

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2010-140

DECEMBER TERM, 2010

John Malcovsky	}	APPEALED FROM:
	}	
	}	
v.	}	Chittenden Superior Court
	}	
	}	
Kevin Corcoran	}	DOCKET NO. S0821-09 Cnc

Trial Judge: Matthew I. Katz

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

Tenant Kevin Corcoran appeals pro se from a superior court judgment awarding damages and possession of the premises to landlord John Malcovsky. Tenant challenges a number of the court’s findings and also contends the trial court was biased. We affirm.

In November 2005, tenant entered into a one-year lease with landlord for the residence in question, located on Intervale Avenue in the City of Burlington. Tenant continued to rent the premises on a month-to-month basis after the lease expired. In June 2009, landlord filed an action for ejectment and damages for unpaid rent and utilities. A one-day evidentiary hearing was held in November 2009. The court heard testimony from both landlord and tenant, as well as the City’s housing inspector, and viewed a video of the premises taken by tenant. Thereafter, the court issued a written decision in favor of landlord.

In its ruling, the court noted that tenant did not dispute the unpaid rent and utility bills, but essentially argued that they were offset by certain conditions that impaired the unit’s habitability. Based on the evidence, however, the court found that the conditions in question did not impair the unit’s habitability and that landlord had been largely responsive to tenant’s complaints, some of which, the court concluded, were in retaliation for landlord’s notice of eviction. Accordingly, the court entered judgment in favor of landlord, awarding damages of \$2571 and possession of the premises. This appeal followed.

Tenant principally reasserts the claim that he withheld a portion of the rent and utilities because landlord failed to provide a safe and healthy dwelling unit. The difficulty is that tenant declined to order a transcript of the evidentiary hearing, making it impossible to review the pertinent testimony, particularly that of the City inspector on whom the court relied. See State v. Gadreault, 171 Vt. 534, 538 (2000) (mem.) (holding that appellant’s failure to provide transcript on appeal precluded review of claims); In re S.B.L., 150 Vt. 294, 307 (1988) (“[A]ppellant must bear the consequence of the lack of a transcript of the evidence.”). Nor does tenant cite specifically to any documentary evidence, such as the inspector’s reports or the videotape, to support his claim. See id. at 297 (stating that this Court “will not comb the record searching for error”). Accordingly, we discern no basis to disturb the evidentiary findings and judgment of the trial court.

Tenant also raises a number of procedural claims, asserting that the court improperly refused his requests to go to trial, to pay rent into an escrow account, to issue subpoenas, and to call witnesses. Again, the absence of a record of the proceedings or any record citations renders it impossible to address the claims.

Finally, tenant asserts he was denied a fair hearing because the judge was not impartial, having previously presided over matters involving tenant in family court. The absence of a record, however, makes it impossible to determine whether tenant preserved this claim by moving to disqualify the judge on this basis pursuant to Vermont Rule of Civil Procedure 40(e)(3). See DeLeondardis v. Page, 2010 VT 52, ¶ 31 (holding that claim of bias was not preserved for review on appeal where defendant failed to seek disqualification under Rule 40(e)(3)). Accordingly, we can not consider the issue on appeal. See Gadreault, 171 Vt. at 538 (declining to review claim where, having failed to order transcript, appellant could not show that it was preserved).

On the day of argument, tenant called the clerk of this Court requesting orally that the argument be continued because tenant had to take his daughter to a medical appointment. In view of our conclusion that tenant's issues are largely unreviewable in the absence of a transcript, we do not find that an argument would be helpful to tenant. Accordingly, the motion is denied.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice