

Long v. Stokes

MEMORANDUM

Date: April 11, 2018
To: Supervising Attorney
From: Altiozem Legal Services
Subject: Long v. Stokes: Pertaining Laws and Case Law; Analysis and Conclusion

Per your instructions, I have organized the facts, issues, codes, and case law pertaining to the Long v. Stokes case, wherein the Stokes face potential liability for the alleged wrongful eviction of tenant Long, who stated to having been wrongfully evicted subsequent to his unsuccessful attempt to re-enter the residence after returning from a personal business trip. Below are the broken-down and analyzed facts, which may help assess the likelihood of (1) the Stokes being charged with wrongful eviction, and (2) the elements which could prove Long liable for breach of contract. Case law was used in order to anticipate the outcome of these two possibilities.

FACTS

Stan and Majorie Stoke built the Bella Vista Apartments in 1972. The apartments are rather run down now but still functional and sufficiently habitable for tenants. The Stokes require a \$500 deposit in order to enter into a one-year contract with their tenants.¹ They inspected and cleaned each apartment when a tenant moved out. The contract provisions include the following (all these provisions will be referred to below by their respective numbers):

1. Tenant gives Landlord permission to enter and inspect the apartment. Landlord will provide prior written notice regarding the time the inspection will occur.
2. Tenant shall reimburse Landlord for any damages that Tenant or Tenant's invitee or licensee cause to occur to Landlord's property.²
3. Tenant shall pay Landlord rent in the amount of \$1,100 per month. Rent and any other expenses incurred the prior month are due by midnight on the 5th of each

¹ Utah Code Ann. § 57-17-3(1): "Upon termination of a tenancy the owner may apply . . . [the] money held as a deposit toward the payment of rent, damage . . . beyond reasonable wear and tear, other costs and fees provided for in the contract, or cleaning of the unit."

² § 57-22-5(a)(b)(c)(e): "Each renter shall . . . maintain the premises . . . in a clean and safe condition; maintain all plumbing fixtures in as sanitary a condition as the fixtures permit; use all electrical, plumbing, sanitary, heating, and other facilities and appliances in a reasonable manner."

- month. Tenant shall pay a penalty fee of 5% of the amount due if Tenant fails to pay rent or other expenses incurred by the 5th of the month. If Tenant fails to pay rent or any other expenses incurred the prior month within 30 days, Tenant shall pay a penalty fee of 10% of the amount due, and Landlord reserves the right to instigate eviction procedures.³
4. Tenant must report any damage to the apartment that would require repair or improvement to the Landlord in writing.
 5. If Tenants move out without passing a cleaning inspection, Landlords reserve the right to deduct cleaning fees incurred from Tenant's deposit.

Tenants complained about the newest tenant, Chris Long, reporting that he and his guests drank alcohol, smoked, and made a lot of noise. In addition, the tenant living directly under Mr. Long reported that his bathroom ceiling dripped discolored water. The Stokes posted a notice that they would inspect the apartment at a specified time on January 10th. At the designated time, they entered the apartment and made the following handwritten notes:

- (1) Large hole in the back bedroom wall. (2) Shallow pool of water in the bathroom – It appears someone clogged the toilet, allowed it to overflow, turned off the water after a few minutes, and failed to clean the water up off the floor. (3) Cigarette burns in the carpet. (4) Unidentified stains on the walls and carpets.

The Stokes wrote a letter to Mr. Long, including the notes above, notifying him that they were hiring professionals to repair the damage and that he would be responsible for the charges incurred according to the terms of his rental contract. On the January 21st, the Longs posted an invoice on Mr. Long's apartment door for the apartment repairs. The invoice totaled \$1,800.

No one saw Mr. Long after the January 10th, and Mr. Long failed to pay his monthly rent for January and February, or the invoice or to otherwise communicate with the Stokes. On February 10th, the Stokes changed the locks to Mr. Long's apartment, used Mr. Long's \$500 deposit to pay the \$500 of cleaning fees, and rented the apartment out to a new tenant.⁴

On February 20th, Mr. Long tried to re-enter his apartment. His key did not work. Mr. Long called the Stokes and claimed that the apartment was like that when he moved in and that he had not received any of the notices they left on his door. He demanded that the Stokes rent him the same or a similar apartment and refund his \$500 deposit immediately. They refused and demanded that Mr. Long pay the repair costs, February's rent, and the late fees immediately. Mr. Long refused to pay.

³ § 15-8-6(1)(g): "For each rental purchase agreement, the lessor shall disclose in the agreement the following items: a statement that the total of payments does not include other charges, such as late payment, default, pickup, and reinstatement fees, which fees shall be separately disclosed in the agreement."

⁴ § 78B-6-816(1)(a)(b): "In the event of abandonment, the owner may retake the premises . . . [re]rent them . . . and the tenant who abandoned the premises shall be liable [for costs] necessary to restore the rental unit."

ANALYSIS, APPLICABLE LAWS, AND OVERALL CONCLUSION

I. ISSUE

1. “What is the likelihood of a Utah court ruling in Mr. Long’s favor for wrongful eviction?”

Short Answer:

It is unlikely that a court would rule in favor of Long.

Rules:

Utah Code Annotated:

- § 57-17-3(1): “Upon termination of a tenancy the owner may apply . . . [the] money held as a deposit toward the payment of rent, damage . . . beyond reasonable wear and tear, other costs and fees provided for in the contract, or cleaning of the unit.”
- § 78B-6-815(1): Abandonment occurs when “tenant has not notified the owner that [he] will be absent, [he] fails to pay rent within 15 days after the due date, and there is no reasonable evidence [besides] personal property that [he] is occupying the premises.”
- § 78B-6-816(1)(a)(b): If tenant abandons the premises, “the owner may retake the premises and attempt to re-rent them . . . and the tenant who abandoned the premises [is] liable for [remaining] rent due; tenant is liable for costs . . . necessary to restore the rental unit.”
- § 78B-6-816(2)(a)(b)(i): In the event of abandonment, “the owner is entitled to [store] property [left by tenant] . . . and recover actual moving and storage costs from the tenant.”

Case(s) Cited:

Malibu Inv. Co. v. Sparks, 2000 UT 30

- **Issue:** Can plaintiff evict defendant for failure to comply with mobile park rules?
- **Rule:** Utah Code Ann. § 57-16-5(1)(a)(ii)⁵
- **Application:** Defendant's failure to comply with park rules gives plaintiff cause to evict under § 57-16-5(1)(a)(ii).
- **Conclusion:** Decision affirmed because plaintiff's eviction proceedings were proper under defendant's lease and statutory requirements.

ANALYSIS

Long’s claim of wrongful eviction may be undermined by his failure to recognize the contractually-permitted deduction from his deposit, which he intends to recover in the

⁵ § 57-16-5(1)(a)(ii): “An agreement for the lease of mobile home . . . may be terminated by mutual agreement or for . . . failure of a resident to comply with a mobile home park rule.”

action against the Stokes in addition to the other expenses brought against him. Pursuant to Utah Code Ann. § 57-17-3(1),⁶ the Stokes followed proper procedure when deducting money from Long’s deposit by itemizing the items for which Long’s deposit was deducted, and by presenting him with the notice detailing the balances, unpaid rents, and costs of each item. In addition, according to § 78B-6-815(1)(2),⁷ Long had legally abandoned the premises by (a) failing to communicate with the landlords for a total of 41 days—well beyond the minimum required 15-days to constitute abandonment; (b) made no effort to contact the Stokes, (c) not leave a notice of his absence, or (d) attempt to repair the damages done to the apartment.

By comparing *Malibu Inv. Co. v. Sparks*, one can determine that Long’s violation of contract provisions 2, 3, and 4 are sufficient to constitute eviction, as his “failure to comply with [apartment] rules give [the Stokes] cause to evict.”⁸ Per preceding case law, a reasonable person would have expected for the Stokes to evict Long.

Pursuant to § 78B-6-816(2)(a)(b)(i),⁹ the Stokes are protected from Long’s alleged claims, as Long’s actions constituted abandonment; therefore, the Stokes retain the right to rent the property to another tenant. In addition, the Stokes retain the right to be paid the rent owed by Long, as well as any damage costs accrued from apartment repairs.

In conclusion, Long’s chances of recovery are unlikely, because but not limited to the following reasons: (1) Long legally abandoned the property and (2) failed to pay rent for 41 days; (3) Long has no witnesses to support his case, whereas the Stokes could use Long’s disgruntled neighbors as witnesses, and (4) the damages done to the apartment are highly likely to have been caused by Long’s direct or indirect actions. As will be discussed next, it is likely that Long will be liable for breaching his contract duties, as he made no effort to mitigate damages, and his alleged claims could be seen as having been filed in poor faith.¹⁰

II. ISSUE

2. “What is the likelihood the court will rule in the Stokes’ favor for breach of contract?”

Short Answer:

⁶ § 57-17-3(1): “Upon termination of a tenancy the owner may apply . . . [the] money held as a deposit toward the payment of rent, damage . . . beyond reasonable wear and tear, other costs and fees provided for in the contract, or cleaning of the unit.”

⁷ § 78B-6-815(1): Abandonment occurs when “tenant has not notified the owner that [he] will be absent, [he] fails to pay rent within 15 days after the due date, and there is no reasonable evidence [besides] personal property that [he] is occupying the premises.”

⁸ *Malibu Inv. Co. v. Sparks*, 2000 UT 30.

⁹ Utah Code Ann. § 78B-6-816(2)(a)(b)(i): In the event of abandonment, “the owner is entitled to [store] property [left by tenant] . . . and recover actual moving and storage costs from the tenant.”

¹⁰ An “intentional dishonest act by not fulfilling legal or contractual obligations . . . entering into an agreement without the intention or means to fulfill it, or violating basic standards of honesty in dealing with others” (*Legal Dictionary - Law.com*. Law.com Legal Dictionary. Accessed April 11, 2018).

It is likely that the court will rule in favor of the Stokes for breach of contract.

Rules:

Utah Code Annotated:

- § 57-22-3(1)(2)(4): “[Owners] renting or leasing a[n] [apartment] shall maintain that unit in a condition fit for human habitation . . . and [Renters] shall cooperate.”
- § 57-22-4(2)(6): Owner “shall provide [Renter] at least 24-hours’ notice of [his] entry into [Renter’s apartment]. Failure to comply with [aforementioned] requirement may not be used by [Renter] as a[n] excuse [for] non-compliance with the [rental agreement]; [Renter] may not give rise to any cause of action against the owner.”
- § 57-22-5(1)(b)(c)(d)(e)(g)(h): “[Renter] shall maintain premises . . . in clean and safe conditions . . . and dispose of all waste [cleanly and safely]; use all electrical and plumbing . . . appliances [reasonably].
- § 57-22-6(2): “If a renter believes that [his] residential rental unit has a deficient condition, [he] may give the owner written notice.”
- § 15-8-5: “The disclosures [of the agreement] shall be made at or before consummation of the rental purchase agreement. The disclosures shall be made clearly and conspicuously in writing.”
- § 15-8-6(1)(a)(d)(f)(g)(i)(k):

The [owner] shall disclose in the agreement the [cost of monthly rent], a description of property . . . [T]he total [initial deposit] amount; a statement that [monthly] payments [do] not include other charges . . . a statement identifying the party responsible for maintaining or servicing property, a statement that the consumer . . . [shall return] the property in good repair, along with any past due rental payments.

- § 15-8-8(1)(a)(i)(iii): “A [renter] who fails to [pay] rent may reinstate the agreement . . . by paying all past due rental charges . . . and any applicable late fee.”
- § 15-3-3: “Nothing herein shall validate a transaction within its provisions which is actually or constructively fraudulent.”

Secondary Source(s):

MUJI¹¹ 2d CV CV2102 – Elements for breach of contract:

¹¹ Model Utah Jury Instructions, Second Edition.

In order to recover damages, [plaintiff] must prove each of these four things: (1) that there was a contract between [plaintiff] and [defendant]; (2) that [plaintiff] did what the contract required [him] to do, or that [he] was excused from performing [his] contract obligations; (3) that [defendant] breached the contract by not performing [his] obligations; and (4) that [plaintiff] was damaged because [defendant] breached the contract.

CV2103 – Creation of a contract:

A contract is an agreement between two or more parties. It can be either oral or written, or a mixture of both. To create a contract, what the parties have promised to do for each other has to be spelled out well enough that they can tell what it is they have each promised to do for the other. If [one] cannot tell what it is they have promised to do for each other, then there is no contract.

Case(s) Cited:

Bair v. Axiom Design, L.L.C., 2001 UT 20, 20 P.3d 388 (Sup.Ct.)

- **Issue:** How does someone suing for breach of contract fulfill their burden of proof?
- **Rule:** URCP Rule 50¹²
- **Application:** At the close of appellant's case-in-chief, appellee moved the trial court for a "directed verdict" pursuant to Utah R. Civ. P. 50(a). The trial court granted the motion, concluding that appellant's evidence established that the actual value of the missing transparencies was "between \$ 5.00 and \$ 10,000.00," but that appellant therefore had failed to meet its burden of proof regarding the enforceability of the contracts' \$ 1500 liquidated damages clauses.
- **Conclusion:** Judgement Reversed.

Beck v. Farmers Ins. Exch., 701 P.2d 795, 1985 Utah LEXIS 846

- **Issue:** How can a party's inaction breach an implied obligation of good faith and performance?
- **Rule:** U.C.C. § 1-304(1)¹³
- **Application:** Plaintiff motorist filed claim against defendant insurer for refusing to investigate and settle insurance claim; the defendant, without explanation, refused to investigate. Defendant moved for summary of judgement; however, the facts suggested that defendant's flat rejection of plaintiff's settlement offer was sufficient to prove breach of an implied obligation of good faith performance to diligently investigate and evaluate plaintiff's claim
- **Conclusion:** Defendant's summary judgement was reversed and remanded.

¹² URCP Rule 50: "If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may resolve the issue against the party."

¹³ U.C.C. § 1-304(1): "This section sets forth a basic principle running throughout the Uniform Commercial Code. The principle is that in commercial transactions good faith is required in the performance and enforcement of all agreements or duties."

ANALYSIS

The first aspect to analyze is the nature of contracts in general—an agreement between two parties. In the rental agreement between the Stokes and Long, the promises they have made to one another are spelled out well enough that they can tell what it is they have each promised to do for the other.¹⁴ Furthermore, the Stokes lawfully disclosed¹⁵ contractual terms, provisions, and obligations,¹⁶ which a reasonable person would not consider to be “actually or constructively fraudulent;”¹⁷ therefore, there is nothing within the rental agreement that would be considered invalid, according to § 15-3-3.¹⁸

Pursuant to the four elements needed for breach of contract,¹⁹ (1) there was a contract between the Stokes and Long, (2) the Stokes did what the contract required them to do, (3) Long breached the contract by not performing his obligations outlined in contract provisions 2, 3, and 4; and (4) the Stokes were damaged because Long breached the contract.²⁰ Therefore, Long breached his contract with the Stokes, thus a reasonable person would see that the Stokes are likely to win a breach of contract lawsuit against Long.

In order for the Stokes to successfully sue for breach of contract, they must fulfill their burden of proof. In *Bair v. Axiom Design*, appellant photo agency failed to fulfill their burden of proof when making a case against appellee for not returning 37 out of 107 photographic transparencies. Appellant alleged that the cost of the items was anywhere between \$ 5.00 and \$ 10,000.00. The allegation did not meet the burden of proof standards in URCP Rule 50,²¹ due to the fact that a specific monetary amount was not given; thus, failing to convince a jury in their favor.

From *Bair v. Axiom Design*, it is clear that suing for unspecific amounts of money based on the alleged breach of inconspicuous contract provisions, does not meet the standards of burden of proof. Anticipating the Stokes’ upcoming trial, a reasonable jury

¹⁴ MUJI 2d CV, CV2103 – Creation of a contract.

¹⁵ Utah Code Ann. § 15-8-5: “The disclosures [of the agreement] shall be made at or before consummation of the rental purchase agreement. The disclosures shall be made clearly and conspicuously in writing.”

¹⁶ § 15-8-6(1)(a)(d)(f)(g)(i)(k): The [owner] shall disclose in the agreement the [cost of monthly rent], a description of property . . . [T]he total [initial deposit] amount; a statement that [monthly] payments [do] not include other charges . . . a statement identifying the party responsible for maintaining or servicing property, a statement that the consumer . . . [shall return] the property in good repair, along with any past due rental payments.

¹⁷ § 15-3-3: “Nothing herein shall validate a transaction within its provisions which is actually or constructively fraudulent.”

¹⁸ See *supra* note 11.

¹⁹ MUJI 2d CV CV2102 – Elements for breach of contract.

²⁰ Damages include past-due rent, reparation costs, litigation costs, etc.

²¹ Appellant was “fully heard on an issue during a jury trial” and “the court found that [the] jury [did] not have a legally sufficient evidentiary basis” to decide in favor of appellant.

would agree that the Stokes fulfilled their burden of proof; the Stokes would be able to prove (1) that the contract provisions are clear, (2) that Long breached those provisions, (3) prove actual damages, and (4) demand recovery for a specific amount reflected on invoices and receipts. The Stokes are on good legal ground to win the lawsuit.

Long's likelihood of liability could be further elucidated by analyzing *Beck v. Farmers Ins. Exch.*, a case which brought the "duty of good faith and performance" into question. Defendant insurance company refused to investigate and settle an insurance claim filed by plaintiff motorist, giving no explanation for the refusal. Consequently, Defendant was found to have breached its duty of good faith and performance, as well as conspicuously-written contractual obligations. Likewise, Long demonstrated no recognition of fault after unequivocally breaching contract provisions 2, 3, and 4—in addition to demonstrating no intention to mitigate damages—therefore breaching his implied duty of good faith and performance, as required by U.C.C. § 1-304(1).²²

Pursuant to Utah Code Ann. § 57-22-3(1)(2)(4)²³ and § 57-22-5,²⁴ Long did not fulfill his tenant duties, as he failed to keep the residential unit in conditions fit for human habitation, and failed to make the damages known to the Stokes. From what one can see, the Stokes have not breached any portion of their contract nor their owners' duties outlined in § 57-22-4(2)(6).²⁵

Pursuant to § 57-22-6(2)²⁶, Long breached provision number 4 of the contract by failing to act in a reasonable manner. Long alleged that the apartment was damaged before he moved in, which he would perhaps use as a defense, but cannot do so given that he did not provide the Stokes a written notice detailing the damages, and certainly did not do so within any of the Corrective Periods.

Long's demand for no-cost reinstatement is unsatisfiable, in light of his failure to fulfill the conditions of § 15-8-8(1)(a)(i)(ii).²⁷ Furthermore, any speculation regarding the legality of evicting a tenant and promptly renting the apartment to someone else, would be rendered invalid considering that Utah law "imposes a duty upon landlords to mitigate

²² U.C.C. § 1-304(1): "In commercial transactions good faith is required in the performance and enforcement of all agreements or duties."

²³ Utah Code Ann. § 57-22-3(1)(2)(4): "[Owners] renting or leasing a[n] [apartment] shall maintain that unit in a condition fit for human habitation . . . and [Renters] shall cooperate."

²⁴ § 57-22-5(1)(b)(c)(d)(e)(g)(h): "[Renter] shall maintain premises . . . in clean and safe conditions . . . and dispose of all waste [cleanly and safely]; use all electrical and plumbing . . . appliances [reasonably]."

²⁵ § 57-22-4(2)(6): Owner "shall provide [Renter] at least 24-hours' notice of [his] entry into [Renter's apartment]. Failure to comply with [aforementioned] requirement may not be used by [Renter] as a[n] excuse [for] non-compliance with the [rental agreement]; [Renter] may not give rise to any cause of action against the owner."

²⁶ § 57-22-6(2): "If a renter believes that [his] residential rental unit has a deficient condition, [he] may give the owner written notice."

²⁷ § 15-8-8(1)(a)(i)(ii): "Pay all past due rental charges, reasonable costs of pickup and redelivery of chattels, and any applicable late fee."

their damages by reletting premises after a tenant has wrongfully vacated and defaulted on the covenant to pay rent.²⁸

In conclusion, Long legally abandoned the premises, failed to pay rent, and was therefore lawfully evicted. In contrast, the Stokes fulfilled their duty to mitigate damages by promptly renting the apartment out to someone else; they fulfilled their contractual duties as well. By analyzing the statutes and case law of this section, it is reasonable to believe that the court will rule in favor of the Stokes for Long's breach of contract.

CONCLUSIONS

The facts of this case, analyzed through the statutes mentioned in this document, strongly suggest that Long will be found liable for breach of contract; in addition, stare decisis suggests the same result, considering the other similar cases which have been decided that way. In addition, Long unequivocally breached certain provisions outlined in the contract, which in itself is sufficient to win the breach of contract lawsuit. However, this does not necessarily have any effect on the wrongful eviction claim placed against the Stokes; it remains uncertain whether Long had the chance to read the notices posted on his door. However, this interrogatory does not necessarily mean that the Stokes breached their duty to give notice; the Stokes seem to have made reasonable efforts to contact Long, which could shift the fault to Long for not having made sure his apartment was in good condition before leaving, nor providing any contact information. The Stokes have good legal standing, considering that they acted pursuant to the Utah Codes mentioned here; this fact alone is perhaps the Stokes' best defense against the wrongful eviction claim. It does not seem like Long has any defenses for the breach of contract claim placed against him.

²⁸ *Reid v. Mut. of Omaha Ins. Co.*, 776 P.2d 896, 907 (Utah Sup.Ct. 1989).