

Homestead Exemption
ORS 23.240(1)
ORS 23.160(1)(n)
renumbered (o)
Pre-paid rent
Security deposit

In Re Casserino

Case # 699-66978-
aer7

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Debtors filed a joint Chapter 7; however, they were separated and the husband was living in a month-to-month rental property. Under his month-to-month agreement, Debtor pre-paid the last month's rent of \$750 and pre-paid a security deposit, \$100 of which was non-refundable. He claimed the last month's rent and the security deposit exempt under ORS 23.240, Oregon's homestead exemption. The trustee objected.

At issue was the scope of Oregon's homestead exemption. The trustee argued the pre-paid rent and security deposit were similar to an account or a form of cash, which would only be exempt under ORS 23.160(1)(n) (now (o)), i.e. the pourover exemption. Debtor argued the pre-paid rent and deposit were so integral to his tenancy, they were covered by the homestead exemption.

The court noted decisions by bankruptcy courts in Colorado and Texas holding pre-paid rents and deposits exempt under similar homestead statutes.

In overruling the trustee's objection and allowing the exemption, the court followed the above line of cases, in light of the policy that the homestead exemption be given a liberal and humane interpretation.

1 month tenancy, memorialized in an agreement executed on September 24,
2 1999.

3 The rent and deposit were not initially scheduled but were
4 disclosed at the meeting of creditors. After the trustee filed an
5 adversary proceeding against the landlord for turnover of the rent
6 and deposit, debtor amended his schedules listing, as assets, the
7 rent and the \$400 refundable portion of the deposit. He claimed
8 their full value exempt as a homestead under Oregon law. The trustee
9 has objected. This case concerns the scope of Oregon's homestead
10 exemption.

11 *DISCUSSION:*

12 ORS 23.240(1) provides that a single debtor is entitled to
13 exempt up to \$25,000 in equity in his homestead.¹ The homestead must
14 be the "actual abode of and occupied by the owner, or the owner's
15 spouse, parent or child" There is no dispute that the Lebanon,
16 Oregon property was debtor's actual abode at the time of filing.

20
21 ¹ ORS 23.240 provides in pertinent part:

22 A homestead shall be exempt from sale on
23 execution, from the lien of every judgment
24 and from liability in any form for the debts
25 of the owner to the amount in value of
26 \$25,000, except as otherwise provided by law.
The exemption shall be effective without the
necessity of a claim thereof by the judgment
debtor...

1 The homestead statute is remedial in nature and is to be
2 construed liberally to advance its purpose. In re Stratton, 269 B.R.
3 716 (Bankr. D. Or. 2001). As stated by the Oregon Supreme Court:

4 The object of the homestead exemption laws is well
5 understood. This object is to assure to the unfortunate
6 debtor, and his equally unfortunate but more helpless
7 family, the shelter and the influence of home; and, in
8 its promotion, courts may well employ the most liberal
9 and humane rights of interpretation.

8 Banfield v. Schulderman, et.al. (*In Re Banfield's Estate*) 137 Or.
9 167, 178-179, 298 P. 905, 907 (1931) (internal citations omitted).

10 Under Oregon law, a homestead may be claimed in any interest in
11 property that carries with it the right of possession. In Re White,
12 727 F.2d 884 (9th Cir. 1984); see also; Fiet v. O'Dwyer, Civ. # 85-
13 984-LE (D. Or. September 13, 1985) (unpublished) (Leavy, J.). Since
14 a month to month tenancy carries with it the right of possession, it
15 will support a homestead exemption.² The question here is whether
16 the rent and deposit are so tied to that tenancy as to come under it
17 for purposes of the homestead exemption. There is no Oregon
18 authority on point.

19 The trustee argues that the rent and deposit are akin to an
20 account or some other form of cash. Accordingly, only the exemption
21 provided by ORS 23.160(1)(n), (Oregon's pourover exemption)³ applies.
22 Debtor argues that the rent and deposit are integral to his tenancy,
23

24 ² The trustee takes no issue with this proposition.

25 ³ The statute has since been renumbered to ORS 23.160(1)(o). The parties
26 have stipulated that the pourover exemption has been applied to other assets.

1 thus covered by the exemption. Other courts interpreting statutes
2 similar to Oregon's have held that prepaid rents and security
3 deposits are exempt, recognizing that a leasehold is exempt, thus
4 rights attendant thereto are likewise exempt. See, In Re Quintana,
5 28 B.R. 269 (Bankr. D. Co. 1983)⁴ (construing the Colorado homestead
6 exemption); and In Re Nagel, 216 B.R. 397 (Bankr. W. D. Tx. 1997)⁵
7

8 ⁴ Colorado's homestead exemption, C.R.S 38-41-201, provided at the
9 time:

10 Every homestead in the state of Colorado occupied as
11 a home by the owner thereof or his family shall be exempt
12 from execution and attachment arising from any debt,
13 contract, or civil obligation not exceeding in value the
14 sum of twenty thousand dollars in actual cash value in
15 excess of any liens or encumbrances on the homesteaded
16 property in existence at the time of any levy or
17 execution thereon.

18 The year after Quintana, Colorado passed C.R.S. § 13-54-102(1)(r)
19 specifically making security deposits exempt. The homestead statute itself has
20 since been amended in ways immaterial to the issue at bar.

21 ⁵ Texas' homestead statute, V.T.C.A. Property Code § 41.002, provided at
22 the time in pertinent part:

23 a) If used for the purposes of an urban home or as a
24 place to exercise a calling or business in the same urban
25 area, the homestead of a family or a single, adult
26 person, not otherwise entitled to a homestead, shall
27 consist of not more than one acre of land which may be in
28 one or more lots, together with any improvements
29 thereon.

30 (b) If used for the purposes of a rural home, the
31 homestead shall consist of:

32 (1) for a family, not more than 200 acres, which
33 may be in one or more parcels, with the
34 improvements thereon; or

35 (2) for a single, adult person, not otherwise
36 entitled to a homestead, not more than 100 acres,
37 which may be in one or more parcels, with the

(continued...)

1 (construing the homestead exemption provided by Texas law). The
2 Nagel court emphasized that a lease is an executory contract and
3 rights arising thereunder should be either exempt in toto or not
4 exempt in toto.⁶

5 This Court is persuaded that the reasoning of the Quintana and
6 Nagel courts is correct. To hold otherwise allows trustees to
7 interfere with the exemption rights granted to debtors under Oregon
8 law. Frequently, the landlord (although it may have a security
9 interest in the rent and deposit) may turn the money over to the
10 trustee upon demand and require that the debtor restore the deposit
11 in order to remain in possession of the debtor's abode. Debtors who
12 are unable or unwilling to make such double payment may be evicted
13 from their homestead. Oregon's policy that the homestead exemption
14

15 _____
16 (...continued)

improvements thereon.

17

18 (d) The definition of a homestead as provided in this
19 section applies to all homesteads in this state whenever
20 created.

The statute has since been amended in ways immaterial to the issue at bar.

21
22 ⁶ Here the month to month tenancy was unexpired as of the petition's
23 filing. The trustee did not move to assume it within 60 days of the order for
24 relief. It was thus deemed rejected under 11 USC § 365(d)(1). Post rejection,
25 debtor moved to compel the estate to abandon the rent and deposit. At the hearing
26 on the motion, the trustee represented the adversary proceeding against the
landlord had been settled with the estate to receive turnover of the rent and
deposit. In light of these representations, the court denied the motion to compel
abandonment. This ruling however must be viewed in light of the settlement, and
should not be construed as generally establishing the rights of parties post
§ 365(d)(1) rejection.

1 be given a liberal and humane interpretation, mitigates against such
2 a result.

3 Due to the foregoing, the court concludes that the debtors may
4 properly claim the rent and deposit exempt as part of the homestead
5 exemption allowed pursuant to ORS 23.240. This opinion constitutes
6 the court's findings of facts and conclusions of law, they shall not
7 be separately stated. An order consistent herewith shall be entered.

8
9

Albert E. Radcliffe
CHIEF BANKRUPTCY JUDGE