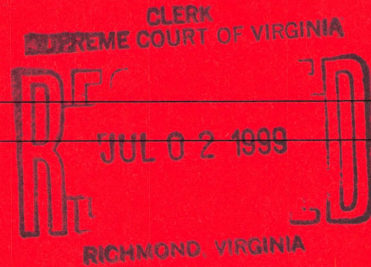


259Va 259



IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND

RECORD NO. 990320

LINDA H. WOHLFORD

Appellant

v.

GLADYS A. QUESENBERRY

Appellee

APPENDIX

LEGAL AID SOCIETY OF ROANOKE VALLEY
DAVID D. BEIDLER
HENRY L. WOODWARD
416 CAMPBELL AVENUE S.W.
ROANOKE, VIRGINIA 24016
(540) 344-2088, (540) 342-3064, fax

Counsel For Appellant

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Counsel For Appellant

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SUMMONS FOR UNLAWFUL DETAINER

VA. CODE ANN. § 8.01-126

General District Court

CITY OR COUNTY

STREET ADDRESS OF COURT

TO ANY AUTHORIZED OFFICER: Summon the Defendant(s) as provided below:
TO THE DEFENDANT(S): You are commanded to appear before this Court on

Feb. 26, 1998 10:30am

DATE AND TIME

to answer this civil claim.

DATE ISSUED

CLERK

DEPUTY CLERK

MAGISTRATE

CLAIM AND AFFIDAVIT: Defendant(s) unlawfully detains and withholds from Plaintiff(s):

1053 Bold Branch Road

ADDRESS/DESCRIPTION OF DETAINED PROPERTY

and that the Defendant should be removed from possession based on the following:

☒ Unpaid rent

and further that rent is due and owing and damages have been incurred as follows:

\$ 550.00 rent due for Dec 1997 and Jan 1998 and

Interest and \$ late fee and \$

damages for

\$ costs, and \$

BASIS OF CLAIM

attorney's fees

All required notices have been given.

Subscribed and sworn to before me this day

1-9-98

DATE

Gladys A. Queenberry
by Wayne A. Queenberry

PLAINTIFF(S)

PLAINTIFF'S ATTORNEY

PLAINTIFF'S AGENT

PLAINTIFF'S EMPLOYEE

CLERK

DEPUTY CLERK

MAGISTRATE

NOTARY PUBLIC (My commission expires)

CASE DISPOSITION

JUDGMENT that Plaintiff(s) recover against ☐ named DEFENDANT(S) ☐ possession of the premises described above, and rent, in the sum of

\$ with interest and \$ late fee, and \$ damages

\$ costs, and \$ attorney's fees.

HOMESTEAD EXEMPTION WAIVED? ☐ YES ☐ NO ☐ CANNOT BE DEMANDED

☐ JUDGMENT FOR ☐ NAMED DEFENDANT(S) ☐

☐ NON-SUIT ☐ DISMISSED

Defendant(s) Present? ☐ Yes ☐ No

DATE

JUDGE

CASE NO.

V98000042 JAN 09 PM 03:43

HEARING DATE

AND TIME

Gladys A. Queenberry
715 Nineteenth St. S.E.
Roanoke, VA 24013

PLAINTIFF(S)

COURT

Linda H. Wolford

DEFENDANT(S)

1053 Bold Branch Rd
Bedford, VA 24523

Summons for Unlawful Detainer

RECEIPT NO.

DATE FEE RECEIVED

TO DEFENDANT: You are not required to appear; however, if you fail to appear, judgment may be entered against you. See the additional notice on the back side about requesting a change of trial location.

☐ To dispute this claim, you must appear on the return date to try this case.

☐ To dispute this case, you must appear on the return date for the judge to set another date for trial.

Bill of Particulars

ORDERED

DUE

Grounds of Defense

ORDERED

DUE

ATTORNEY FOR PLAINTIFF(S)

ATTORNEY FOR DEFENDANT(S)

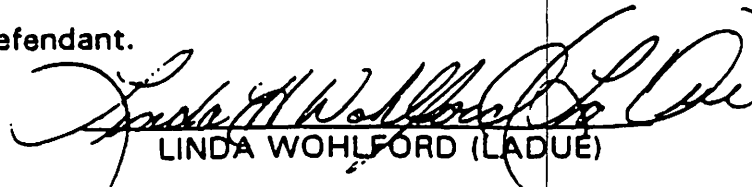
CONTESTED CASES: WILL BE HEARD ON RETURN DATE UNLESS AFFIDAVIT ATTACHED AND THE PLAINTIFF'S ATTORNEY REQUESTS CONTINUANCE

[GROUNDS OF DEFENSE]

Defendant, under oath, states her grounds of defense as follows:

1. Defendant denies that she is indebted to plaintiff, as alleged;
2. Defendant affirmatively states that plaintiff has failed to maintain the premises in a lawful manner and that her failure to do so rendered the premises uninhabitable and renders the lease void and unenforceable.
3. Defendant is no longer in possession of the premises.

WHEREFORE, defendant asks that the Summons for Unlawful Detainer be dismissed with costs awarded to defendant.


LINDA WOHLFORD (LADUE)

[COUNTERCLAIM]

Defendant Linda M. Wholford (now "LaDue") counterclaims as follows:

1. In or about July 1997, Defendant leased from plaintiff Gladys A. Quesenberry ("hereafter landlord"), residential premises located within Bedford County on a month-to-month oral lease.
2. Landlord is the owner of the residential premises.
3. The owner of residential premises has a duty to provide and maintain a safe and adequate heating system and keep a roof in good repair in leased residential premises. PM-301.2, PM-304.7, PM-304.12, PM-601.2, and PM-603.1 of the Basic Property Maintenance Code (BOCA Code), made applicable to all existing residential housing in Virginia by Va. Code Section 36-97, et seq.
4. During a cold spell in early September 1997, Defendant turned on her furnace for the first time, only to be inundated with fumes and soot throughout her home causing extensive damage to defendant's personal property. Rain leaked through the roof, causing damage to defendant's personal property.

4. Defendant notified landlord several times about the problem with the heating/furnace system. Defendant also notified landlord about the leaky roof.

5. After several days of complaints by defendant, landlord finally dispatched a repairman who attempted to repair the heating/furnace system.

6. Landlord and/or her agents informed defendant that the problems with the heating/furnace system had been cured.

7. In late October, 1997, defendant was forced out of the residential premises after being overcome and injured by fumes and soot from the furnace. She has not been able to return to the residential premises because of the problems with the furnace/heating system and has had to secure alternative housing at a substantial increase in cost to her.

8. Defendant was injured by the fumes and soot and again incurred substantial damage to her personal property as a result of the malfunctioning heating system.

COUNT I - NEGLIGENCE PER SE

9. Plaintiff landlord was negligent, per se, when she failed to maintain in good repair, and in a safe working condition the heating/furnace system, in violation of sections PM-601.2 and PM-603.1 of the BOCA Code.

10. Plaintiff landlord was negligent, per se, when she failed to maintain a sound, tight roof incapable of admitting rain, in violation of sections PM-301.2 and PM-304.7 of the BOCA Code.

11. As a direct and proximate result of the malfunctioning heating/furnace system and leaky roof, Defendant has incurred direct and consequential damages in excess of \$25,000.

WHEREFORE, defendant Linda Wohlford (LaDue) seeks judgment against plaintiff Gladys A. Quesenberry in the amount of at least \$25,000, plus her costs and interest at the judgment rate.

DEMURRER

Comes now the Plaintiff, Gladys A. Quesenberry, and files her Demurrer to the Counterclaim exhibited against her on the following grounds:

1. The Counterclaim alleges that Defendant leased from the Plaintiff a residence premises located within Bedford County on a month-to-month oral lease.
2. Defendant predicates Plaintiff's liability on Plaintiff's obligation to provide and maintain a safe and adequate heating system and to keep the roof in good repair pursuant to the Basic Property Maintenance Code (BOCA Code), made, according to Defendant, applicable to all existing residential housing in Virginia by Virginia Code Section 36-97, et seq.
3. No such duty is imposed on a landlord except by express argument or pursuant to Section 55-248, et seq. of the Code of Virginia, as amended (The Virginia Residential Landlord Tenant Act).
4. No agreement existed between Plaintiff and Defendant to provide and maintain a safe and adequate heating system or a good roof.
5. The Virginia Residential Landlord and Tenant Act does not apply to Plaintiff.

6. Defendant's allegation of negligence on the part of Plaintiff cannot, under the circumstances, be predicated upon Plaintiff's alleged failure to repair.

TWENTY-FOURTH JUDICIAL CIRCUIT
OF VIRGINIA

JAMES W. UPDIKE, JR., JUDGE
BEDFORD COUNTY CIRCUIT COURT
P. O. Box 235
BEDFORD, VA 24523
(540) 586-7885
FAX (540) 586-4052



COMMONWEALTH OF VIRGINIA
CITIES OF LYNCHBURG AND BEDFORD
COUNTIES OF AMHERST, BEDFORD, CAMPBELL AND NELSON

CAROL W. BLACK, CLERK
BEDFORD COUNTY CIRCUIT COURT
P. O. Box 235
BEDFORD, VA 24523
(540) 586-7832
FAX (540) 586-8197

September 10, 1998

RECEIVED
SEP 14 1998

LEGAL AID SOCIETY
ROANOKE VALLEY

Victor M. Santos, Esquire
Post Office Box 1287
Staunton, Virginia 24402-1287

David B. Beidler, Esquire
416 Campbell Avenue, S. W.
Roanoke, Virginia 24016-3627

IN RE: Gladys A. Quesenberry v. Linda H. Wohlford
Law No. CL98009208-00

Dear Counsel:

On August 18, 1998, a hearing was conducted in the captioned matter on plaintiff's demurrer to the counter-claim filed by the defendant. During this hearing, the parties agreed that Sections 55-248 et seq. of the Code of Virginia (the Virginia Residential Landlord and Tenant Act) do not apply to this case.

After consideration of the case law and the arguments submitted by counsel, plaintiff's demurrer is sustained.

I ask Mr. Santos to prepare an order consistent with this opinion.

Very truly yours,

A handwritten signature in dark ink, appearing to read "James W. Updike, Jr.", written over a horizontal line.
James W. Updike, Jr., Judge

JWUJr:mks

cc: The Honorable Carol W. Black, Clerk

ORDER

This cause came on August 18, 1998, on the Demurrer of Gladys A. Quesenberry, Plaintiff, by counsel, upon the appearance of Defendant, Linda H. Wohlford, by counsel, upon the stipulation of the parties, and was argued by counsel.

And the Court having reviewed the case law and the arguments submitted by counsel is of the opinion that Plaintiff's Demurrer is well taken. It is, accordingly, ORDERED that Defendant's Counter-Claim, Count I and Count II is hereby dismissed.

This matter is continued for such other Orders as may be necessary.

Enter: _____

Judge

Date: _____

10/26/58

EXCEPTIONS TO ORDER SUSTAINING DEMURRER

A. Count I of the counterclaim adequately states a cause of action for negligence, per se:

1). The Virginia Uniform Statewide Building Code (BOCA) and its implementing regulations place a duty to maintain residential premises in good repair on all owners of the property;

2). Ms. Wohlford was within the class of people BOCA is designed to protect;

3). Violation of BOCA, like the violation of any statute enacted to protect health, safety, and welfare, is negligence, per se; and,

4). The absence of a landlord's duty to repair at common law is archaic, contrary to the good of society, and should be changed.

B. Count II of the counterclaim adequately states a cause of action for unjust enrichment:

1). Landlord's rental of the premises violated BOCA, rendered the lease void and unenforceable, and unjustly enriched landlord in the amount of rent paid by Ms. Wohlford.

By: David D. Beidler

David D. Beidler, Esq.

Counsel for Linda Wohlford
Legal Aid Society of Roanoke Valley
416 Campbell Avenue S.W.
Roanoke, VA 24016
(540) 344-2088

[ORDER OF NONSUIT]

THIS CAUSE, came on this date upon the motion of Gladys A. Quesenberry, by counsel, to take a voluntary non-suit, and was argued by counsel.

And the defense having no objection and it appearing appropriate to do so, it is accordingly ordered that the above entitled action be, and it hereby is, dismissed without prejudice.

Enter: _____

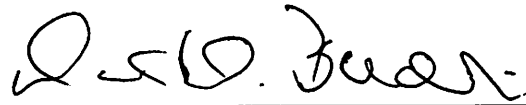
11/24/58

ASSIGNMENT OF ERROR

THE CIRCUIT COURT ERRED IN SUSTAINING A DEMURRER TO THE OCCUPANT'S CLAIM OF NEGLIGENCE PER SE AGAINST THE OWNER OF THE PREMISES WHERE SHE RESIDED FOR VIOLATIONS OF VIRGINIA'S UNIFORM STATEWIDE BUILDING CODE.

CERTIFICATE OF SERVICE OF APPENDIX

I certify that, pursuant to Rules 5:4 and 5:26(d) of the rules of the Supreme Court of Virginia, I have filed the requisite twenty copies of this appendix with the clerk of this court and that three copies have been served on Victor V. Ludwig and Victor M. Santos, Esquires, counsel for appellee, Nelson, McPherson, Summers & Santos, L.C., P.O. Box 1287, Staunton, Virginia 24402-1287, all done by mailing on July 1, 1999.

A handwritten signature in dark ink, appearing to read "D. D. Beidler", is written over a horizontal line.

David D. Beidler