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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2004-105

AUGUST TERM, 2004

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| Peter Beck, M.D.<br><br>v.<br><br>Andy Nau and Kirsten Doellinger | } | APPEALED FROM:<br><br>Franklin Superior Court<br><br>DOCKET NO. S218-03 Fc<br><br>Trial Judge: Howard E. VanBenthuysen |

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

Landlord appeals from a Franklin Superior Court order concluding that landlord breached the implied warranty of habitability by failing to fix the furnace from October 2000 to January 2001 in the premises he rented to tenants. We affirm.

The record reveals the following facts, which are viewed in the light most favorable to the prevailing party. Spaulding v. Butler, 172 Vt. 467, 475 (2001). In the late summer of 2000, landlord, who lives in New Hampshire, agreed to rent to tenants a house he owns in Alburg, Vermont for $600 per month. The oral agreement created a month-to-month tenancy. At the end of October 2000, tenants notified landlord that the furnace was not working. A technician inspected the furnace and informed landlord by telephone that the furnace needed replacement. A second technician from a different firm subsequently inspected the furnace. The second technician similarly " condemned" the furnace.

Landlord refused to replace the furnace and attempted to repair it himself. One of the tenants also tried to fix it, but was unable to do so. The furnace remained non-functional through November and December. In late November, tenants informed landlord that they would vacate the premises if landlord did not replace the furnace and restore heat to the residence. At about the same time, tenants installed a small woodstove which provided some heat to two rooms in the house. By January 2001, the weather turned much colder, and on January 14, tenants notified landlord that they were moving out by month' s end. Despite the lack of a working furnace, landlord responded by demanding that tenants remain in the house until February 14 or lose their $600 security deposit. Tenants moved out on January 24 anyway, and landlord was able to rent the property to other tenants effective February 1, 2001.

On or about January 28, before the new tenants moved in, landlord traveled to the Alburg house. Upon arrival, landlord discovered that some pipes had frozen and burst in the basement, spilling water on the dirt floor. Landlord cleaned up the mess and fixed the pipes himself. In May 2003, landlord filed the present action seeking compensation for damages he claimed tenants caused to his Alburg property, including damages caused by the frozen pipes. Tenants counterclaimed, alleging breach of the implied warranty of habitability and consumer fraud. After a bench trial, the court entered judgment for tenants. The court rejected tenants' consumer fraud claim, but awarded them $234 for oil tenants purchased but could not use because the furnace did not work. The present appeal followed the court' s denial of landlord' s motion for reconsideration.

In his pro se brief, landlord presents the following question for our consideration: " [W]hether the Supreme Court would come to the same decision were it to read and weigh the submissions by [the parties] to the Franklin [Superior] Court and heard the same with conflicting testimony by [tenants] at the trial." The issue landlord presents reveals his misunderstanding of the Supreme Court' s role in reviewing superior court judgments. This Court does not substitute its

judgment for that of the trial court on matters of fact. Whipple v. Lambert, 145 Vt. 339, 341 (1985). Likewise, the Court does not resolve conflicts in testimony or reweigh the evidence admitted at trial because those responsibilities rest with the trier of fact. Kasnowski v. Dep' t of Employment Sec., 137 Vt. 380, 381 (1979). We will uphold the trial court' s judgment if it is supported by findings that are grounded in the record evidence. Spaulding, 172 Vt. at 475. Even where substantial evidence contradicts the trial court' s findings, the findings will withstand scrutiny on appeal if the record contains any credible and supportive evidence. Agway, Inc. v. Brooks, 173 Vt. 259, 262 (2001). Landlord has not demonstrated that the superior court' s findings lack any support in the evidence admitted at trial. Indeed, the essential fact supporting the superior court' s judgment " that the furnace did not work during tenants' period of occupancy " was admitted by landlord.

Landlord contends that tenants should have done more to let him know that the furnace remained in disrepair throughout the time they occupied the Alburg premises. We disagree. It is well established that a tenant cannot, as a matter of law, waive the landlord' s obligation to provide a rental unit with a reasonable amount of heat. See 9 V.S.A. § 4457(c) (establishing landlord' s statutory duty to furnish rental premises with reasonable heat); Nepveu v. Rau, 155 Vt. 373, 375 (1990) (holding that implied warranty of habitability may not be waived by agreement). Once notified of a problem affecting a tenant' s health and safety, the landlord must undertake the necessary repairs to fulfill the landlord' s duty under § 4457(c). In this case, therefore, landlord was obligated to repair the furnace after tenants notified him that it had stopped functioning properly at the end of October. Tenants had no obligation to provide any additional notice to landlord about the state of the furnace. Landlord, not tenants, was responsible for ensuring the furnace provided heat to the premises.

Landlord complains that as an out-of-state resident, he should be afforded some kind of protection against the actions tenants took in this case. In landlord' s view, tenants maliciously abandoned the property knowing that the pipes could freeze because the house had no heat. Landlord provides no legal authority for his argument, and we can find none in the statutes governing residential rental agreements. See 9 V.S.A. § § 4451-4468. The duty to maintain a rental premises in a condition that is fit for human habitation does not depend upon how difficult it might be for the property owner to fulfill that duty. Thus, even if tenants knew that by moving out it was possible the pipes could freeze and burst, the fact remains that landlord had the duty to ensure the premises were adequately heated. Tenants notified landlord twice, once in November 2000 and again in January 2001, that they would move out if he did not replace the furnace as two technicians had recommended. Landlord' s claim that tenants are responsible for the damage to his property from the frozen pipes is without merit.

Finally, landlord claims that the court erred by concluding that he breached the warranty of habitability because the premises was heated by the wood stove tenants installed. In support, landlord argues that the residence had been heated by wood for over 100 years before this case arose. The superior court found, however, that the stove was capable of heating only a couple of rooms in the house, although tenants rented the entire premises. The implied warranty of habitability applies to the entire residence and not just a portion of it as landlord' s argument presumes. The evidence supports the court' s implicit finding that the wood stove did not furnish a reasonable amount of heat to the Alburg house during the winter months at issue here. We find no reason to disturb the court' s ruling.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice