1) Request for documentation

If an applicant for, or tenant of, housing assisted under a covered housing program represents to a public housing agency or owner or manager of the housing that the individual is entitled to protection under subsection (b), the public housing agency or owner or manager may request, in writing, that the applicant or tenant submit to the public housing agency or owner or manager a form of documentation described in paragraph (3).

(2) Failure to provide certification

(A) In general

If an applicant or tenant does not provide the documentation requested under paragraph (1) within 14 business days after the tenant receives a request in writing for such certification from a public housing agency or owner or manager of housing assisted under a covered housing program, nothing in this subpart may be construed to limit the authority of the public housing agency or owner or manager to—

(i) deny admission by the applicant or tenant to the covered program;

(ii) deny assistance under the covered program to the applicant or tenant;

(iii) terminate the participation of the applicant or tenant in the covered program; or

(iv) evict the applicant, the tenant, or a lawful occupant that commits violations of a lease.

(B) Extension

A public housing agency or owner or manager of housing may extend the 14-day deadline under subparagraph (A) at its discretion.

(3) Form of documentation

A form of documentation described in this paragraph is—

(A) a certification form approved by the appropriate agency that—

(i) states that an applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking;

(ii) states that the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection under subsection (b) meets the requirements under subsection (b); and

(iii) includes the name of the individual who committed the domestic violence, dating violence, sexual assault, or stalking, if the name is known and safe to provide;

(B) a document that—

(i) is signed by—

(I) an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional, or a mental health professional from whom an applicant or tenant has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of the abuse; and

(II) the applicant or tenant; and

(ii) states under penalty of perjury that the individual described in clause (i)(I) believes that the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection under subsection (b) meets the requirements under subsection (b);

(C) a record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency; or

(D) at the discretion of a public housing agency or owner or manager of housing assisted under a covered housing program, a statement or other evidence provided by an applicant or tenant.

(4) Confidentiality

Any information submitted to a public housing agency or owner or manager under this subsection, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking shall be maintained in confidence by the public housing agency or owner or manager and may not be entered into any shared database or disclosed to any other entity or individual, except to the extent that the disclosure is—

(A) requested or consented to by the individual in writing;

(B) required for use in an eviction proceeding under subsection (b); or

(C) otherwise required by applicable law.

(5) Documentation not required

Nothing in this subsection shall be construed to require a public housing agency or owner or manager of housing assisted under a covered housing program to request that an individual submit documentation of the status of the individual as a victim of domestic violence, dating violence, sexual assault, or stalking.

(6) Compliance not sufficient to constitute evidence of unreasonable act

Compliance with subsection (b) by a public housing agency or owner or manager of housing assisted under a covered housing program based on documentation received under this subsection, shall not be sufficient to constitute evidence of an unreasonable act or omission by the public housing agency or owner or manager or an employee or agent of the public housing agency or owner or manager. Nothing in this paragraph shall be construed to limit the liability of a public housing agency or owner or manager of housing assisted under a covered housing program for failure to comply with subsection (b).

(7) Response to conflicting certification

If a public housing agency or owner or manager of housing assisted under a covered housing program receives documentation under this subsection that contains conflicting information, the public housing agency or owner or manager may require an applicant or tenant to submit third-party documentation, as described in subparagraph (B), (C), or (D) of paragraph (3).

(8) Preemption

Nothing in this subsection shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this subsection for victims of domestic violence, dating violence, sexual assault, or stalking.

(d) Notification

(1) Development

The Secretary of Housing and Urban Development shall develop a notice of the rights of individuals under this section, including the right to confidentiality and the limits thereof.

(2) Provision

Each public housing agency or owner or manager of housing assisted under a covered housing program shall provide the notice developed under paragraph (1), together with the form described in subsection (c)(3)(A), to an applicant for or tenants of housing assisted under a covered housing program—

(A) at the time the applicant is denied residency in a dwelling unit assisted under the covered housing program;

(B) at the time the individual is admitted to a dwelling unit assisted under the covered housing program;

(C) with any notification of eviction or notification of termination of assistance; and

(D) in multiple languages, consistent with guidance issued by the Secretary of Housing and Urban Development in accordance with Executive Order 13166 (42 U.S.C. 2000d-1 note; relating to access to services for persons with limited English proficiency).

(e) Emergency transfers

Each appropriate agency shall adopt a model emergency transfer plan for use by public housing agencies and owners or managers of housing assisted under covered housing programs that—

(1) allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to transfer to another available and safe dwelling unit assisted under a covered housing program if—

(A) the tenant expressly requests the transfer; and

(B)(i) the tenant reasonably believes that the tenant is threatened with imminent harm from further violence if the tenant remains within the same dwelling unit assisted under a covered housing program; or

(ii) in the case of a tenant who is a victim of sexual assault, the sexual assault occurred on the premises during the 90 day period preceding the request for transfer; and

(2) incorporates reasonable confidentiality measures to ensure that the public housing agency or owner or manager does not disclose the location of the dwelling unit of a tenant to a person that commits an act of domestic violence, dating violence, sexual assault, or stalking against the tenant.

(f) Policies and procedures for emergency transfer

The Secretary of Housing and Urban Development shall establish policies and procedures under which a victim requesting an emergency transfer under subsection (e) may receive, subject to the availability of tenant protection vouchers, assistance under section 1437f(o) of Title 42.

(g) Implementation

The appropriate agency with respect to each covered housing program shall implement this section, as this section applies to the covered housing program.

CREDIT(S)

(Pub.L. 103-322, Title IV, § 41411, as added Pub.L. 113-4, Title VI, § 601(a)(4), Mar. 7, 2013, 127 Stat. 102; amended Pub.L. 114-324, § 6, Dec. 16, 2016, 130 Stat. 1951.)

Notes of Decisions (1)

Due process

Section 8 voucher-holder's wife, who was victim of husband's domestic abuse, had a protected property interest in husband's voucher sufficient to support her due process claim against city housing department alleging that her due process rights were violated when department terminated her husband's voucher without giving her an opportunity to be heard; Violence Against Women Act (VAWA) expressly prescribed a procedure to provide victims of domestic abuse who lived with their abusers the opportunity to retain the Section 8 voucher held by their abusers when a public housing agency terminated assistance to the abuser. A.S. v. Been, S.D.N.Y.2017, 228 F.Supp.3d 315. Constitutional Law ⇐ 4130; Landlord and Tenant ⇐ 2065

34 U.S.C.A. §12491, 34 U.S.C.A. §12491

Tennessee Homes v. Welch

M2021-01383-COA-R3-CV, 2022 WL 3332662

(Tenn. Ct. App. August 12, 2022)

2022 WL 3332662
Only the Westlaw citation is currently available.

SEE COURT OF APPEALS RULES 11 AND 12

Court of Appeals of Tennessee,
AT NASHVILLE.

TENNESSEE HOMES

v.

Dalton L. WELCH, et al.

No. M2021-01383-COA-R3-CV

Assigned on Briefs July 1, 2022

FILED August 12, 2022

Appeal from the Circuit Court for Coffee County, No. 2020-CV-47049, William A. Lockhart, Judge

Attorneys and Law Firms

Drew Justice, Murfreesboro, Tennessee, for the appellants, Dalton L. Welch and Alexis S. Clark.

James D. Lane, II, Tullahoma, Tennessee, for the appellee, Tennessee Homes.

Carma Dennis McGee, J., delivered the opinion of the court, in which W. Neal McBrayer and Kristi M. Davis, JJ., joined.

OPINION

Carma Dennis McGee, J.

***1** This appeal is a landlord-tenant dispute involving issues of liquidated damages and material breach of contract. The landlord filed a civil warrant in general sessions court to recover an early termination fee and other related fees pursuant to the parties' lease agreement. The general sessions court entered a judgment in favor of the landlord finding that the early termination fee was reasonable and was not a penalty. The tenants appealed the judgment to the circuit court. The circuit court also entered a judgment in favor of the landlord finding that the early termination fee was reasonable and was not a penalty and that the landlord did not breach the lease agreement. The tenants appeal. We affirm as modified and remand to the circuit court for calculation of damages.

I. Facts & Procedural History

In March 2020, Dalton L. Welch and Alexis S. Clark (collectively, "Tenants") entered into a "Tennessee Residential Lease Agreement" with Tennessee Homes ("Landlord").[1] The lease agreement consisted of 33 paragraphs and included six addenda regarding the following: insurance; pest control; wi-fi end user acceptance agreement; zero tolerance for criminal activity; pets; and a statement of facts. The lease agreement was for a 12-month term and required monthly rent in the amount of $865.00. Additionally, the lease agreement contained the following relevant provisions:

> 3. **DAMAGE DEPOSIT:** Upon the due execution of this Agreement, Tenant shall deposit with Landlord the sum of [$500.00] receipt of which is hereby acknowledged by Landlord, as security for any damage caused to the Premises during the term hereof. Such deposit shall be returned to Tenant, without interest, and less any set off for damages to the Premises upon the termination of this Agreement.....
>
> ...
>
> 5. **CONDITION OF PREMISES:** Tenant stipulates, represents and warrants that Tenant has examined the Premises, and that they are at the time of this Lease in good order, repair, and in safe, clean and tenantable condition. Any damaged or non-working items on the Premises will be noted on the attached and signed 'Check-in Sheet'.
>
> ...
>
> 7. **ALTERATIONS AND IMPROVEMENT:** Tenant shall make no alterations to the buildings or improvements on the Premises or construct any building or make any other improvements on the Premises without the prior written consent of Landlord. Any and all alterations, changes, and/or improvements built, constructed or placed on

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the Premises by Tenant shall, unless otherwise provided by written agreement between Landlord and Tenant, be and become the property of Landlord and remain on the Premises at the expiration or earlier termination of this Agreement.

...

13. **INSPECTION OF PREMISES:** Landlord and Landlord's agents shall have the right at all reasonable times during the term of this Agreement and any renewal thereof to enter the Premises for the purpose of inspecting the Premises and all buildings and improvements thereon. And for the purposes of making any repairs, additions, or alterations as may be deemed appropriate by Landlord for the preservation of the Premises of the building.....

...

21. **EARLY TERMINATION FEES:** If this agreement terminates for nonpayment or other listed defaults, other than a Landlord approved written termination from Tenant, Tenant agrees to pay [$1,000.00], in addition to all other fees, charges, and damages allowed, as an Early Termination Fee (hereinafter referred to as 'Early Termination Fee'). The Early Termination Fee is not a penalty, but rather a charge to compensate Landlord for Tenant's failure to satisfy the terms of the agreement.

...

24. **FEES:** Should it become necessary for Landlord to employ an attorney to enforce any of the conditions or covenants hereof, including the collection of rent or gaining possession of the Premises, Tenant agrees to pay all expenses incurred, including a reasonable attorney's fee.....

***2** ...

27. **SEVERABILITY**: If any provision of this Agreement or the application thereof shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Agreement nor the application of the provision to other persons, entitles, or circumstances shall be affected thereby, but instead shall be enforced to the maximum extent permitted by Law.

After entering into the lease agreement, Tenants moved in to the apartment. Pursuant to paragraph 5 of the lease agreement, Tenants completed a check-in sheet and determined that, non-figuratively, everything but the kitchen sink was in acceptable condition at the time. They submitted a work order requesting that maintenance inspect the leaky sink. Both the check-in form and the work order contained notations that the sink was checked and/or repaired. However, according to Mr. Welch, he eventually had to fix the sink himself after waiting for help to no avail. Shortly after they moved in, Tenants also discovered that the refrigerator was not working properly, but this issue was not noted on the check-in form.

In June 2020, Mr. Welch drafted a letter expressing his and Ms. Clark's dissatisfaction with the apartment and their desire to terminate the lease. He described other issues such as the defective wi-fi and having to replace the refrigerator, and complained about the lack of response they received in regard to these issues. He also suggested that they should not have to pay anything further due to their trouble and that they would be out of the apartment by the end of June. In response to this letter, Landlord agreed to let them out of their lease, but he informed them that, per paragraph 21 of the lease agreement, they would have to pay the early termination fee of $1,000. In a text message, Mr. Welch acknowledged that he would pay the early termination fee but disagreed to pay any other fees beyond that. At the end of June, Tenants moved out of the apartment as agreed but did not pay the early termination fee. Landlord was able to relet the apartment to another individual on July 9, 2020.

As a result of Tenants' failure to pay the early termination fee, Landlord filed a civil warrant in general sessions court pursuant to paragraph 24 of the lease agreement. Landlord sought to recover the "early termination fee of $1,000.00," as well as the "remaining monthly rent until property is relet at $865.00 (8 months) per month; damages of $250.00; courts costs of $145.50; service fees of $75.00; [and] attorney's fees of $600.00 for a total of $8,490.50."[2] Tenants disputed whether they caused any physical damage to the apartment, but an affidavit was filed by Landlord claiming otherwise. They also argued that the early termination fee was unenforceable because it was a penalty, which was against public policy. The

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general sessions court held a trial on the matter in September 2020. The court entered judgment in favor of Landlord finding that the early termination fee was reasonable and was not a penalty. The court held that Landlord was entitled to a total of $1,870.50, less the $500.00 security deposit. The judgment for $1,870.50 included the following fees: $1,000.00 for the early termination fee; $600.00 for attorney's fees; $145.50 for court costs; $75.00 for service fees; and $50.00 for damages. Thereafter, Tenants timely appealed the judgment to the circuit court.

*3 The circuit court ultimately held a de novo trial on the matter in October 2021. Tenants raised an allegation not previously tried regarding a material breach by Landlord. After closing arguments, the court made an oral ruling in favor of Landlord and stated that Landlord could submit an affidavit for attorney's fees. Counsel for Landlord subsequently submitted an affidavit. On October 22, 2021, the circuit court then entered a judgment detailing its findings. Like the general sessions court, the court found that the early termination fee was reasonable and was not a penalty. Furthermore, the court found that Landlord did not breach the lease agreement. Therefore, the court held that Landlord was entitled to judgment and calculated the judgment amount as follows:

Rent:	$252.00
Damages:	$50.00
Early Termination Fee:	$1,000.00
Subtotal:	$1,302.00
Security Deposit:	-$500.00
Subtotal:	$802.00
Refrigerator:	-$300.00
Subtotal:	$502.00
Attorney's Fees (General Sessions Court):	$145.50
Service Fee (General Sessions Court):	$75.00
Subtotal:	$1,322.50
Attorney's Fees for [Circuit Court] Appeal:	$1,650.00
Total Judgment in the Amount of	$3,695.00[3]

Afterward, Tenants timely filed an appeal with this Court.

Tenants filed a statement of the proceedings, to which Landlord filed an objection. After a hearing on the matter, the circuit court entered an order finding that all aspects of the statement of proceedings were consistent with what had transpired, with the exception of two clarifications concerning the lease agreement and the text messages between the parties. The court explained that the lease agreement was properly submitted into evidence without objection, the lease agreement was a binding contract entered into between the parties, Tenants only argued that the early termination fee was unenforceable, and the remainder of the lease agreement was enforceable. Additionally, the court explained that the text messages between the parties were admitted into evidence over the objection of Tenants, the objection was toward the relevance of the text messages and was overruled, and the text messages did not form a contract or amend the lease agreement.

Upon review of the record, this Court found that it did not have subject matter jurisdiction because the circuit court's order from October 22, 2021, was not a final judgment pursuant to Tennessee Rule of Civil Procedure 58. Therefore, we ordered Tenants to obtain entry of a final judgment in the circuit court. A supplemental record was subsequently filed with this Court which contained a final order that complied with Tennessee Rule of Civil Procedure 58.

II. Issues Presented

Tenants present the following issues for review on appeal, which we have reordered and slightly restated:

1. Whether Landlord materially breached the contract first, thereby justifying Tenants moving out early;

2. Whether the early termination fee was a valid and enforceable liquidated damages clause; and

3. Whether the final judgment improperly totaled the amount of damages from the circuit court's oral ruling and/or improperly awarded attorney's fee without evidence.

In addition to these issues, Landlord presents an issue of whether he is entitled to recover attorney's fees incurred as a result of this appeal. For the following reasons, we affirm and remand to the circuit court for further proceedings consistent with this opinion.

III. Standard of Review

*4 This is an appeal of a trial court's decision made from a bench trial. "In an appeal from a bench trial, we review the trial court's findings of fact de novo with a presumption of correctness, unless the evidence preponderates otherwise." *Smith v. Hi-Speed, Inc.*, 536 S.W.3d 458, 467 (Tenn. Ct. App. 2016) (quoting *Foster-Henderson v. Memphis Health Ctr., Inc.*, 479 S.W.3d 214, 223 (Tenn. Ct. App. 2015)). Furthermore, "great weight is given to the trial court's determinations of credibility." *Pless v. Pless*, 603 S.W.3d 753, 770 (Tenn. Ct. App. 2019) (citing *Walton v. Young*, 950 S.W.2d 956, 959 (Tenn. 1997)). Therefore, we give "great weight to a trial court's factual findings that rest on determinations of credibility." *Id.* (quoting *Nashville Ford Tractor, Inc. v. Great Am. Ins. Co.*, 194 S.W.3d 415, 424 (Tenn. Ct. App. 2005) (citations omitted)). "Although we also review the trial court's resolution on a question of law de novo, no presumption of correctness attaches to the trial court's legal conclusions." *Hi-Speed, Inc.*, 536 S.W.3d at 467 (citing *Bowden v. Ward*, 27 S.W.3d 913, 916 (Tenn. 2000)).

IV. Discussion

A. Material Breach

We begin our discussion by first addressing the issue concerning material breach. Tenants contend that Landlord was the first party to materially breach the contract, i.e., the lease agreement. The circuit court found that Landlord did not breach the lease agreement. The court concluded that there were minor issues that Tenants experienced, but those issues did not constitute a breach of the lease agreement. We agree.

It is well established that a party must establish three elements in order to succeed on a breach of contract claim: " '(1) the existence of an enforceable contract, (2) nonperformance amounting to a breach of contract, and (3) damages caused by the breach of the contract.' " *Fitness & Ready Meals LLC v. Eat Well Nashville LLC*, No. M2021-00105-COA-R3-CV, 2022 WL 601073, at *3 (Tenn. Ct. App. Mar. 1, 2022) (quoting *Bynum v. Sampson*, 605 S.W.3d 173, 180 (Tenn. Ct. App. 2020) (citation omitted)). The parties' dispute as to this particular issue pertains to the second element—a nonperformance that amounts to breach of the lease agreement. This Court has held that "in order for a contractual breach to be sufficient to relieve the non-breaching party of its contractual obligations, the initial breach must be 'material.' " *M & M Elec. Contractor, Inc. v. Cumberland Elec. Membership Corp.*, 529 S.W.3d 413, 423 (Tenn. Ct. App. 2016) (quoting *DePasquale v. Chamberlain*, 282 S.W.3d 47, 53 (Tenn. Ct. App. 2008) (citation omitted)). If the breach " 'was slight or minor, as opposed to material or substantial, the nonbreaching party is not relieved of his or her duty of performance, although he or she may recover damages for the breach.' " *Id.* (quoting *Anil Constr. Inc. v. McCollum*, No. W2014-01979-COA-

R3-CV, 2015 WL 4274109, at *12 (Tenn. Ct. App. July 15, 2015) (*no perm. app. filed*) (citation omitted)). When determining the materiality of a party's breach, it is the "clear trend" of Tennessee courts "to apply the test found in section 241 of the Restatement (Second) of Contracts." *Madden Phillips Constr., Inc. v. GGAT Dev. Corp.*, 315 S.W.3d 800, 822-23 (Tenn. Ct. App. 2009); *see, e.g.*, *State v. Howington*, 907 S.W.2d 403, 410-411 (Tenn. 1995); *DePasquale*, 282 S.W.3d at 53-54; *Adams TV of Memphis, Inc. v. ComCorp of Tenn., Inc.*, 969 S.W.2d 917, 921 (Tenn. Ct. App. 1997). That test includes the following factors:

> (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected;
>
> (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived;
>
> ***5** (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture;
>
> (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances;
>
> (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.

Restatement (Second) of Contracts § 241 (1981). However, when analyzing the materiality of a breach, we have held that sometimes "these factors are only marginally helpful in analyzing the materiality." *M & M Elec. Contractor, Inc.*, 529 S.W.3d at 423.

In order to resolve this issue of first material breach, we examine the issues that Tenants experienced during their time at the apartment. There were three specific issues that Tenants experienced regarding the sink, the refrigerator, and the wi-fi. Landlord testified that he observed a problem with the sink when the lease was first entered into in March 2020, but the records he provided demonstrated that he sent someone to fix it just a few days later. He explained that he did not receive any further complaints from Tenants about the sink until June 2020. Mr. Welch testified that he informed someone about the sink, but after about two weeks, he was unaware if anyone had come to fix it and decided to fix it himself. He agreed that it was conceivable that someone might have come to fix it while he was away, but he did not believe that someone should have entered his apartment without his permission.

As for the refrigerator, Landlord testified that he was contacted and told that the refrigerator was not working properly shortly after Tenants had moved in. He told Tenants to load up the refrigerator with ice in order to keep the food cool temporarily because he did not have anyone to fix it at the time. He learned a few days later, however, that Tenants bought their own refrigerator from a relative. He admitted that the refrigerator was not working and that he contracted to provide working appliances, but he maintained that he was unaware of the defective refrigerator when he entered into the contract. Mr. Welch testified that no one offered to replace the refrigerator at the time he communicated it was not working, so after about three days he bought a new one from his mother. He stated that Landlord never gave him any credit toward his rent for the expense and that he left this refrigerator when they moved out of the apartment. At the time of his testimony, he was unable to remember whether he paid $300 or $400 for the refrigerator. His letter from June 2020 reflected that he paid $500 for it.

With respect to the wi-fi, Landlord testified that he was never informed of any problems with the wi-fi until June 2020. Tenants complained that it did not work or that it worked only intermittently. As a result, Landlord asked maintenance to look into the matter and checked with other tenants to see whether they were having any problems, but he received no other complaints. Mr. Welch testified that the wi-fi "never really worked," but he admitted that he did not complain about it until later because of his prior complaints regarding the sink and the refrigerator. Contrary to Landlord's testimony, Mr. Welch stated that other tenants expressed to him that their wi-fi did not work either. Ms. Clark testified that there was never an offer to improve the wi-fi or reduce their rent due to its defectiveness.

***6** For a breach of contract claim, we have held that "[w]hether a party has fulfilled its obligations under a contract or is in breach of the contract is a question of fact." *A & P Excavating and Materials, LLC v. Geiger*, 622 S.W.3d 237, 248 (Tenn. Ct. App. 2020) (quoting

Forrest Constr. Co., LLC v. Laughlin, 337 S.W.3d 211, 225 (Tenn. Ct. App. 2009)). Even assuming that these issues amounted to a breach, we find that the evidence does not preponderate against the circuit court's conclusion that the issues were minor, and therefore not material. Landlord was initially aware of the issue with the sink and attempted to resolve it expeditiously by sending someone to fix it. After doing so, he was unaware that any problem with the sink remained until he was informed by Tenants in June 2020. Mr. Welch admitted that someone might have come to fix the sink while he was away, and the documents in the record demonstrate that someone did on March 17, 2020. He did not believe that someone should have entered the apartment without his permission, but paragraph 13 of the parties' lease agreement clearly gave Landlord, and his agents, the right to enter the apartment for the purposes of inspection and repair. Landlord was unaware of the defective refrigerator at the time the parties entered into the lease agreement. After he was informed of the issue, he offered a temporary solution to Tenants until he could find someone to fix the refrigerator. After only a few days, however, Tenants decided to replace the refrigerator themselves. They replaced the refrigerator without any prior written consent of Landlord, which was in contravention of paragraph 7 of the parties' lease agreement. Finally, both Landlord and Mr. Welch testified that the issue with the wi-fi was not brought up until June 2020, which was shortly before Tenants decided to move out of the apartment. Landlord then had someone look into the issue and checked with other tenants to determine whether they were having issues with the wi-fi, but he received no other complaints. In the addendum regarding the wi-fi, Tenants acknowledged that the wi-fi "may not be uninterrupted or error-free."

While we agree that the situation for Tenants was not ideal, the extent to which they had been deprived of the benefit they reasonably expected did not rise to the level of material. *See* Restatement (Second) of Contracts § 241(a) (1981). In regard to all three issues mentioned above, Landlord attempted, or offered to attempt, to resolve them. From our review of the record, Landlord acted reasonably and in good faith when these issues were brought to his attention. *See* Restatement (Second) of Contracts § 241(e) (1981). Additionally, it was likely that he would have cured these issues if Tenants had communicated further about the sink, had waited more than a few days to allow him to resolve the issue with the refrigerator, and had brought the issue with the wi-fi to his attention sooner. *See* Restatement (Second) of Contracts § 241(d) (1981). We sympathize with Tenants—no one wants to move into an apartment and encounter problems, irrespective of the materiality. Nevertheless, we find that these issues were "slight or minor, as opposed to material or substantial," and therefore Tenants were not relieved of their duty of performance. *M & M Elec. Contractor, Inc.*, 529 S.W.3d at 423 (quoting *Anil Constr. Inc.*, 2015 WL 4274109, at *12 (*no perm. app. filed*) (citation omitted)). As such, we conclude Landlord did not materially breach the lease agreement first.

B. Liquidated Damages

While the parties differ on whether the lease agreement's provision regarding an early termination fee is enforceable, both of them appear to agree that the lease on its face provides for the potential collection of an early termination fee in addition to "other fees, charges, and damages." Tenants contend that the provision in the lease agreement providing for an early termination fee was unenforceable. To support this contention, they argue that the early termination fee was unenforceable because, when viewed prospectively, damages were not difficult to ascertain and the early termination fee was not a reasonable estimate of damages. They also argue that the early termination fee was a penalty because it was cumulative to damages rather than a substitute for damages. Additionally, they claim that the lease agreement's language stating the early termination fee was "not a penalty" is irrelevant and that Landlord had "less-than-zero damages" without the early termination fee. In response to these arguments, Landlord contends that the early termination fee was reasonable, bore a direct relationship with the monthly rental amount, and was not a penalty. At trial, Landlord testified that the early termination fee applied in addition to all other damages because he had other business expenses, besides lost rent and physical damage, which the fee helped subsidize. In order to address this issue, we review the Tennessee case law on liquidated damages.

i. Generally

*7 Initially, although not technically raised as a separate issue, we determine the finding that the "early termination fee" is, on its face, a purported liquidated damages clause to be integral to our review. *See Keck v. Meek*, No. E2017-01465-COA-R3-CV, 2018 WL 3199220, at *7 (Tenn. Ct. App. June 28, 2018) (determining that whether the trial court properly found that the buyers exercised their option to purchase the subject property was integral to its review, although it was not raised as a separate issue by the sellers). The lease agreement did not refer to the early termination fee as "liquidated damages." The provision reads as follows:

> 21. **EARLY TERMINATION FEES:** If this agreement terminates for nonpayment or other listed defaults, other than a Landlord approved written termination from Tenant, Tenant agrees to pay [$1,000.00], in addition to all other fees, charges, and damages allowed, as an Early Termination Fee (hereinafter referred to as 'Early Termination Fee'). The Early Termination Fee is not a penalty, but rather a charge to compensate Landlord for Tenant's failure to satisfy the terms of the agreement.

However, we note that "the parties' choice of language does not determine the nature of the provision." *Anesthesia Med. Grp., P.C. v. Buras*, No. M2004-01599-COA-R3-CV, 2006 WL 2737829, at *2 (Tenn. Ct. App. Sept. 25, 2006) (citing *Guiliano v. Cleo, Inc.*, 995 S.W.2d 88, 97 (Tenn. 1999)). Our Supreme Court has explained that "[a] contractual provision need not explicitly include the term 'liquidated damages' to constitute a liquidated damages provision." *Guiliano*, 995 S.W.2d at 97. Rather, "it is the task of the Court and not of the parties to decide the true nature of the sum payable." P.S. Atiyah, *An Introduction to the Law of Contract* 316-17 (3d ed. 1981). "If the contract is for a matter of uncertain value, and a reasonable sum is fixed by the parties as the amount to be paid on breach, that sum, *though actually called a 'penalty' in the instrument*, is recoverable as liquidated damages if the obligation be not in fact performed." *Ill. Cent. R. Co. v. So. Seating & Cabinet Co.*, 58 S.W. 303, 305 (Tenn. 1900) (citations omitted) (emphasis added). Concomitantly, if the sum is "unreasonable ..., the stipulation, *however named*, is a penalty, and only actual damages, to be ascertained in the ordinary way, can be recovered." *Id.* at 306 (emphasis added).

Although it is not explicitly stated in the lease agreement, the provision was clearly intended to be a stipulation for liquidated damages. *See Buras*, 2006 WL 2737829, at *2 ("The term 'liquidated damages' means a sum agreed upon by contracting parties at the time they enter into their contract, to be paid as compensation for damages suffered by one party in the event that the other breaches the contract.") (citing *V.L. Nicholson v. Transcon Inv.*, 595 S.W.2d 474, 484 (Tenn. 1980)). We can conclude so because the clear language of the provision made the fee due or conditioned upon termination "for nonpayment or other listed defaults" and referred to the fee as a "charge to compensate Landlord for Tenant's failure to satisfy the terms of the agreement." *See id.* (concluding that the provision was clearly one for liquidated damages because the clear language of the contract's provision made the payment due or conditioned upon a breach, or, specifically, an "event of default.") (citing *Guiliano*, 995 S.W.2d at 97).

Therefore, as a preliminary matter, we find that the circuit court properly analyzed the "early termination fee" as a provision for liquidated damages. The decisive question is whether the liquidated damages provision at issue is enforceable.

ii. Enforceability[4]

***8** We have found that "[t]he beginning point for any current day discussion of liquidated damages is the Tennessee Supreme Court's holding in *Guiliano* ...." *Id.* at *6. Our Supreme Court discussed the issue of liquidated damages at length in *Guiliano* and determined that the "prospective approach" best addresses the recovery of liquidated damages. *Guiliano*, 995 S.W.2d at 100; *see Allmand v. Pavletic*, 292 S.W.3d 618, 630-31 (Tenn. 2009) (reaffirming and applying the principles of liquidated damages from *Guiliano*); *Hensley v. Cocke Farmer's Coop.*, No. E2014-01775-COA-R3-CV, 2015 WL 5121142, at *5-6 (Tenn. Ct. App. Aug. 31, 2015), *perm. app. denied* (Tenn. Ct. App. Jan. 21, 2016) (applying the principles

of liquidated damages from *Guiliano* in a case involving a contractual provision for severance pay). The Court explained that "there are two important interests at issue: the freedom of parties to bargain for and to agree upon terms," such as a term providing for liquidated damages, "and the limitations set by public policy." *Id.* "Generally, the parties to a contract are free to agree upon liquidated damages and upon other terms that may not seem desirable or pleasant to outside observers." *Id.*; *see Chapman Drug Co. v. Chapman*, 341 S.W.2d 392, 398 (Tenn. 1960); 22 Am. Jur. 2d *Damages* § 686 (1988). In that respect, we "should not interfere in the contract, but should carry out the intentions of the parties and the terms bargained for in the contract, unless those terms violate public policy." *Id.*; *see McKay v. Louisville & N.R. Co.*, 182 S.W. 874, 875 (Tenn. 1916) (citing *Baltimore & Ohio S.W. Ry. Co. v. Voight*, 176 U.S. 498, 505, 20 S.Ct. 385, 387, 44 L.Ed. 560 (1900)).

In the context of parties agreeing to a liquidated damages provision, the Court further explained that:

> [I]t is generally presumed that [the parties] considered the certainty of liquidated damages to be preferable to the risk of proving actual damages in the event of a breach. 22 Am. Jur. 2d *Damages* § 726.
>
> Liquidated damages permit the parties to allocate business and litigation risks and often serve as part of the contractual bargain. In addition, they lend certainty to the contractual agreement and allow the parties to resolve defaults and other related disputes efficiently, when actual damages are impossible or difficult to measure. C.T. McCormick, *Handbook on the Law of Damages* § 157 (1935).

Id. Thus, under the prospective approach, we "focus on the intentions of the parties based upon the language in the contract and the circumstances that existed at the time of contract formation." *Id.* (footnote omitted). The Court explained that those circumstances include:

> [W]hether the liquidated sum was a reasonable estimate of potential damages and whether actual damages were indeterminable or difficult to measure at the time the parties entered into the contract. If the provision satisfies those factors and reflects the parties' intentions to compensate in the event of a breach, then the provision will be upheld as a reasonable agreement for liquidated damages. However, if the provision and circumstances indicate that the parties intended merely to penalize for a breach of contract, then the provision is unenforceable as against public policy.

Id. at 100-01 (internal citation omitted). Following this approach, the circuit court properly determined that the provision regarding the early termination fee must be viewed prospectively, rather than retrospectively, at the time the parties entered into the lease agreement.

A liquidated damages provision is "subject to close scrutiny because of the public policy against forfeitures." *Bachour v. Mason*, No. M2012-00092-COA-R3-CV, 2013 WL 2395027, at *4 (Tenn. Ct. App. May 30, 2013) (citations omitted); *Anesthesia Med. Grp., P.C. v. Chandler*, No. M2005-00034-COA-R3-CV, 2007 WL 412323, at *9 n.7 (Tenn. Ct. App. Feb. 6, 2007) (citations omitted); *Buras*, 2006 WL 2737829, at *7 n. 10 (citations omitted). The viewpoint from which we are to analyze a liquidated damages provision is described in both *Chandler* and *Buras* as follows:

> The law continues to be that a liquidated damages provision will be upheld if the amount of such damages bears a reasonable relationship to the amount of actual damages that would likely be sustained in the event of a breach and if the actual amount of damages would be difficult to determine or prove. Conversely, liquidated damages will not be upheld if they are deemed to constitute a penalty against the breaching party rather than a reasonable way to guarantee compensation for damages to the non-breaching party. *Guiliano*, 995 S.W.2d at 98.

***9** *Chandler*, 2007 WL 412323, at *9; *Buras*, 2006 WL 2737829, at *7 (footnote omitted). The circuit court found that the early termination fee was reasonable and not a penalty. Yet, the court did not elaborate on why the early termination fee was reasonable and did not make a finding that the actual amount of damages would have been difficult to determine or prove.

When viewing the provision prospectively, it was a "reasonable prediction" that Landlord could sustain damages if Tenants did not complete their 12-month term. *Guiliano*, 995 S.W.2d at 99; *see Buras*, 2006 WL 2737829, at *7 (explaining that "at the time the contract was signed it was clearly foreseeable, and in fact likely, that [the plaintiff] would suffer damages if [the defendant] did not complete his three-

year employment commitment"). Tenants point out in their reply brief that the apartment could have been filled in one day hypothetically, and the lost rent would have only been approximately $29.00 ($865.00 monthly rent ÷ 30 days). Likewise, we point out that the apartment could have not been filled during the remainder of the 12-month term, and the lost rent would have been approximately $6,920.00 ($865.00 monthly rent × 8 months). Moreover, if Tenants had moved out earlier than June 2020, the lost rent would have been even greater if the apartment could not have been filled. The $1,000.00 early termination fee was not disproportionate in Landlord's favor; in fact, it was favorable to Tenants. *See Buras*, 2006 WL 2737829, at *7 (explaining that the liquidated damages were not disproportionate in plaintiff's favor, but were favorable to the defendant). When Tenants did move out, Landlord was able to relet the apartment to another individual on July 9, 2020 and only sustained approximately $252.00 in lost rent. Nevertheless, "the amount of actual damages at the time of breach is of little or no significance to the recovery of liquidated damages" under the prospective approach. *Guiliano*, 995 S.W.2d at 99. The early termination fee in the amount of $1,000.00 was a reasonable estimate of the damages Landlord could sustain at time the parties entered into the lease agreement.

Still, "the actual amount of damages" must have been "difficult to determine or prove" in order for a liquidated damages provision to be enforceable. *Chandler*, 2007 WL 412323, at *9; *Buras*, 2006 WL 2737829, at *7. In *Buras*, we found that the actual damages could not be accurately predicted at the time of the contract formation because, among other things, it could not be ascertained how long it would take to find a replacement for the defendant who did not complete his three-year employment commitment. *Buras*, 2006 WL 2737829, at *7. Similarly, at the time the parties entered into the lease agreement in this case, it would have been difficult to determine the following: (1) if and when Tenants would breach by moving out and (2) if and when Landlord would be able to find a new tenant to replace them. We are unable to find any Tennessee case law specifically addressing the characterization of such fees in residential lease agreements.[5] However, the Missouri Court of Appeals has interpreted a similar lease provision to be a valid liquidated damages clause. In *Paragon Grp. Inc. v. Ampleman*, 878 S.W.2d 878, 881 (Mo. Ct. App. 1994), the Court examined a provision from a lease agreement, which provided a $920.00 termination fee equal to the amount of two month's rent. Nine months remained on the lease when the tenant breached the lease, and the Court determined that that $920.00 was not an unreasonable estimate of the damages the landlord would incur upon breach of a $5,520.00 lease when nine months remained in the lease term. *Id.* (citations omitted). Additionally, the Court disagreed with the tenant's contention that the amount of damages would not be difficult to ascertain, explaining that "Missouri courts have consistently held actual damages for breach of real estate sales contracts are uncertain and difficult to prove." *Id.* (citations omitted). The Court further explained as follows:

> ***10** Like real estate contracts, it is difficult to measure damages upon breach of a lease by the tenant. While the amount of rent due under the lease is easily measurable, it is hard to say how long the apartment will be vacant or how much time, expense and energy will be expended to re-let the premises. It is also difficult to estimate whether or how many prospective long-term tenants were turned away while the leasing tenant occupied the premises or how this damaged the landlord. Contrary to Tenant's assertions, it is even harder to measure the damages of a large apartment complex where marketing and leasing activities are occurring daily. In that situation, putting a price on Landlord's damages is difficult at best. Where the difficulty of loss is great, significant latitude is allowed in setting the amount of anticipated damages.

Id. (internal citations omitted). Accordingly, the Court in *Ampleman* found that the trial court did not err in finding the clause in question was a valid liquidated damages clause. Like the Missouri Court of Appeals, we emphasize that "it is difficult to measure damages upon breach of a lease by the tenant." *Id.* Furthermore, "[w]hile the amount of rent due under the lease is easily measurable," it is difficult to ascertain, among other things, "how long the apartment will be vacant or how much time, expense and energy will be expended to re-let the premises." *Id.* The damages Landlord would potentially suffer, if Tenants did not complete the 12-month term, were "indeterminable or difficult to ascertain **at the time of contract formation**." *Chandler*, 2007 WL 412323, at *10 (quoting Guiliano, 995 S.W.2d at 99) (emphasis added).

As such, we find that at the time the parties entered into the lease agreement, the early termination fee of $1,000.00 was a reasonable estimate of potential damages and such damages were difficult to ascertain at the time the parties entered into the lease agreement.

iii. Scope of Liquidated Damages

Though we have analyzed the liquidated damages provision from the viewpoint described in *Chandler* and *Buras*, our discussion does not end here. "If [a] contract contains no criteria for determining the stipulated liquidated damages, these exactions will be unenforceable." 22 Tenn. Prac. Contract Law & Prac. § 12:36; *see Cummins v. Vaughn*, 911 S.W.2d 739, 742 (Tenn. Ct. App. 1995) (explaining that the parties eliminated the basis for recovery of liquidated damages when they obliterated the criteria for the amount of liquidated damages). The provision in the lease agreement contained such criteria, stating that it was "a charge to compensate Landlord for Tenant[s'] failure to satisfy the terms of the agreement." Thus, the $1,000.00 early termination fee was an estimation of the anticipated actual damages Landlord would suffer for Tenants' failure to satisfy the lease agreement. The following discussion on this issue, which has been called a "Have Cake and Eat It" clause,[6] is instructive:

> Questions sometimes arise on whether a party in the same action for breach may obtain both liquidated and conventional damages. Along with obtaining liquidated damages, a party can exercise its conventional right to recover other damages proximately related to a breach of the contract, but only where they are outside the scope of the liquidated damages clause. On the other hand, a party may not elect between its right to recover liquidated damages versus actual damages for losses covered by a liquidated damages clause, except as permitted by the contract.

***11** 22 Tenn. Prac. Contract Law & Prac. § 12:36 (footnotes omitted). The liquidated damages provision stated that Tenants agreed to pay the early termination fee "in addition to all other fees, charges, and damages allowed ...." Therefore, Landlord could recover "other fees, charges, and damages" that were not contemplated by the liquidated damages provision. As we have explained, "[t]he liquidated damage clauses of contracts do not cover damages flowing from 'events' not contemplated by the parties at the time they are signed 'unless the contract expressly provides that damages other than those enumerated ... shall not be recovered.' " *Loveday v. Barnes*, No. 03A01-9201CV0030, 1992 WL 136176, at *4 (Tenn. Ct. App. June 19, 1992) (citing 22 Am. Jur. 2d *Damages* § 728).

By that same token, Landlord cannot have his cake and eat it too. "If a party elects the remedy of liquidated damages, he or she cannot generally seek additional damages for the same breach."[7] *Wayne Boykin & Assocs. v. Tinsely*, No. M2006-02465-COA-R3-CV, 2008 WL 820512, at *7 (Tenn. Ct. App. Mar. 26, 2008); *see G.H. Swope Bldg. Corp v. Horton*, 338 S.W.2d 556, 568-69 (Tenn. 1960) ("Having retained the $250, the owner has received all the damages he is entitled to receive under the accepted offer to buy. As the Court views it, to hold otherwise would be to ignore the accepted meaning of the expression 'liquidated damages.' "). The very nature of a liquidated damages provision is to settle in advance the "anticipated actual damages" that might arise "from a future breach." 22 Am. Jur. 2d *Damages* § 506 (footnote omitted). "The effect of a clause for stipulated damages in a contract is to substitute the agreed amount for the actual damages resulting from a breach of the contract .... A valid liquidated damages clause precludes recovery for actual damages; both actual damages and liquidated damages cannot be awarded." 22 Am. Jur. 2d *Damages* § 535 (footnotes omitted).

Here, it is evident that the parties contemplated the $1,000.00 early termination fee to be a reasonable estimate of the lost rent and related damages that Landlord would potentially suffer in light of a breach by Tenants. Consequently, we determine that the early termination fee was meant to compensate Landlord for the lost rent, and the lost rent is not recoverable by Landlord.[8] Therefore, to the extent that the circuit court awarded the $252.00 in lost rent, the total judgment amount should be reduced by that amount.[9]

iv. Intent

*12 Lastly, we note that Tenants initialed the liquidated damages provision in the lease agreement demonstrating that they agreed to it and were aware of it. They signed the addendum regarding the statement of facts and initialed the statement: "I/We understand and agree there is an **early termination fee** as stated in the lease agreement[.]" Furthermore, just before moving out, Mr. Welch acknowledged through a text message in June 2020 that he would pay the early termination fee "like it says in the lease." At the time the parties entered into the lease agreement, and even at the time the parties were anticipating a breach through their correspondence in June 2020, they intended for the early termination fee to resolve Tenants' default efficiently, when actual damages were impossible or difficult to measure. *Guiliano*, 995 S.W.2d at 100 (citing C.T. McCormick, *Handbook on the Law of Damages* § 157 (1935)).

Accordingly, we conclude that the early termination fee, as a liquidated damages provision, was valid and enforceable. Enforcing this provision "gives effect to the original intentions of the parties and furthers the goals and purposes of stipulating in advance to potential damages." *Buras*, 2006 WL 2737829, at *8. However, as previously discussed, Landlord may not recover the actual damages of $252.00 in the form of lost rent. As such, the total judgment amount should be reduced by $252.00.

C. Final Judgment Amount

i. Calculation

Tenants' final issue concerns the calculation of the final judgment amount and the award of attorney's fees. They state in their appellate brief, "the math on the final judgment simply does not add up." After struggling with the math provided in the circuit court's judgment, we agree. Moreover, Landlord admits in his appellate brief that the math was "incorrect" and a certain fee was "omitted by mistake." Landlord attempts to clarify the discrepancies in his appellate brief, explaining that the court inadvertently left out the actual attorney's fees of $600.00 from general sessions court and that the $145.50 represents the court costs, i.e., the filing fees for the civil warrant. It is evident that this explanation solves the discrepancy of how the court reached the subtotal of $1,322.50:

Rent:	$252.00
Damages:	$50.00
Early Termination Fee:	$1,000.00
Subtotal:	$1,302.00
Security Deposit:	-$500.00
Subtotal:	$802.00
Refrigerator:	-$300.00
Subtotal:	$502.00
[Court Cost's]	[$145.50]
Attorney's Fees (General Sessions Court):	[$600.00]
Service Fee (General Sessions Court):	$75.00
Subtotal:	$1,322.50

Regardless of this explanation, the math still falls $722.50 short of the total judgment amount of $3,695.00:

Subtotal:	$1,322.50
Attorney's Fees for [Circuit Court] Appeal:	$1,650.00
Total Judgment in the Amount of	$3,695.00

In light of these mathematical discrepancies, we remand this issue to the circuit court to determine the correct amount for the total judgment to be awarded to Landlord. *See St. John-Parker v. Parker*, 638 S.W.3d 624, 649 (Tenn. Ct. App. 2020) (remanding to the trial court for an inadvertent omission of discretionary cost from its final judgment). We also reiterate that Landlord may not recover the actual damages of $252.00 in the form of lost rent because that amount was contemplated by the liquidated damages provision. On remand, the correct amount for the total judgment to be awarded to Landlord should be reduced by $252.00. However, Landlord may recover "all other fees, charges, and damages" that were not contemplated by the liquidated damages provision.

ii. Reasonable Attorney's Fees

Tenants also argue that attorney's fees should not be awarded at all without sufficient evidence to assess the reasonableness of the fees. The lease agreement contained language providing for attorney's fees as follows: "Should it become necessary for Landlord to employ an attorney to enforce any of the conditions or covenants hereof, including the collection of rents or gaining possession of the Premises, Tenant agrees to pay all expenses incurred, including a reasonable attorney's fee." After trial, counsel for Landlord submitted an affidavit, stating in pertinent part, "My current hourly rate for creditor clients is $250.00/hour. However, I currently represent the Plaintiff in this matter and charge an hourly rate of $150.00/hour." Counsel for Landlord did not include the number of hours or an estimated amount of attorney's fees incurred. In its judgment, the circuit court found that Landlord was entitled to a judgment of attorney's fees pursuant to paragraph 24 of the lease agreement. The court found that Landlord was entitled to $1,650.00 in attorney's fees for the proceedings in circuit court, but, as discussed above, the court's calculation of the total judgment inadvertently omitted the $600.00 attorney's fees for the proceedings in general sessions court.

***13** Tenants concede in their appellate brief that the record suggests the attorney's fees from general sessions court were $600.00.[10] Similar to the previous issue on the calculation of the total judgment, Landlord explains how the court reached the amount of attorney's fees incurred. He explains that the amount of attorney's fees contained in the court's judgment reflected that attorney's fees from the circuit court were a total of $1,650.00. Therefore, he states that this amount, when divided by the hourly rate of $150.00, disclosed that the amount of time expended was 11 hours. In regard to this issue, we have explained that:

> Where an attorney's fee is based upon a contractual agreement expressly providing for a reasonable fee, the award must be based upon the guidelines by which a reasonable fee is determined. *Wilson Mgmt. Co. v. Star Distrib. Co.*, 745 S.W.2d 870, 873 (Tenn. 1988). Obviously, the burden of proof on the question of what is a reasonable fee in any case is upon the plaintiff, and plaintiff should be in a position to tender such proof. *Id.* However, a trial judge may fix the fees of lawyers in causes pending or which have been determined by the court, with or without expert testimony of lawyers and with or without a prima facie showing by plaintiffs of what a reasonable fee would be. *Id.* The trial judge may feel that the proceedings which he or she has heard have sufficiently acquainted him or her with the appropriate factors to make a proper award of an attorney's fee without proof or opinions of other lawyers. *Kahn v. Kahn*, 756 S.W.2d 685, 696-97 (Tenn. 1988). Therefore, reversal of a fee award is not required merely because the record does not contain proof establishing the reasonableness of the fee. *Kline v. Eyrich*, 69 S.W.3d 197, 210 (Tenn. 2002). Should a dispute arise as to the

> reasonableness of the fee awarded, then in the absence of any proof on the issue of reasonableness, it is incumbent upon the party challenging the fee to pursue the correction of that error in the trial court by insisting upon a hearing on that issue, or to convince the appellate courts that he was denied the opportunity to do so through no fault of his own. *Id.* (citing *Wilson Mgmt. Co.*, 745 S.W.2d at 873); *Kahn*, 756 S.W.2d at 697. Absent a request for a hearing by the party dissatisfied by the award, a trial court is not required to entertain proof as to the reasonableness of the amount of attorney's fees awarded. *Richards v. Richards*, No. M2003-02449-COA-R3-CV, 2005 WL 396373, at *15 (Tenn. Ct. App. W.S. Feb. 17, 2005).

Malibu Equestrian Est., Inc. v. Sequatchie Concrete Serv., Inc., No. M2005-02954-COA-R3-CV, 2007 WL 2200171, at *7 (Tenn. Ct. App. July 30, 2007).

Tenants did not request a hearing with the circuit court expressing their dissatisfaction with the award of attorney's fees. Therefore, the circuit court was not "required to entertain proof as to the reasonableness of the amount of the attorney's fees awarded." *Id.* (citing *Richards*, 2005 WL 396373, at *15). Given that Tenants failed to pursue any correction of the award of attorney's fees in circuit court, they must convince this Court that they were denied the opportunity to do so through no fault of their own. *Id.* (citing *Kline*, 69 S.W.3d at 210). In their appellate brief, they argue that neither the final judgment nor the attorney's fees affidavit were served upon them prior to entry of judgment. Counsel for Tenants argues that he did not even see the attorney's fees affidavit at all until he acquired the appellate record from this Court. Additionally, both the final judgment and the attorney's fees affidavit were missing a proper certificate of service. Counsel admits that, conceivably, he had some obligation to object to these errors, but argues that there was no opportunity to do so.

***14** Tenants contend that they were denied the opportunity to challenge the award of attorney's fees, but after the circuit court's oral ruling, they were on notice that Landlord would be filing an affidavit for attorney's fees. Therefore, we find that Tenants were not denied the opportunity to challenge the attorney's fees. Despite Tenants' arguments, we find that the circuit court was capable of adjudging the value of the attorney's services. *See id.* at *8 ("Having overseen the proceedings below, the trial court was capable of adjudging the value of the attorney's services."). Furthermore, we have reviewed the record and conclude that the $1,650.00 award of attorney's fees was reasonable. The attorney's fees affidavit demonstrated that counsel for Landlord charged $150.00/hour, and the $1,650.00 award of attorney's fees shows that he was compensated for 11 hours of services. We find no error in the circuit court's handling of this issue.

D. Appellate Attorney's Fees

Landlord presents an additional issue requesting attorney's fees for this appeal. The parties' lease agreement contained language providing for reasonable attorney's fees: "Should it become necessary for Landlord to employ an attorney to enforce any of the conditions or covenants hereof, including the collection of rent or gaining possession of the Premises, Tenant agrees to pay all expenses incurred, including a reasonable attorney's fee."

In Tennessee, we have "long followed the 'American Rule' with regard to attorney's fees." *Eberbach v. Eberbach*, 535 S.W.3d 467, 474 (Tenn. 2017) (citing *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 194 (Tenn. 2000)). Under the American Rule, "a party in a civil action may recover attorney's fees only if: (1) a contractual or statutory provision creates a right to recover attorney's fees; or (2) some other recognized exception to the American Rule applies, allowing for recovery of such fees in a particular case." *Id.* (quoting *Cracker Barrel Old Country Store, Inc. v. Epperson*, 284 S.W.3d 303, 308 (Tenn. 2009) (citing *Taylor v. Fezell*, 158 S.W.3d 352, 359 (Tenn. 2005); *John Khol & Co. P.C. v. Dearborn & Ewing*, 977 S.W.2d 528, 534 (Tenn. 1998))). When an agreement exists between parties that entitles the prevailing party to recover attorney's fees, "[o]ur courts long have observed at the trial court level that parties are contractually entitled to recover their reasonable attorney's fees ...." *Id.* at 478; *see, e.g., Seals v. Life Invs. Ins. Co. of Am.*, No. M2002-01753-COA-R3-CV, 2003 WL 23093844, at *4 (Tenn. Ct. App. Dec. 30, 2003); *Hosier v. Crye-Leike Com., Inc.*, No. M2000-01182-COA-R3-CV, 2001 WL 799740,

at *6 (Tenn. Ct. App. July 17, 2001). Our Supreme Court has stated that this observation is also true at the appellate court level and explained its reasoning as follows:

> Absent fraud, mistake, or some other defect, our courts are required to interpret contracts as written, giving the language used a natural meaning. *U.S. Bank, N.A. v. Tennessee Farmers Mut. Ins. Co.*, 277 S.W.3d 381, 386-87 (Tenn. 2009). This axiomatic rule does not change or lose its force because the parties to an agreement are before an appellate court. Indeed, one of the bedrocks of Tennessee law is that our courts are without power to make another and different contract from the one executed by the parties themselves. *Dubois v. Gentry*, 182 Tenn. 103, 184 S.W.2d 369, 371 (1945); *see also Bob Pearsall Motors, Inc. v. Regal Chrysler-Plymouth, Inc.*, 521 S.W.2d 578, 580 (Tenn. 1975) ("The courts, of course, are precluded from creating a new contract for the parties.").

Id. Following this reasoning, the Court concluded that our appellate courts "do not have discretion to deny an award of fees mandated by a valid and enforceable agreement between the parties ...." *Id.* at 479. Therefore, if the parties' lease agreement provided for attorney's fees under certain circumstances, that provision must be enforced.

***15** As mentioned before, the parties' lease agreement contained language providing for "a reasonable attorney's fee" if it became "necessary for Landlord to employ an attorney to enforce any of the conditions or covenants" of the agreement.[11] There is a valid and enforceable lease agreement which contains language providing for "a reasonable attorney's fee." Landlord initiated this lawsuit in general sessions court when it became "necessary for [him] to employ an attorney to enforce" the liquidated damages clause of the lease agreement. Tenants appealed the general sessions court's decision and the circuit court's decision, both of which awarded judgment in favor of Landlord, and Landlord was forced to defend his award. The defense of those judgments qualifies as "enforc[ing] any of the conditions or covenants" of the lease agreement. Therefore, we conclude that the parties' lease agreement entitles Landlord to an award of reasonable attorney's fees for this appeal.

As such, we conclude that Landlord is entitled to an award of reasonable attorney's fees incurred before this Court. We grant Landlord's request for an award of reasonable attorney's fees on appeal and remand the case to the circuit court for a determination of the appropriate amount of those fees.

V. Conclusion

For the aforementioned reasons, we affirm the decision of the circuit court in regard to the issues of material breach of contract and the enforceability of the early termination fee. We affirm the award of damages to Landlord. However, we remand for the circuit court to determine the correct amount for the total judgment to be awarded to Landlord and to reduce the total judgment amount by $252.00 to exclude the lost rent awarded. We also remand the case to the circuit court for a determination of the appropriate amount of attorney's fees to be awarded to Landlord for this appeal. Costs of this appeal are taxed to the appellants, Dalton L. Welch and Alexis S. Clark, for which execution may issue if necessary.

All Citations

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Footnotes

1 Ernest G. Hobbs, Jr. was the owner and property manager for Tennessee Homes, and we also refer to him as "Landlord" in this opinion.

2 Tenants signed the twelve-month lease in March 2020 and vacated the premises at the end of June, so they remained on the property for approximately four months. Landlord filed a civil warrant requesting rent in the amount of $865/month for the remaining eight months of the lease. The civil warrant was filed on same day that the property was relet.

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3 In its calculation of the judgment amount, the circuit court's math fails to add up, which Tenants point out in their appellate brief. Landlord attempts to clarify this discrepancy in its appellate brief, explaining that the court inadvertently left out the actual attorney's fees of $600 from general sessions court and that the $145.50 represents the court costs, i.e., the filing fees for the civil warrant. Even assuming arguendo that this Court accepts Landlord's explanation, the math still falls short of the total judgment amount of $3,695.00.

4 If we find that the liquidated damages provision is unenforceable, the lease agreement contains a severability provision in paragraph 27, which would allow the remainder of the lease agreement to still be enforced. We note that:

> Even if the [liquidated damages] provision is an unenforceable penalty, or where the clause is invalid for other reasons, the injured party will not forfeit all rights to contract enforcement, but may still seek its actual demonstrated damages. Where the liquidated damages clause is unenforceable, and no bar exists to a damages remedy, this situation might actually benefit the plaintiff where it can prove a loss, because the actual damages could exceed liquidated damages.

22 Tenn. Prac. Contract Law & Prac. § 12:37 (footnote omitted).

5 We do note that the *Keck* case involved a dispute concerning a "Tennessee Residential Lease Agreement," in which this Court addressed an issue regarding liquidated damages, but it pertained to the transfer of real property. *Keck*, 2018 WL 3199220, at *1, 15. The sellers in that case relied in part on a provision for "liquidated damages" of the parties' real estate contract, which provided that if the buyers failed "to perform the covenants herein contained within the time specified," the sellers would be able to retain "as liquidated damages all sums which have theretofore been paid." *Id.* at *15.

6 J. Calamari & J. Perillo, *The Law of Contracts*, § 14.32 (4th ed. 1998).

7 This Court has also briefly discussed this issue of "double recovery" in a case involving a breach of a construction contract, though we did not reach the substance of the issue. *Airline Const. Inc. v. Barr*, 807 S.W.2d 247, 259-60 (Tenn. Ct. App. 1990). In *Barr*, the plaintiff alleged that the award of liquidated damages was a penalty because the defendant was also awarded lost profits under an oral agreement between the parties. *Id.* at 260. However, we ultimately concluded that the issue was moot because we determined that that the admission of evidence surrounding the oral agreement violated the parol evidence rule. *Id.*

8 We have noted that a breach of contract claim for unpaid rent may be "antithetical" to a claim that liquidated damages are proper under the same contract. *Keck*, 2018 WL 3199220, at *15 n.5. In the *Keck* case, which involved the transfer of real property, we found that the liquidated damages provision was unenforceable under the circumstances. *Id.* at *15. In this case, we conclude that Landlord may not recover both liquidated damages and actual damages in the form of lost rent, but, unlike the *Keck* case, we have found that the liquidated damages provision is enforceable under these circumstances.

9 We note here that the lease agreement contained a separate provision concerning the security deposit, and, incidentally, any damages to the apartment. The deposit was intended to be "security for any damage caused to the Premises during the term hereof." Additionally, the provision stated that "such deposit shall be returned to Tenant, without interest, and less any set off for damages to the Premises upon the termination of this Agreement." In light of this separate provision, we determine that the damages to the apartment were not contemplated by the liquidated damages provision. Furthermore, the early termination fee was recoverable "in addition to all other fees, charges, and damages allowed," and recovery of damages to the apartment were permitted because they were provided for elsewhere in the lease agreement. As such, pursuant to the security deposit provision, the circuit court properly found that the $500.00 deposit should be returned to Tenants less the $50.00 for damages to the apartment.

10 The circuit court's judgment notes that the attorney's fees from general sessions court were $600.00 when recounting the general sessions court's judgment. The general sessions court's judgment found that

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Landlord was entitled to attorney's fees in the amount of $600.00. Landlord also references the $600.00 fee in its trial brief.

11 There were two Tennessee cases involving a lease agreement that employed similar language, which we found instructive in our analysis of this issue. *See Country Mile, LLC v. Cameron Props.*, No. M2017-01771-COA-R3-CV, at *28 (Tenn. Ct. App. Mar. 13, 2019); *Keck*, 2018 WL 3199220, at *2.

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