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1998 Survey of Rhode Island Law: Cases: Landlord Tenant Law

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Landlord and Tenant. *Russo v. Fleetwood*, 713 A.2d 775 (R.I. 1998) Upon a landlord's motion, dismissal of a tenant's appeal of eviction action was required by Rhode Island state law due to non-payment of rent during the pendency of the appeal, regardless of the tenant's circumstances surrounding the nonpayment.

In *Russo v. Fleetwood*,¹ the Rhode Island Supreme Court declined the plaintiff's invitation to create an exception to the state statute regarding dismissals of appeal for nonpayment of rent while an appeal is pending.² Although the court was sympathetic to the plaintiff's circumstances giving rise to her nonpayment of rent, those circumstances cannot be considered under the statute.³ Where the language of the statute is mandatory, and does not provide language granting judicial discretion regarding the circumstances of nonpayment, the court cannot ignore the mandates of the statute and create an exception for a certain group.⁴

FACTS AND TRAVEL

In January 1997, landlord Carlo Russo (landlord) brought an eviction proceeding against Joyce Fleetwood (Fleetwood), a tenant in an apartment he owned.⁵ The action was commenced in the district court based upon Fleetwood's failure to pay the previous month's rent.⁶ At the time, Fleetwood's rent payments were subsidized by a section 8 Housing Assistance Payments Program.⁷ Also, she had no income other than monthly checks from Supplemental Security Income (SSI). Fleetwood maintained that she had paid the unsubsidized portion of the December 1996 rent to the United States Department of Housing and Urban Development.⁸ The payment was not sent to the landlord because he did not respond to her concerns regarding noxious odors she detected in her apartment.⁹

1. 713 A.2d 775 (R.I. 1998).

2. *Id.*

3. *See id.*

4. *See id.* at 776-77.

5. *See id.* at 775.

6. *See id.*

7. *See id.*

8. *See id.*

9. *See id.*

A trial was held which resulted in a judgment for possession in favor of the landlord, which Fleetwood appealed.¹⁰ While the appeal was pending, Fleetwood did not receive her SSI check on time and thus did not pay her June 1997 rent in a timely fashion.¹¹ Landlord immediately sought a dismissal of the appeal under Rhode Island General Laws sections 34-18-52 and 34-18-53.¹² Fleetwood entered an objection to the motion, and paid rent the next day upon receipt of the SSI check. However, the trial justice granted the landlord's motion to dismiss.¹³ On review by the Rhode Island Supreme Court, the plaintiff's request for a stay of execution was granted pending appeal.¹⁴

ANALYSIS AND HOLDING

The primary issue the court decided on appeal was whether the trial justice erred in dismissing Fleetwood's appeal. Fleetwood proposed that the trial justice had the authority to apply equitable principles to her case, and use discretion to consider her particular circumstances for nonpayment of rent during the pendency of her appeal.¹⁵ While the court agreed that this particular issue had been addressed prior to her appeal, it also noted that she cited no legal authority to support her position.¹⁶ The court then turned to the language of section 34-18-53, which states:

Dismissal of appeal for nonpayment of rent during pendency of appeals.—In the event that the tenant fails or refuses to pay all sums promptly when due, in accordance with the provisions of § 34-18-52, the court in which the case is pending, shall, without any trial on the merits, on the motion of the landlord, and after hearing thereon, including satisfactory proof of such nonpayment, enter an order for the entry of judgment and the issuance of the execution and the prompt service of that execution.¹⁷

The language of this statute clearly supports the trial court's decision to dismiss plaintiff's appeal, as landlord made an appropriate

10. *See id.* at 776.

11. *See id.*

12. *See id.*

13. *See id.*

14. *See id.*

15. *See id.*

16. *See id.*

17. *Id.* at 776.

showing of the nonpayment of rent. The court's reading of the statute unveiled no suggestion that a court has the authority to exercise discretion regarding the circumstances underlying the nonpayment.¹⁸ Because the language is so clear, reasoned the court, there is no basis upon which to create an exception for Fleetwood or any tenant in an analogous situation. The condition of living on a fixed income, though unfortunate, is no more worthy of exception from the statute than other reasons for nonpayment of rent which may be equally as worthy.¹⁹

CONCLUSION

The Rhode Island Supreme Court declined to allow an exception to section 34-18-53 based on the plaintiff's nonpayment of rent due to her fixed income. By doing so, the court avoided interfering with a legislatively created eviction proceeding which contains clear language and provides specific benefits for compliant landlords.

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18. *See id.*

19. *See id.*