



Ruling could make evictions rarer

But some landlords say laws already favor tenants

By LISA ARSENAULT
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After 40 years of renting out apartments in Concord, Bo Szanto doesn't think the state Supreme Court should have the right to tell him he can't make a tenant leave his property when their lease is up.

"What are we supposed to do?" Szanto said. "When you sign a lease with a tenant, it's a legal contract. Evidently they just don't think a contract is any good."

The state Supreme Court ruled this week that landlords cannot evict a tenant just because their lease is up. They must notify the tenant of their eviction and provide a reason for the eviction that qualifies under state law.

The decision was based on the case of a Nashua woman who chose to fight an eviction from Royal Crest Estates on the grounds that the end of her lease wasn't a sufficient reason to evict her.

Some local landlords, like Szanto, say the ruling will cost them their right to protect their property. Other landlords say it won't change much at all because the odds are already stacked in the tenant's favor.

"It seems to me that when you have a lease, you have an agreement, a contract. Now the contract can expire and you can't get rid of the tenant," Szanto said. "This is a huge shift."

The case began when Kasha Dziejewicz received a notice in July 2004 that the apartment complex owners,

AIMCO Properties, didn't intend to renew her one-year lease when it expired in September of that year. They told her to move out by Aug. 31, but she said no. A Nashua District Court ruled that the property owners could evict her. The state Supreme Court overturned that ruling Wednesday.

Dziejewicz's lawyer said she still lives at Royal Crest Estates, but she could not be reached for comment.

State law says that residential tenants can be evicted for failing to pay rent, damaging the property, causing health or safety hazards, or violating a specific term of their lease. Tenants also can be evicted for "other good cause," such as a landlord's need to renovate a unit or sell a building.

In the ruling, the Supreme Court justices said they

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hoped to give landlords the flexibility to evict tenants for legitimate reasons, but also to protect tenants from being forced to move for no good reason.

Some landlords, like Sue Dobens of Nashua, said she doesn't think the ruling changes much at all.

"I tend to think it's not as big of a deal as some people would, only because of the fact that evictions are always difficult no matter what," said Dobens, who is the director of the New Hampshire Property Association. "In my mind I don't consider this a real revolutionary idea."

Dobens said that even before this ruling, landlords needed to give a specific reason in order to get a tenant out after the lease expired. If the landlord asked the tenant to leave and the tenant chose not to, the rights of landlords were already limited - especially if the tenant had been paying the rent regularly, she said.

"This is just one more little bit of power in favor of the tenants," Dobens said.

Other landlords, like Szanto, said the ruling is as bad as one issued this summer allowing the government to seize private property from one owner and turn it over to another if doing so would benefit a community. That precedent-setting decision has affected Supreme Court Justice David Souter personally. A California man seeking to punish Souter, who lives in Weare, for supporting the ruling is proposing seizing his land to construct a hotel.

Szanto says the latest state Supreme Court's ruling could cost him his property, too.

"It's kind of something like that, but this is probably worse," Szanto said.

Lawyers are divided on the issue.

Elliott Berry, a Manchester lawyer with the New Hampshire Legal Assistance, said the ruling won't result in any major changes because most district courts already recognize that landlords must give a valid reason to evict tenants.

"This is not new or revolutionary," Berry said.

Berry said that the assumption that a tenant is obligated to leave when their lease runs out is wrong. The lease locks a tenant into the rent price, not the rent dates, he said. Tenants who don't have leases have been protected by a similar law for decades, he added.

"Even if you don't have a lease, you can't evict a tenant unless you have a good cause for doing so," Berry said. "All this does is extend that same tenant protection to those who have leases."

The bottom line, he said, is that people need a reliable place to live without fear of being evicted for no reason.

"It's no longer okay to say, 'I just don't want you,'" Berry said. "In this day and age, housing is too scarce and too precious."

Arthur Gormley, who represented the landlord in the Dziejewicz case, disagrees. He says that the court created a new right of occupancy for tenants that is unfair to landlords.

Manchester lawyer Matt Johnson said he agrees.

"I think it's a sweeping decision," said Johnson, a lawyer for Devine Millimet who specializes in real estate and construction litigation. "I think it seriously affects the property rights of landowners in New Hampshire."

Johnson said that a lease is a contract and when it runs out, both parties should have a say in whether it continues or not. He said the eviction process is already stacked against the landlord and the ruling "just creates one more hurdle."

"What this ruling really does is creates a situation where you can have a perpetual tenancy," he said. "A tenant can now effectively sign a written lease for a fixed period of time and stay as long as they keep paying the rent."

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