

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
Docket No. Wncv

STATE OF VERMONT,)
Plaintiff,)
)
v.)
)
MARY FERNANDEZ,)
Defendant.)

COMPLAINT

NOW COMES the State of Vermont, by and through Vermont Attorney General William H. Sorrell, and pursuant to the Vermont lead law, 18 V.S.A., Chapter 38; and the Vermont Consumer Fraud Act, 9 V.S.A., Chapter 63; hereby makes the following complaint against Mary Fernandez who owns residential rental property in the Vermont towns of Northfield and Northfield Falls, and has failed to perform essential maintenance practices as required by 18 V.S.A. § 1759(b).

ALLEGATIONS

The Parties

1. Defendant Mary Fernandez (“Defendant”) is the owner of rental properties in the Vermont towns of Northfield and Northfield Falls. Five properties (“the properties”) owned by Defendant are listed in Attachment A. See Attachment A.
2. The properties were constructed prior to 1978, and therefore, are pre-1978 “rental target housing” within the meaning of the Vermont lead law, 18 V.S.A. § 1751(23), and are subject to the requirements of 18 V.S.A. Chapter 38.
3. The Attorney General has the right to appear in any civil action in which the State, in his judgment, has an interest. 3 V.S.A. § 157.

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ATTORNEY
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109 State Street
Montpelier, VT
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4. The Attorney General has an interest in ensuring that landlords comply with Vermont laws regarding habitability of housing.

Statutory scheme

5. Lead-based paint in housing, the focus of the Vermont lead law, is a leading cause of childhood lead poisoning, which can result in adverse health effects, including decreases in IQ.

6. The lead law requires that essential maintenance practices (“EMPs”) specified in 18 V.S.A. § 1759 be performed at all pre-1978 rental housing.

7. All paint in pre-1978 housing is presumed to be lead-based unless a certified inspector has determined that it is not lead-based. 18 V.S.A. § 1759(a).

8. EMPs include, but are not limited to, installing window well inserts, visually inspecting properties at least annually for deteriorated paint, restoring surfaces to be free of deteriorated paint within 30 days after such paint has been visually identified or reported to the owner, and posting lead-based paint hazard information in a prominent place. 18 V.S.A. § 1759(a) (2), (4) and (7).

9. The EMP requirements also mandate that an owner of rental target housing file affidavits or compliance statements attesting to EMP performance with the Vermont Department of Health and with the owner's insurance carrier. 18 V.S.A. § 1759(b).

10. Under the lead law, all paint in rental target housing is “presumed to be lead-based unless a lead inspector or lead risk assessor has determined that it is not lead-based.” 18 V.S.A. § 1760(a).

11. A violation of the lead law requirements may result in a maximum civil penalty of \$10,000.00. 18 V.S.A. § 130(b)(6). Each day that a violation continues is a separate violation. 18 V.S.A. § 130(b)(6).

12. The Vermont Consumer Fraud Act, 9 V.S.A Chapter 63, prohibits unfair and deceptive acts and practices, which includes the offering for rent, or the renting of, target housing that is noncompliant with the lead law.

13. Violations of the Consumer Fraud Act are subject to a civil penalty of up to \$10,000.00 per violation. 9 V.S.A. § 2458(b)(1). Each day that a violation continues is a separate violation.

Facts relating to Defendant

14. Defendant is the owner of the properties which she has in the past and continues presently to rent and offer for rent.

15. The Office of the Attorney General sent Defendant a letter dated January 21, 2010 which advised her of the lead law and requested proof of lead law compliance at the property within 90 days.

16. Defendant did not respond to the January 21, 2010 letter.

17. The Office of the Attorney General sent Defendant a letter dated March 18, 2010 which reminded her of her duty to respond to the previous letter.

18. Defendant responded to the March 18, 2010 letter, but failed to bring the properties into compliance with the lead law.

19. The Vermont Department of Health has no evidence to demonstrate that Defendant maintained the property in accordance with Vermont's lead law in 2009, 2010 or 2011.

20. The properties remain out of compliance with the Vermont lead law.

FIRST CAUSE OF ACTION – Failure to perform essential maintenance practices

21. The State of Vermont incorporates and realleges paragraphs 1 through 20 above.
22. The lead law requires that EMPs specified in 18 V.S.A. § 1759 be performed at all rental target housing and that compliance statements attesting to EMP performance be filed with the Department of Health and the property owner's insurance carrier on an annual basis. 18 V.S.A. § 1759. Copies of the compliance statements must also be given to all tenants at the property and to new tenants prior to entering a lease agreement. 18 V.S.A. § 1759(b)(3)-(4).
23. EMPs require that a property owner "[p]romptly and safely remove or stabilize lead-based paint if more than one square foot of deteriorated lead-based paint is found on any interior or exterior surface located within any area of the dwelling to which access by tenants is not restricted." 18 V.S.A. § 1759(a)(3).
24. Owners must also install "window well inserts in all windows or protect window wells by another method approved by [the Department of Health]." 18 V.S.A. § 1759(a)(1).
25. Defendant violated Vermont's Lead Law, 18 V.S.A. Chapter 38, by:
 - a. Failing to file with the Department of Health an EMP compliance statement attesting to EMP performance for the properties during 2009, 2010 or 2011; and
 - b. Failing to file with her liability insurance carrier or tenants EMP compliance statements attesting to EMP performance for the properties in 2009, 2010 or 2011.
26. A violation of the EMP requirements may result in a maximum civil penalty of \$10,000.00. 18 V.S.A. § 130(b)(6).

27. Each day that a violation continues is a separate violation. 18 V.S.A. § 130(b)(6).

SECOND CAUSE OF ACTION – Consumer Fraud: noncompliant rental housing

28. The State of Vermont incorporates and realleges paragraphs 1 through 27 above.

29. The Vermont Consumer Fraud Act, 9 V.S.A., Chapter 63, prohibits unfair and deceptive acts and practices in commerce, which include the rental of, or offering for rent, housing that is noncompliant with the lead law.

30. By renting to tenants, and by offering for rent, property that was not in compliance with the lead law, Defendant engaged in unfair acts and practices in commerce in violation of the Consumer Fraud Act, 9 V.S.A. § 2453(a).

31. Violations of the Consumer Fraud Act are subject to a civil penalty of up to \$10,000.00 per violation. 9 V.S.A. § 2458(b)(1).

32. Each day that a violation continues is a separate violation.

RELIEF SOUGHT

WHEREFORE, based on the allegations set forth above, the State of Vermont respectfully requests that the Court award the following relief:

1. An Order finding that Defendant violated 18 V.S.A. § 1759 and that the violations are continuing.
2. An Order finding that Defendant violated 9 V.S.A. § 2453(a) and that the violations are continuing.
3. Civil Penalties of not more than \$10,000 for each violation of the lead law.
4. Civil Penalties of not more than \$10,000 for each violation of the Consumer Fraud Act.

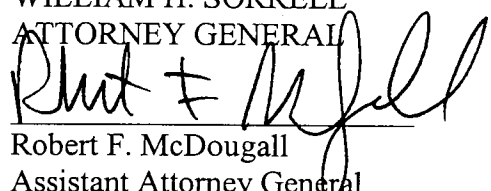
5. An Order requiring that Defendant hire, at her expense and with the approval of the Attorney General's Office, an independent contractor who is certified by the Department of Health to perform EMP work to conduct compliance inspections of the interior and exterior of the properties and all other rental target housing properties owned by Defendant.
6. An Order requiring that Defendant bring the properties and any other non-compliant properties identified by the independent inspection into compliance with the requirements of the lead law.
7. An Order requiring reimbursement to the State for the reasonable value of its services and its expenses in investigating and prosecuting this action.
8. Such other relief as the Court may deem just and appropriate.

DATED at Montpelier, Vermont this 11th day of July, 2011.

Respectfully submitted,

WILLIAM H. SORRELL
ATTORNEY GENERAL

By:


Robert F. McDougall
Assistant Attorney General
Office of the Attorney General
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ATTACHMENT A

1. 11 Mill Street, Northfield Falls
2. 674 N. Main Street, Northfield
3. 32 Depot Square, Northfield
4. 182 Vine Street, Northfield
5. 268 Union Street, Northfield