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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-530

JUNE TERM, 2002

A. Lee Faucett	}	APPEALED FROM:
	}	
v.	}	Chittenden Superior Court
	}	
Edward Farmer and Peggy L. Bradley	}	DOCKET NO. S0610-01 CnC
	}	
	}	Trial Judge: David A. Jenkins

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

Defendant Edward Farmer appeals the superior court's judgment in favor of plaintiff A. Lee Faucett in this landlord-tenant action. We affirm.

Defendant and Peggy Bradley rented a residential apartment from plaintiff pursuant to a one-year lease agreement commencing on December 1, 2000. From April 2001 on, no rent was paid to plaintiff. Apparently, defendant had moved out of the apartment, and Bradley had begun seeking assistance from the United States Department of Housing and Urban Development (HUD) and the Vermont Department of Social Welfare (DSW, now Department of Prevention, Assistance, Transition and Health Access). DSW administered a back-rent program that disbursed payments for rental arrears to those persons who qualified for HUD's Section 8 program.

On May 15, 2001, plaintiff filed suit against defendant and Bradley, seeking back rent. In June 2001, a case manager for DSW wrote defendant's attorney a letter stating that Bradley met "most" of the eligibility requirements for the back-rent program, and that if plaintiff were willing to accept a subsidy from the Burlington Housing Authority, DSW "would consider her application for back rent with the possibility of paying up to 3 months back rent that is owed." Plaintiff landlord refused to agree to a housing inspection, however, which blocked Bradley's efforts to benefit from the Section 8 program. Meanwhile, plaintiff's suit was tried by court on July 6, 2001. Following the trial, the superior court entered judgment for plaintiff, awarding him four months back rent. In its decision, the court concluded that plaintiff was not required to mitigate damages by entering into a new lease with different terms under HUD's Section 8 program because the concept of mitigation does not require the acceptance of revised or additional contract terms.

On appeal, defendant argues that plaintiff had an obligation under the implied covenant of good faith and fair dealing to enter into a modified contract with Bradley so that she could participate in the Section 8 program, and that plaintiff may not recover back rent that he could have collected through mitigation of damages by agreeing to participate in the program. We find these arguments unavailing. Without question, the principles underlying the duty to mitigate damages and the covenant of good faith and fair dealing are applicable to landlord-tenant agreements. See O'Brien v. Black, 162 Vt. 448, 452 (1994) (concluding that principles underlying duty to mitigate in general contract law apply with equal force to landlord-tenant agreements); Carmichael v. Adirondack Bottled Gas Corp., 161 Vt. 200, 208 (1993) (holding that "underlying principle implied in every contract is that each party promises not to do anything to undermine or destroy the other's rights to receive the benefits of the agreement"). But neither the duty to mitigate nor the covenant of good faith and fair dealing required plaintiff to substitute his current lease agreement for another one with only one of the previous tenants pursuant to a subsidized housing program imposing additional obligations. This is not what plaintiff

bargained for when he signed the original lease agreement with defendant and Bradley.

Defendant describes the additional obligations that would be imposed upon plaintiff under the Section 8 program as "trivial" and "minimal," and points out that he indicated he would pay for any minor repairs that might be necessary following a housing inspection. But the forty or so pages of fine print detailing the landlord's obligations under the Section 8 program belie defendant's attempts to downplay the additional requirements that plaintiff would have to meet if he agreed to participate in the program. Indeed, plaintiff makes no attempt to challenge the superior court's finding that the Section 8 regulations would obligate plaintiff to assent to many new and different terms, including inspection and termination requirements. This is not a situation where the landlord has failed to mitigate damages after the tenant left the premises. Rather, defendant is asking the courts to require plaintiff to accede to an entirely different lease agreement with many new and different terms. The superior court correctly determined that plaintiff cannot be forced to do so as part of his duty to act fairly under the parties' agreement and to mitigate his damages.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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James L. Morse, Associate Justice

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Marilyn S. Skoglund, Associate Justice