

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**KENT, SC.**

**SUPERIOR COURT**

**(FILED: September 22, 2016)**

**COMMERCE PARK VILLAGE GREEN, LLC :**

**VS.**

**C.A. No. KD-2011-1029**

**VITO VITONE, ALIAS**

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**DECISION**

**RUBINE, J** This District Court appeal follows a Judgment in favor of the Plaintiff landlord, Commerce Park Village Green, LLC. The Defendant tenant, Vito Vitone, took an appeal to this Court following entry of Judgment. The matter is therefore before the Court for trial de novo on the trespass and ejection action. Rather than proceed with a trial de novo in open court, the parties agreed to submit the matter on stipulated facts. The Court adopts the Stipulated Facts as its findings of fact for purposes of trial de novo.

**I**

**Facts**

In accordance with a written lease agreement (Lease), Defendant Vito Vitone (Tenant) rented condominium unit number 5 at property owned by the corporate Plaintiff Commerce Park Village Green, LLC (Landlord). The Lease term was for one year commencing July 1, 2010 and ending on June 30, 2011. The Tenant did not vacate the property on June 30, 2011, but remained a holdover tenant through July 31, 2011. The Tenant did not pay the rent or condominium fee for the month of July 2011. The Lease contains a specific provision for holdover, which provides in pertinent part as follows: “[i]f Resident holds over and fails to vacate on or before the required move out date (i.e. the end of the Lease Term or . . . extension period after proper move

out or vacate notice has been given, or a different move out date agreed to by the parties in writing), Resident shall be liable to pay double Rent for the holdover period . . .” Lease ¶ 16 (emphasis added).

The Landlord did not send a notice of noncompliance to the Tenant in accordance with the Lease provisions and G.L. 1956 § 34-18-35. Landlord filed an action for eviction for reasons other than nonpayment of rent. Sec. 34-18-36. On August 10, 2011, Judgment entered for the Landlord for possession and back rent. Tenant took a timely appeal from that Judgment and is entitled to trial de novo. When the case was reached for trial, the parties, in lieu of trial, stipulated to all material facts.

## II

### Issues

The parties stipulate and agree that the only issue or controversy between the parties is the interpretation of Paragraph 16 of the Lease, specifically the Holdover clause. The Landlord claims that no “move out or vacate” notice to double the rent for the month of July is necessary. The Tenant claims that the Landlord was required to serve the Tenant with a “proper move out or vacate notice” before a complaint for eviction may commence, as well as before the holdover provision of the Lease may be invoked. Defective notice under the statute is jurisdictional, and this Court has no jurisdiction to consider a complaint absent strict compliance with the notice provisions of the statute. See, Hedco Ltd. v. Blanchette, 763 A.2d 639 (R.I. 2000); see also, Abbenante v. Giampietro, 75 R.I. 349, 66 A.2d 501 (1949). The purpose of notice is to advise the tenant of the reason for eviction, and provides an opportunity to cure prior to the commencement of an eviction action. Proper notice also affords the tenant a reasonable opportunity to secure alternative housing before an eviction action is commenced.

### III

#### Conclusion

In accordance with the Stipulated Facts, the terms of the Lease, and the provisions of the Residential Landlord and Tenant Act, § 34-18-38, the Court finds an eviction resulting from failure to vacate following expiration of the Lease term must be preceded by proper notice to quit. Absent such timely and accurate notice, neither the District Court, nor this Court on appeal, has jurisdiction to consider the eviction action (trespass and ejectment).

The provisions of § 34-18-38 govern evictions for holding over after termination or expiration of the lease term. In this case, the Lease expired by its terms on June 30, 2011, yet the Tenant remained in possession during the entire month of July, not moving out until July 31, 2011. The Complaint alleges that Tenant remained in possession for one month beyond the Lease expiration. The lawful manner for the Landlord to pursue eviction was to comply with the provisions of § 34-18-38, or to give notice of rent arrearage, and proceed to file a complaint for eviction for nonpayment of rent. Secs. 34-18-35 and 34-18-38. According to § 34-18-38, a landlord may file a “Complaint for Eviction for Reason Other Than for Nonpayment of Rent” which shall be commenced according to the form provided in § 34-18-56(e). That form allows the landlord to designate the reason for eviction, one of which states that the “[d]efendant has remained in possession of the rented premises following the period set forth in the attached notice of termination of tenancy which was mailed to defendant. (Plaintiff must attach copy of required termination notice).” The form of notice required following the holdover by a tenant after the expiration of the lease is set forth in § 34-18-56(c).

Although the Complaint filed in the District Court contains an allegation that “[t]he Defendant Tenant has failed to quit the premises at the end of the term of the Lease Contract on

June 1, 2011,” there is no reference to the required notice to quit, nor is such notice attached to the Complaint.

In other words, the Landlord acted as if the Lease termination date contained in the Lease was self-executing, without providing the Tenant notice of his holdover after the Lease term expired. The Residential Landlord and Tenant Act, however, does not permit a landlord to commence a trespass and ejectment action against a holdover tenant without statutory notice. Similarly, the Lease itself contemplates such notice to the Tenant, as it provides in Paragraph 16 that if the Tenant holds over or fails to vacate after the end of the Lease, a “proper move out or vacate notice” is required as a condition precedent to the imposition of double rent for holdover.

By reason of the Landlord’s failure to follow the proper notice provisions of state law, the District Court should have dismissed the Complaint in its entirety, and certainly not imposed the holdover penalty contained in the Lease.

This Court accordingly will enter its judgment dismissing the Complaint for eviction for reasons other than nonpayment of rent. The Judgment entered in the District Court is vacated by this appeal. This Court’s dismissal is without prejudice to the Landlord refile a proper eviction complaint for proper grounds, provided all statutory prerequisites are followed.<sup>1</sup> Tenant’s counsel shall prepare a form of judgment for entry by the Court consistent with this Decision.

Any delays in reaching this case for trial were caused by delays in scheduling by the Court, and not by Defendant (Appellant). Accordingly, the motion to dismiss the appeal for failure to prosecute is denied.

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<sup>1</sup> As stipulated, the rent for July 2011 remains unpaid; however, without jurisdiction, this Court cannot enter judgment either for rent arrearage or possession, and has no option other than dismissing the Complaint for lack of subject matter jurisdiction.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASE:** Commerce Park Village Green, LLC v. Vito Vitone

**CASE NO:** KD-2011-1029

**COURT:** Kent County Superior Court

**DATE DECISION FILED:** September 22, 2016

**JUSTICE/MAGISTRATE:** Rubine, J.

**ATTORNEYS:**

**For Plaintiff:** Richard G. Riendeau, Esq.

**For Defendant:** David P. Destefano, Esq.