

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-012

DECEMBER TERM, 2003

Rosaire St. Pierre	}	APPEALED FROM:
	}	
v.	}	Franklin Superior Court
	}	
Michael Stanford	}	DOCKET NO S297-02 Fc
	}	
	}	Trial Judge: Dennis R. Pearson
	}	

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

Tenant Michael Stanford appeals pro se from an order of the Franklin Superior Court granting landlord Rosaire St. Pierre' s complaint for eviction. We affirm.

According to the trial court' s findings, the parties had an oral rental agreement for month-to-month tenancy in premises landlord owns in Richford, Vermont. On June 27, 2002, landlord served tenant with a notice to quit, stating that the tenancy would end, for no cause, effective September 30, 2002. Landlord served the notice on the same date the superior court dismissed a previous eviction action landlord had filed against tenant for nonpayment of rent. The court dismissed the prior case on grounds that no outstanding rent was due and that landlord filed the action to retaliate against tenant.

Landlord filed the present action to regain possession of his rental property, and tenant filed an answer and counterclaim. Tenant' s counterclaim sought unspecified damages for emotional distress and attorneys fees under Vermont' s Consumer Fraud Act, 9 V.S.A., chapter 63. Tenant also alleged that landlord failed to maintain the premises. Landlord moved for an order directing tenant to pay rent into court. The court granted the motion, but reduced the monthly rent from \$600 to \$400 per month because the premises needed repairs.

On November 22, 2002, the parties tried the case before the court. Following the hearing, at which only tenant and landlord testified, the court recited its findings on the record and issued a written judgment order in landlord' s favor. The court determined that landlord provided tenant with sufficient notice to terminate the tenancy for no cause. The court delayed the effective date of the writ of possession to January 22, 2003 to allow tenant to find new housing for himself and his family. In the meantime, tenant was ordered to continue paying rent into court at the reduced rental amount in consideration for the condition of the premises. This appeal followed.

On appeal, tenant first argues that the court erred by denying his claim that landlord' s action amounted to retaliation. In addressing tenant' s claim, we must be mindful of the standard of review. When reviewing the trial court' s fact findings, we do not assess the credibility of witnesses nor the weight the court gave to the evidence. Gilbert v. Davis, 144 Vt. 459, 461 (1984). Thus, a party claiming the court' s findings are erroneous must demonstrate that the contested findings lack evidentiary support. Id. That standard has not been met here. In this case, the court was unpersuaded by the evidence that the present eviction was retaliatory. The court noted landlord' s efforts to make some repairs to the property after he served the June 2002 notice to quit. From that the court reasonably inferred that landlord did not intend to retaliate against tenant by seeking eviction, notwithstanding his prior retaliatory actions against tenant. The court found that

landlord wanted to rent his property to someone other than tenant, likely due to the parties' less than amicable relationship. Because the court's finding is based on a reasonable inference from the evidence, we find no clear error.

Tenant next argues that he is entitled as a matter of law to attorneys fees and damages for his consumer fraud claim under our decision in Bisson v. Ward, 160 Vt. 343 (1993). In that case, we explained that the Consumer Fraud Act, 9 V.S.A., chapter 63, is meant "to protect the public from unfair and deceptive business practices and to encourage fair and honest competition." 160 Vt. at 349. At the time the Bissons rented the premises to Ward, they falsely promised her that they would make certain repairs to the property and did not advise her of the property's additional defects. That material misrepresentation formed the basis for Ward's Consumer Fraud claim. We held that landlord/tenant agreements are not exempt from the Act, and we remanded the matter back to the trial court for a determination of damages and an award of attorney's fees in light of the trial court's findings that the Bissons acted deceptively and unfairly in renting the premises to Ward. Id. at 351-52.

In contrast to the tenant's claim in Bisson v. Ward, tenant's consumer fraud claim here consists solely of his assertion that landlord was retaliating against him by evicting him. There was no evidence of any material misrepresentation by landlord in this case. And, considering that the court rejected the foundation of tenant's claim of consumer fraud, the court correctly denied tenant's request for attorneys fees and damages under the Act.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice