

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

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

ENTRY ORDER

FEB 25 2010

SUPREME COURT DOCKET NO. 2009-198

FEBRUARY TERM, 2010

Thomas C. Michelson	}	APPEALED FROM:
	}	
v.	}	Lamoille Superior Court
	}	
Rhoda Mae Dunster, Gary Dunster,	}	DOCKET NO. 220-9-08 Lecv
Misty Graham, Michael Follet,	}	
Norman Houle, Terry Smith and	}	
Charles Farnum	}	
		Trial Judge: Christina C. Reiss

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

This is a landlord-tenant dispute in which the superior court awarded plaintiff/landlord damages totaling \$9,240 against several defendant tenants, but found that landlord had failed to establish his claim against tenant Michael Follet for past rent due in the amount of \$2500. Landlord appeals, contending that: (1) the evidence supported the claim against Follet; and (2) the court erred in failing to award additional damages against tenant Misty Graham for injury to the premises. We affirm.

The facts may be summarized as follows. Landlord owns a three-building complex in Stowe, Vermont known as the Pines Motel. In September 2008, landlord filed a complaint for ejection, back rent, and other damages against seven tenants. Following a bench trial in March 2009, the court made findings and issued a partial judgment order in favor of landlord against three of the tenants (Misty Graham, Charles Farnham, and Terry Smith) awarding back rent totaling \$6840. The court found in favor of one tenant, Michael Follet, and scheduled a subsequent hearing against two others, Rhoda Mae Dunster and Gary Dunster. Following a second evidentiary hearing in May 2009, the court issued a partial judgment order in favor of landlord, awarding back rent of \$2400 plus interest. The court thus awarded landlord back rent in an amount totaling \$9,240, and entered a final judgment order. This pro se appeal by landlord followed.¹

Landlord makes a number of assertions, but fundamentally contends that the evidence amply supported the claim for back rent against tenant Follet. We emphasize that our scope of review in this matter is limited. It is exclusively the role of the fact-finder, in this case the trial court, to assess the credibility of witnesses and weigh the evidence presented. Kanaan v. Kanaan, 163 Vt. 402, 405, 659 A.2d 128, 131 (1995). This Court will not reweigh the evidence on appeal. We will uphold the trial court's findings unless clearly erroneous, viewing the evidence in a light most favorable to the judgment. Town of Bethel v. Wellford, 2009 VT 100, ¶ 5. Findings will not be reversed merely because they are contradicted by substantial evidence; rather, an appellant must show that there is no credible evidence to support the findings. Id.

¹ The record is unclear as the outcome of the complaint against tenant Norman Houle.

Analyzed in light of these standards, the record reveals no basis to disturb the judgment. Landlord emphasizes that he submitted records maintained by his property manager (who was also one of the defendant tenants) showing the absence of certain periodic rent payments from Follet, as well as three checks (one for \$700 and two for \$200 each) from Follet marked returned for insufficient funds. Landlord acknowledged, however, that he had some concern whether he was receiving all of the checks submitted to the property manager, and the trial court found that landlord “testified candidly, and the [c]ourt found credibly, that [landlord] does not have an exact computation of the amount due because some of the rental periods were handled by [the property manager]” and landlord “has some concern about missing money from those amounts.”

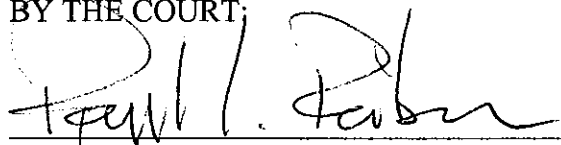
The trial court further found that any amount that actually was owing would be entirely offset by the reduced value of the premises resulting from the lack of heat, running water, and hot water for a portion of time during the lease period. Finally, the court observed—although it did not decide—that Follet’s lease was voidable based on landlord’s failure to disclose the presence of two convicted sex offenders living in one of the buildings on the grounds.

Although landlord disputes the evidence concerning the unit’s habitability, we may not reverse the trial court’s findings unless they are shown to be clearly erroneous and unsupported by any credible evidence, and landlord has not met this burden. Follet testified and introduced other evidence concerning the lack of usable water and heat in the unit, and the court expressly “found credible the Follett’s [sic] claim that at times they were without hot water to bathe, to do their dishes, and to otherwise operate the unit,” and further found that there was no heat provided in the unit for a period of time. Although landlord claims that the testimony was perjured and unfounded, issues of credibility and the weight of the evidence are for the trial court to determine, and landlord has not shown that the court’s findings here are clearly erroneous and unsupported. Accordingly, we find no basis to disturb the judgment.

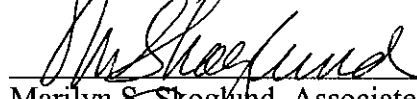
Landlord also contends the court erred in rejecting his claim against tenant Misty Graham for damages to the property, in addition to the \$1,750 awarded against Graham for back rent. Landlord testified that he was required to replace carpet and vinyl and incur clean-up costs because of the condition in which Graham left the property. Landlord adduced no evidence in response to the trial court’s specific question whether he had any records documenting “what the status of the property was when [Graham] took possession,” and the court found that landlord had failed to prove “by a preponderance of the evidence that Misty Graham caused the damage in the unit.” Although landlord contends the trial court erroneously denied the damages for lack of a written lease entitling him to recover for damages over and above normal wear and tear, the record discloses that the court found the evidence of causation to be lacking, and landlord has not demonstrated that the finding was clearly erroneous. Accordingly, we find no error.

Affirmed.

BY THE COURT:



Paul L. Reiber, Chief Justice



Marilyn S. Skoglund, Associate Justice



Brian L. Burgess, Associate Justice