

DIVISION OF ST. THOMAS AND ST. JOHN

Respondent.

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) **CASE NO. ST-13-CV-479**
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Pending before the Court is Petitioner's appeal of an Order issued by the Magistrate. For the following reasons, the Magistrate's Order will be affirmed.

For nearly thirty years, Petitioner operated a business known as Ed's Place Restaurant and Bar on Respondent's property located at 52A Dronigans Gade on St. Thomas.¹ In 2012, the parties had a lease agreement that required rent to be paid in monthly installments of \$604.00.² The lease expired in March of 2012 and the tenancy continued on a month to month basis thereafter.³ Petitioner was behind in his rent obligations at the expiration date of the lease and stopped paying altogether in 2013.⁴ The outstanding rent owed from January 2013 to September 2013 totaled \$5,436.00.⁵ Respondent chose not to

⁵ *Id.*

seek the rent owed in 2012 or the rent owed for October and November of 2013.⁶ Respondent's representative, Shelley Moorehead, delivered to Petitioner two different notices to quit the premises, dated May 1, 2012, and July 6, 2012.⁷ Respondent received a letter on March 4, 2013, signed by Petitioner and his attorney, which stated that Petitioner would vacate the premises by May 1, 2013.⁸ When Petitioner did not vacate the premises as promised, Respondent sent Petitioner another notice to quit on August 10, 2013.⁹

On September 20, 2013, Respondent filed a Complaint in this forcible entry and detainer ("FED") action, and the Magistrate held a hearing on November 21, 2013. After hearing all the evidence, the Magistrate found that Respondent had properly submitted a notice to vacate the premises.¹⁰ And, since Petitioner did not timely pay the outstanding rent owed, the Magistrate granted Respondent restitution of the premises.¹¹ Petitioner requested an appeal of the Magistrate's decision on December 6, 2013.

STANDARD

The Superior Court "has jurisdiction to review judgments and orders issued by a Magistrate, as a result of the Magistrates' exercising their original jurisdiction as provided for at 4 V.I.C. § 123(a)."¹² An Order or Judgment in a FED action is a matter that the

⁶ Hearing Transcript, at page 14.

⁷ *Id.*, at 15.

⁸ *Id.*, at 19.

⁹ *Id.*, at 15.

¹⁰ *Id.*, at 42.

¹¹ The Magistrate issued a written order of his judgment on December 11, 2013.

¹² *Payne v. Lehtonen*, 55 V.I. 286, 289 (Sup. Ct. 2011).

Superior Court may review if appealed.¹³ The Superior Court reviews a Magistrate's factual determinations for "clear error" and legal findings are "afforded plenary review."¹⁴

ANALYSIS

28 V.I.C. § 789 provides that:

(a) The following shall be deemed cases of unlawful holding by force within the meaning of this chapter-

(1) When the tenant or person in possession of any premises fails or refuses to pay any rent due on the lease or agreement under which he holds, or deliver up the possession of the premises for three days after demand made for such possession;

(2) When, after a notice to quit as provided in this chapter, any person continues in the possession of any premises at the expiration of the time limited in the lease or agreement under which such person holds, or contrary to any condition or covenant thereof, or without any written lease or agreement therefor.

(b) An action for the recovery of the possession of the premises may be maintained in the case specified in subdivision (2) of subsection (a) of this section when the notice to quit has been served upon the tenant or person in possession for the period of 3 days before the commencement thereof

...

The May 1, 2012, notice to quit states that Petitioner owed Respondent eight months of rent.¹⁵ The July 6, 2012, notice to quit indicates that the parties had agreed to modify their obligations and that Petitioner was required to pay \$900.00 a month at the end of each month beginning on June 30, 2012.¹⁶ The second notice states that "payment[s] of \$900.00 ... will continue until all past due monthly rent is current," after which the rent would return to \$604.00."¹⁷ At the time the second notice was written, Petitioner owed

¹³ *Id.*

¹⁴ Super. Ct. R. 322.3(b). Plenary review is a full or complete review. See Black's Law Dictionary, Eighth Edition.

¹⁵ See Respondent's Exhibit 4A.

¹⁶ See Respondent's Exhibit 4B.

¹⁷ See Respondent Exhibit 4B.

Respondent eight months in rent.¹⁸ In the third notice to quit, dated August 10, 2013, Respondent made another request that Petitioner vacate the premises, stating that Petitioner had not paid rent since October 21, 2012.¹⁹

The testimony of Petitioner's representative, Leona Snyder, did not refute Respondent's contention that Petitioner was delinquent in his rental payments as expressed in the May 1, 2012, notice. At that time, Petitioner owed Respondent eight months of rent at \$604.00 per month, a total amount of \$4,832.00. In addition, her testimony did not refute Respondent's contention that Petitioner was delinquent in his rental payments as expressed in the July 6, 2012, notice. Indeed, her testimony reflected that Petitioner violated the parties' modified agreement described in the July 6, 2012, notice. Although payments of \$900.00 were due at the end of the month starting June 30, 2012, Snyder only started making payments in August of 2012.²⁰ In addition, although Snyder stated that she paid \$3,000.00 to Respondent between August and October of 2012,²¹ she did not refute Respondent's contention that she stopped paying rent after October 21, 2012. Moreover, Snyder acknowledged that her offer to pay Respondent \$1,500.00 in January of 2013 would not have made the account current at that time.²² Snyder also confirmed that the outstanding rent owed in 2013 was \$5,436.00.²³

¹⁸ *Id.*

¹⁹ See Respondent's Exhibit 4C.

²⁰ Hearing Transcript, at page 16. However, Snyder contradicted herself stating that she started making payments of \$900.00 to Respondent in September of 2012. *Id.*, at 24.

²¹ *Id.*

²² *Id.*, at 24 and 29. See also *Id.*, at 40.

²³ *Id.*, at 25 and 26.

Notwithstanding, Snyder asserted that there was a dispute concerning certain repairs, as well as water and electricity expenses.²⁴ Snyder stated that the adjusted rent balance would be \$2,500.00 if the Magistrate gave Petitioner credit for the repairs and utility expenses.²⁵

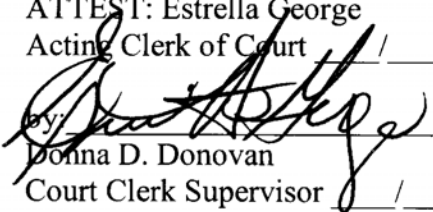
The Magistrate noted that Paragraph 9 of the lease indicated that the tenant was obligated to furnish all utilities.²⁶ In addition, Petitioner provided no evidence of the value of the repairs that he performed on the premises.

The Court finds that the Magistrate did not commit clear error by granting Respondent restitution of the premises. The record reflects that Petitioner was unlawfully holding the premises as described under 28 V.I.C. § 789. As a result, the Magistrate's decision will be affirmed.

An Order consistent with this Opinion shall follow.

Dated: September 19, 2014

ATTEST: Estrella George
Acting Clerk of Court / /

by: 
Donna D. Donovan
Court Clerk Supervisor / /


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

²⁴ Hearing Transcript, at pages 25 and 26.

²⁵ *Id.*, at 26.

²⁶ *Id.*, at 39.