

STATE OF VERMONT
WASHINGTON COUNTY, SS.

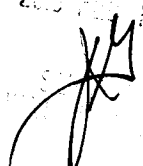
VERMONT SUPERIOR COURT
DOCKET NO.

BRENDA BROWN, individually and on)
behalf of all others similarly situated)
Plaintiffs)

v.)

CITY OF BARRE, VERMONT)
CAROL DAWES, in her official capacity)
as TOWN CLERK AND CREDIT)
SUPERVISOR,)
Defendants)

COMPLAINT

2010 FEB 17 P 2 49

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Now comes, Brenda Brown, by and through her attorneys Christopher Curtis and Vermont Legal Aid, Inc. and states the following in support of her complaint for declaratory and injunctive relief:

INTRODUCTORY STATEMENT

1. Plaintiffs are tenants in the City of Barre, Vermont receiving water services from the Defendant City of Barre pursuant to rental agreements whereby their landlords contract with the Defendant City and are liable to the City for the cost of water service to their buildings. The water system statutes and ordinances provide for termination of water service to the "ratepayer" when water bills are unpaid. The City of Barre has a policy of terminating water service to tenants occupying rental units when the landlord ratepayer fails to pay the bill. This policy deprives the Plaintiff class members of a service essential to their health and safety without opportunity for any pre-termination hearing and without a determination that the Plaintiffs are liable to the Defendant City for the cost of the services. These practices of the Defendants violate the due process clause of the Fourteenth Amendment to the United States Constitution and Plaintiffs seek permanent injunctive and declaratory relief to enjoin further action and enforcement of such ordinances, regulations and practices and for recovery of monetary damages

incurred as a result of Defendants' unlawful actions.

PARTIES

2. Plaintiff, Brenda Brown, is a citizen of the United States and a resident of the City of Barre, Vermont.

3. The Plaintiff class is composed of all tenants in the City of Barre, Vermont who consume water services provided by the Defendant City under rental agreements which provide that their landlords will provide water service as part of the rental agreement.

4. The Plaintiff class is so numerous that joinder of all members if not practicable.

5. There are questions of law and fact common to the entire class.

6. The claims of the representative party are typical of the claims of the class.

7. The representative party will fairly and adequately protect the interests of the entire class.

8. The prosecution of separate actions by individual members of the class will create a risk of inconsistent adjudications which would substantially impair the ability of members of the class to protect their interests.

9. The Defendants have acted or refused to act on grounds generally applicable to the class despite a request by Plaintiff's counsel to revise their policy and procedures. (See Exhibit A).

10. Defendant, City of Barre, Vermont is a municipal corporation which provides water services to consumers in the City of Barre pursuant to 24 V.S.A §5142 *et seq.* and Barre, Vt., Rev. Ordinances ch. 19, art. II, § 36.

11. Defendant, Carol Dawes, is the Town Clerk and "credit supervisor," appointed by the Board of Selectmen for the City of Barre and is responsible for collection of water bills

pursuant to the above statute.

FACTS

13. Plaintiff Brenda Brown is a tenant in a residential rental apartment unit located at 74 Summer Street, Apt. 2, in Barre, Vermont.

14. Ms. Brown occupies the apartment at issue pursuant to a month to month lease. She lives with her son and daughter-in-law. Her rent is \$650 per month; water is included in the rent.

15. Jeffrey Tevis is the owner of the building at 74 Summer Street in Barre. He lived in an apartment on the premises until December of 2009.

16. On or about January 19, 2010, Plaintiff Brenda Brown received hand-delivered notice from an employee of the City of Barre that her water service would be terminated on the following day due to nonpayment by her landlord of a \$571 water bill.

17. Upon inquiry, Defendant Dawes informed Plaintiff that in order to keep the water on, Plaintiff would need to pay the sum of \$722.49 (consisting of \$571.57 which was the monthly bill plus \$150.92 for a repayment agreement on the outstanding balance of over \$2000).

18. On or about January 20, 2010, Plaintiff filed an appeal of the City's decision while continuing to work towards a resolution of the underlying issue.

19. On or about that same date, Defendant Dawes informed counsel that she was mistaken and no appeal was available to the tenant as the tenant was not the "ratepayer".

20. On January 28, 2001, Plaintiff, through counsel sent another letter to the City advising it that shutting off water to the premises was illegal as the Plaintiff was not the responsible party on the bill and the lack of water would be a health hazard.

21. Despite notice of the illegality of its actions, Defendant Carol Dawes insisted that the City had no discretion in the matter and on February 3, 2010, the City terminated water

service to Plaintiff Brown's apartment depriving her of water.

22. Defendant's operation and application of the ordinance concerning water shut-offs results in termination of water service to other members of the class, who do not owe the water bills assessed.

23. Defendants have made no provision in their City ordinances, rules, regulations or practices to afford members of the Plaintiff class a pre-termination hearing to determine the validity of the pending service termination prior to discontinuance and impose on the innocent tenants the obligation to assume the landlord "ratepayer's" debt in order to continue to have water service in their rented dwelling units.

24. By terminating water service to the dwellings of the Plaintiff class, Defendants render the leased premises uninhabitable, and below minimum standards of health and decency as defined in the Vermont Housing and Health Code.

25. By their actions, the Defendants have caused and continue to cause immediate and irreparable harm to the plaintiffs including, but not limited to, inadequate shelter, hygiene, sanitation, inconvenience, anxiety and suffering.

CLAIMS FOR RELIEF

Title 24 of the Vermont Statutes Annotated, §5142 *et seq.*

26. Section 5143(a) of Title 24 provides that "no municipality shall disconnect a *ratepayer* unless payment of a valid bill or charge is delinquent..." [emphasis added].

27. Section 5143(b)(4) allows the ratepayer to avoid shut off upon a showing that disconnection would represent an immediate and serious hazard to the health of the *ratepayer or a resident within the ratepayer's household.*" [emphasis added].

28. Section 5145 of Title 24 provides that when "service is disconnected or interrupted

at the premises of the ratepayer, the individual making the disconnection shall immediately inform a responsible adult *on the premises* that service has been disconnected or interrupted...” [emphasis added].

29. Section 5146 of Title 24, requires the municipality to restore service upon the customer’s request when an agreement is reached with the *ratepayer*.

30. Section 5147 of Title 24 allows for an appeal by the ratepayer after notice to all interested parties and upon appeal, disconnection is postponed.

31. The municipal statutes pertaining to water disconnections are directed to enforcement of the contract between the Defendant City and the ratepayer, in this case the landlord, Jeffrey Tevis.

32. Disconnection of water service at the premises of the ratepayer acts as leverage to get the ratepayer to pay the bill or enter into a repayment agreement.

33. Disconnection of water service to innocent tenant class members or a requirement that they assume the debt of the ratepayer in order to continue to have water service is inconsistent with the statutory framework and the unambiguous language of the statutes.

34. Refusal to allow the tenant class members to appeal the decision to disconnect their water service because they are not the ratepayer deprives the tenants of any meaningful way to challenge the Defendants’ arbitrary and capricious actions.

Sections 19-36 of the Barre City Ordinances Concerning Water and Sewer Services

35. Section 19-36 of the Barre City Ordinances Concerning Water and Sewer Services, permits “the water committee to withhold the water supply from any person failing or refusing to comply with the provisions or requirements of this chapter or regulations approved by the council.” As a remedy the city may cause the water to be shut off and remain off from the

premises until the user has fully complied with all requirements and paid the sum of \$2.00.

36. While Plaintiff class members are “users” of water supplied to them by their landlords, they have not refused or failed to comply with any provision of the ordinance or regulations in the ordinance.

37. Use of the Barre City Ordinance to deprive innocent tenants of water is beyond the scope of the ordinance and regulations and therefore is unlawful.

Title 18 of the Vermont Statutes Annotated, § 122

38. Section 122 of Title 18 provides that “any person injured or damaged by a violation of this title, of a rule adopted pursuant thereto, or of a permit or order issued thereunder, *or by a public health hazard* may bring an action for equitable relief or damages arising from such violation or public health hazard” (emphasis added).

39. Access to potable water for drinking, bathing and general use is recognized as essential to a habitable premises and is a requirement of rental housing. 9 V.S.A. § 4457.

40. All rental dwellings are required to “be connected to: a supply of water sufficient in quantity and pressure to meet the ordinary needs of the occupant(s).” 5 (Sub. Ch. 16) Vt. Code R. § (III)(D)(1) (2006).

41. The Defendants’ failure to provide and/or maintain a connection to water is a public health hazard because deprivation of water violates “department policy as established by rule or procedure.” 18 V.S.A. § 2 (9)(F).

42. Defendants’ actions are the proximate cause of Plaintiff’s harm and have caused a public health hazard.

42 U.S.C. § 1983 and the Fourteenth Amendment of the U.S. Constitution

43. The Fourteenth Amendment to the United States Constitution prohibits the

Defendants from depriving Brenda Brown and the Plaintiff class of life, liberty and property without due process of law.

44. Federal law provides a civil action for deprivation of rights pursuant to 42 U.S.C. § 1983 against “every person who, under color of any statute, ordinance, regulation, custom, usage, of any State... subjects or causes to be subjected, any citizen of the United states or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...”

45. The City of Barre is a municipal corporation operating under color of state law.

46. Carol Dawes, in her official capacity as Town Clerk, is an agent or official of the City of Barre operating under color of state law.

47. The Defendant’s actions in disconnecting water service at their rented dwelling units due to their landlords’ failure to pay the water bills, deprives the Plaintiff Brenda Brown and the class members of a property interest in their dwelling units without access to a pre or post termination hearing to determine their rights and in violation of the statutory scheme which regulates ratepayers not tenants.

48. The Defendants by their actions have caused and continue to cause the named Plaintiff and other members of the Plaintiff class immediate and irreparable harm for which they have no adequate remedy at law.

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Assume jurisdiction of this matter.
2. Declare this action to be a proper class action.
3. Declare that the provisions of the City of Barre ordinances and their application of

Title 24 of the Vermont Statutes to tenants are unconstitutional and void on their face, and as applied, as they provide for termination of water service to the Plaintiffs without any opportunity for pre or post termination hearings where Plaintiffs are not contractually liable to the Defendants for the services.

4. Issue temporary and permanent injunctive relief ordering the Defendants to restore water service to the premises at 74 Summer Street, Apt. 2 and any other rental units occupied by tenants whose water service has been disconnected due to nonpayment by a landlord/ratepayer and to refrain from terminating the water service to such Plaintiffs in the future.

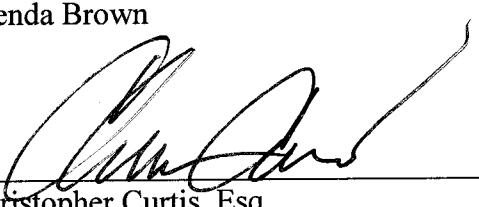
5. Award the Plaintiff, Brenda Brown, damages in such amount as the proofs show are justified.

6. Award the Plaintiff, Brenda Brown, her reasonable attorney fees pursuant to 42 U.S.C. § 1983.

7. Award such other legal and equitable relief as the court deems necessary under the circumstances of this case.

Dated at Montpelier, Vermont this 17th day of February 2010.

Brenda Brown

By 
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Her Attorneys

cc: Oliver Twombly, Esq.