Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-375

JULY TERM, 2003

Bryan E. Jones Trust v. Gary Wetmore and Cheryl Lewis	}	APPEALED FROM: Addison Superior Court DOCKET NO. 67-4-02 Ancv Trial Judge: Matthew I. Katz

In the above-entitled cause, the Clerk will enter:

Landlord appeals the superior court' s judgment in this landlord-tenant dispute. We affirm.

Tenants had been living in their apartment for more than six years when landlord purchased the building in July 2001. In January 2002, when a dispute arose between the parties, landlord sent tenants several eviction notices and informed them in writing that he would increase the rent from $700 to $1000 beginning on April 1, 2002. In April 2002, landlord filed an ejectment action. Tenants moved out of the apartment at the end of June. On July 17, 2002, the superior court held a hearing on landlord' s claim for damages and tenants' counterclaim. At the conclusion of the hearing, the court determined that tenants owed one month's rent, which was offset by the security deposit, and that the expenses incurred by landlord in disposing of rubbish and replacing a light were offset by the value of the heating oil left in the tank for tenants' apartment. The court also rejected tenants' counterclaim. Landlord appeals, arguing that the court erred (1) in determining that he was entitled to $700 rather than $1000 per month in rent for the months of April, May, and June 2002; (2) in offsetting the tenants' security deposit against rent owed; and (3) in failing to award him the full amount he claimed for removal of rubbish and other alleged expenses.

First, landlord argues that the superior court was required to accept his written notification of a rent increase over tenants' claim that he later agreed to accept $700 per month for the months of April, May, and June. We find no error. Landlord acknowledged that he notified tenants of the rent increase, at least in part, to force them to move out of their apartment. According to tenants, when they informed landlord that they would be unable to move out by April and could not afford to pay more than $700 per month, he told them that $700 per month would be acceptable. The court did not err in concluding that the parties ultimately agreed to maintain the rent at $700 per month until plaintiffs were able to move out. See Stoddard & Son v. Vill. of N. Troy, 102 Vt. 462, 468 (1930) (oral agreement may modify written contract not under seal or required by statute of frauds). Landlord misses the point in arguing that he did not need tenants' concurrence to raise the rent. The court found that landlord ultimately agreed to accept $700 per month in rent, and there is evidence in the record to support the court' s finding. See Mullin v. Phelps, 162 Vt. 250, 260 (1994) (factual findings are viewed in light most favorable to prevailing party, disregarding modifying evidence; findings will be upheld, even if contradicted by substantial evidence, as long as there is any credible evidence to support them).

Second, landlord contends that the superior court erred by applying tenants' security deposit to offset the one month of rent owed by tenants. According to landlord, he had no obligation with respect to the security deposit because the former landlord' s attorney had informed tenants in August 2001 that the landlord was applying the deposit against rent owed. Again, we find no error. Within fourteen days of the date a tenant leaves a dwelling, the landlord is required to

return the tenant' s security deposit with a written statement itemizing any deductions. 9 V.S.A. § 4461(c). " Upon termination of the landlord' s interest in the dwelling unit, the security deposit shall be transferred to the new landlord. The new landlord shall give the tenant actual notice of the new landlord' s name and address with a statement that the security deposit has been transferred to the new landlord." Id. § 4461(f). Here, landlord failed to demonstrate either that he sent tenants the notice required under § 4461(f) or that § 4461(c) had been satisfied. Moreover, the court was not persuaded, in light of tenants' response to the letter sent to them by the former landlord' s attorney, that the former landlord was entitled to a setoff for back rent. Under these circumstances, the court correctly assumed that responsibility for tenants' security deposit passed on to the new landlord, as required by § 4461(f).

Third, landlord argues that he was entitled to full reimbursement for the disposal of rubbish and for other expenses he incurred after tenants moved out. We disagree. Tenants disputed each of landlord' s claims regarding the expenses he allegedly incurred, and the court' s award of $100 for rubbish removal was reasonable, given the disputed evidence. Finally, we discern no basis for landlord' s claim that the court declared the case a wash because it was biased against landlord and against landlord-tenant cases in general. The record reveals that the court weighed the evidence and arrived at a result fully supported by the record after giving each of the parties an opportunity to present their case. See Peckham v. Peckham, 149 Vt. 389, 390 (1988) (as trier of fact, trial court is in best position to assess witnesses' credibility and weigh evidence).*

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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Marilyn S. Skoglund, Associate Justice

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Frederic W. Allen, Chief Justice (Ret.)

Specially Assigned

Footnotes

* At oral argument, landlord submitted additional documents which he asked the Court to consider. These documents were contained within the record on appeal prior to landlord's submission at oral argument and we have reviewed them in making this determination.