

2002

Walter Slater, Appellant vs Kevin Brady, Appellee : Brief of Appellant

Utah Court of Appeals

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James H. Deans; Attorney for Appellee.

Walter Slater; Pro se.

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WALTER SLATER

Appellant

vs

Case No 20020599-SC

KEVIN BRADY

Appellee

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List of Parties

WALTER SLATER

Appellant

vs.

Case No. 20020599-SC

KEVIN BRADY

Appellee

Table of Authorities

Statutory Provisions

- A. UCA 78-36-3 through 78-36-11
- B. Murray City Code 15-28-13 A -1 and B
- C. UCA 26-A-1-114 through 121
- D. UCA 57-22-1 through 6

Case Law

- | | |
|----------------------------|---------------------------|
| A. Voyles vs. Straka | 77 Utah 171, 292 P. 913 |
| B. Belnap vs. Fox | 69 Utah 15,48 P. 148 |
| C. Forester vs. Cook | 77 Utah 137 - 292 P. 206 |
| D. Monroc vs. Sidwell | 770 P.2d 1022 Ut 89 |
| E. Monter vs. Kratzers | 29 Ut 2d 18-504 P. 2d 40 |
| F. Van Zyverden vs. Farrer | 15 Ut 2d 367-393 P.2d 468 |

Significant Procedural Rules

Rule 62 of Utah Rules of Civil Procedure

Jurisdictional Statement

This appeal is possible under rule 3 of Utah Rules of Appellate Procedure which provides that an appeal may be taken from a District Court to the Appellate Court with jurisdiction over the appeal from all final orders and judgements.

Jurisdiction is further based upon UCA 78-2-3 (3); which grants the Supreme Court Appellate jurisdiction over appeals from judgements of any court of record over which the Court of Appeals does not have original Appellate jurisdiction.

This was an Unlawful Detainer Proceeding and was not within the Court of Appeals original jurisdiction.

Statement of Issues

The Murray District Court found in the favor of Walter C. Slater. Mr. Slater was not in Unlawful Detainer under the original complaint of the landlord not fixing plumbing in a timely manner. This was the actual case heard at trial.

On March 15, 2002 a Certificate of Notification was sent to Mr. Slater and also to Mr. Deans, Mr. Brady's attorney about the original complaint. On March 16, 2002 Mr. Brady taped a Notice of Terminate Tenancy to Mr. Slater's door. This was done after the Bond Hearing and after Judge Luubeck stated that all other issues were to be held until trial. Mr. Brady seemed to understand this fact because he had his agent accept rent from Mr. Slater for the May rent.

Issues

- A. Whether the Notice of Termination of Tenancy served on March 16 was properly submitted and proper documents filed in the Unlawful Detainer case which was filed on February 12, 2002.
- B. Whether Appellee was entitled to any damages after Appellate was found not in Unlawful Detainer and Appellate offered to pay rent every month in cash to Appellee who refused to accept the rent. The appellate then put all rent except the month of May that was accepted by Mr. Brady's agent in a trust with his attorney Donald R. Schindler until trial.
- C. Whether the courts findings that the Appellate was not in Unlawful Detainer under the facts pleaded and presented in trial permitted an award of treble rents and attorneys fees. There was no proof of actual damages and trial was postponed many times because of Appellee requests to the court.
- D. Whether the acceptance of the rent for May accepted by the Appellee's agent under instruction of Appellee defeated the Notice of Terminate Tenancy notice issued in March

and never filed in court.

E. That it was proven in court that the whole eviction started and continued as nothing more than retaliation for Appellate following procedures set forth by State and City Health Codes. That problems that existed in Mr. Slater's apartment should have been corrected in 24 hours not allowed to go on for over two weeks before Mr. Slater had to correct the problem himself.

Standard of Review

1. That the finding of Unlawful detainer was based upon Allegations which were not within the scope of this action, a Notice to Terminate the Defendant's Tenancy:
2. That the damages were improperly calculated:
3. That the finding that the withholding of funds for the Plumbing Repairs was contrary to Murray City Code Sections 15.28.130 A (1) and B;
4. That the finding that Defendant was not in unlawful Detainer under the scope of the allegations of the Complaint should have resulted in an award of no damages to Plaintiff and an order of Fees to Counsel for Defendant:
5. The issuance of a writ of restitution is improper based on the findings within the scope of the complaint.
6. And on such other and further grounds as are determined on review of the trial record.

The Court committed a reversible error in their ruling and in the whole thereof.

Statement of Case

Kevin Brady the Appellee and landlord of the Apartment Building in Murray, filed an Unlawful Detainer Action against Walter C. Slater Appellant in retaliation for withholding a portion of the rent for plumbing repairs on apartment after two weeks of Health Code Violations.

Statutes

- A. UCA 78-36-3 through 78-36-11
- B. Murray City Code 115-28-130 A (1) B
- C. UCA 26-A-1-114 through 121
- D. UCA 57-22-1 through 6

Statement of Facts

- A. Appellant was a tenant of an apartment owned by Appellee
- B. Around Thanksgiving in 2001 in the Appellates apartment and the adjoining unit began having plumbing problems. The toilet, shower and sinks were completely unusable. Appellee was notified several times in writing and verbally about the problem yet did nothing to resolve the problem. The Appellant had to go to the 7-11 two blocks away to use the rest room facilities and relied on friends to use there showers. About seven days later the sewage pipe burst and sent the sewage all over the Appellants floor. Appellant again called Appellee and finally told Appellee that if he could not get his plumber to come and look at the problem he would find someone that could. Two days later on a Sunday the Appellant had Rescue Rooter come and run a cable down the main line of the kitchen sink to fix the problem. The cost was \$140.00 which Appellant has a receipt for. When Appellant withheld the \$140.00 from December's rent both parties agreed that if Appellant would split the cost of the Rescue Rooter that the Appellee and his wife would steam clean the carpets to get rid of the health hazard and smell that lingered in the apartment. By the time rent was due in February although Appellee had scheduled the carpets to be cleaned it had never been done. Appellant then withheld the other half of the rent. Appellee threatend eviction if he didn't get the \$75.00 that had been withheld. On February 6, 2002 Appellant was served with a notice to pay the \$75.00 or vacate the apartment and on February 20, 2002 was served with a three day summons and complaint of Unlawful Detainrt. On March 1, 2002 a Bond Hearing was held at the Murray District Court. Appellant was told by Judge Lubeck that if he deposited a \$1000.00 bond all other matters would be held over for trail. The bond was paid and Appellant was allowed to stay at the apartment.

- C. Between March 8, 2002 and March 19, 2002 Mr. Deans caused the matter to be continued three times with a final trial date being set for April 24, 2002. These postponements by Appellee started causing problems for Appellants witnesses. One witness had a baby that had scheduled doctor appointment. With the changes there was not enough time for the other tennant that had also experienced the plumbing problems to clear his work schedule. Even though this started out to be a \$70.00 dispute with the bond at stake and the changes being made by Appellee, Appellant felt that it would be wise to retain counsel. Mr. Schindler counsel for Appellant requested one continuance because he was scheduled for surgery. On April 24, 2002 counsel for Appella requested a hearing to have Appellant deposit another \$3000.00 bond. The hearing took place on the telephone between both parties counsel and Judge Lubeck on April 29, 2002. The court ordered Appellant to file an additional \$1500.00 in bond but denied Mr. Deans request for any more.
- D. The Appellee sought and obtained two more continuances until the matter finally came to trail on June 25, 2002. While waiting for trial Appellant tried every month to tender his his rent with Appellee. If Appellee would not accept the rent it was placed in a trust so if it was requested by Appellee it could be made available. On May 1, 2002 Appellee's agent did accept Appellant's rent. No furthers action was taked to evict Appellant from his appartement.
- E. During the trail and over the objections of Appellants Counsel the court heard not only the Unlawful Detainer Action scheduled but also the Notice to Terminate Tenancy which was served in March but was never brought within the scope of the Unlawful Detainer Trial by way of Ammendment or any other form of action.
- F. The court found that Appellant was not in Unlawful Detainer under the original complaint and held that the Unlawful Detainer took place after March 31, 2002 which was the date given on the Terminate Tenancy notice. The court disregarded the fact that no ammendments were filed with the court and Apprllants rent was accepted in May by

Appellee agent two months after the Notice to Terminate Tenancy was taped to the Appellants door.

Argument

This whole case started over \$70.00. It has cost both parties thousands of dollars in attorney fees and bonds. In the Renters Rights handbook it states that if there is a health hazard the renter is within his legal rights to remedy the problem and deduct it from the rent if the landlord has been properly notified and given significant time to correct the problem. The Appellee was given both.

According to State and City codes and statues by the State Board of Health Mr. Brady, the Appellee totally ignored his duty as the property owner and in doing so placed Appellate and Appellates neighbor in an unsanitary, unhealthy situation for over two weeks using the threat of eviction when Appellant took the matter into his own hands.

Appellee postponed court five times. Holding all bond money for months and asking for treble rent when rent was either held in trust for him or given and accepted by his agent on time each month.

Appellate was not found to be in Unlawful Detainer in court but was found to be in violation of Notice to Terminate Tenancy which was a complaint that was never filed with any court or pursued by Appellee once notice was taped to Appellants door

In May Appellee's apartment manager acting on Appellee's instructions accepted rent from Appellant. Would that not make the Termination of Tenancy null and void even if it had been properly filed with the court which it was not. That point on its own behalf should make it unusable in court.

This eviction was clearly retaliatory. In the case of Building Monitoring Systems vs.

Paltan 905 P.2d 1215 Ut 1995 it was found that a landlord cannot evict in retaliation for reporting health violations to authorities or with rent to remedy certain health hazards after proper notification to landlord was made and reasonable time given him to remedy the problem.

Conclusion

In Utah renters are protected by Health and Safety Standards from two sources. First the Legislature has authorized the local Board of Health to oversee Housing Regulations. Ut Code Ann 26 A-114 through 121. Second the Legislature has approved Health and Safety Standards for housing in the Utah Fit Promises Act Ut Code 57-22-1 through 6.

If a landlord can start an eviction process and the tenant has three days to move because the landlord does not choose to keep his apartments safe for his tenants what rights does the tenants have? If the Appellant had not had thousands of dollars for the bonds would he have been homeless? This was a plumbing problem that the landlord failed to address. This should have had nothing to do with tying up peoples time and money in court.

In this case even when we get away from the issue that this was done for retaliation reasons it was rewarded on a Notice that was never filed properly in court and should not have even been an issue at all in the trial.

In court the Appellate was found not guilty for Unlawful Detainer. How can the Appellee receive treble rent and attorney fees for six months when it was the Appellee that refused to accept the rent for four months and then accepted rent for May.

I the Appellate humbly ask the Court of Appeals to please look over the facts of this case. I would ask that the bond money of \$2500.00 and attorney fees of \$1600.00 be awarded in my favor.

I would like to make an apology at this time. I hired Mr. Donald Schindler as my counsel. He represented me at trial although his health seemed to be failing at the time. After he prepared my appeal unfortunately Mr. Schindler passed away. Since I had paid Mr. Schindler for my appeal the only thing that he had not completed was the brief. I hope that the brief that I have prepared is acceptable to this court. I ask that you change the outcome of this case and make it clear that it doesn't matter if you are a landlord or a tenant there are health and safety issues that must be addressed by both parties. The laws that are set up in the State of Utah are set up to protect both parties.

A handwritten signature in black ink, reading "Walter C. Slater". The signature is written in a cursive, flowing style.

Walter C. Slater
Defendant/Appellant