

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2001-097

JANUARY TERM, 2002

Sotos Papaseraphim	}	APPEALED FROM:
	}	
v.	}	Chittenden Superior Court
	}	
Donald and Rose Mary Francis	}	DOCKET NO. S862-00CnC
	}	
	}	Trial Judge: Ben W. Joseph
	}	
	}	

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

Landlord appeals the Chittenden Superior Court's order denying his request for payment of back rent and a writ of possession, and granting in part tenants' counterclaim for landlord's breach of the warranty of habitability. We affirm in part and reverse and remand in part.

On July 12, 2000, landlord filed a pro se complaint in superior court seeking an order requiring tenants to pay rent landlord claimed was overdue and unpaid and directing tenants to vacate the mobile home landlord rented to them. The mobile home rental was subject to two written agreements: one between tenants and landlord and the other between tenants, landlord and the Vermont Housing Authority under the so-called Section 8 program. Tenants, acting pro se, filed an answer to landlord's complaint which denied the complaint's allegations. Tenants also counterclaimed seeking damages for landlord's breach of the warranty of habitability. On September 11, 2000, the court convened an evidentiary hearing at which both parties appeared pro se. The court took testimony from both parties and admitted the few exhibits offered, including photographs of the mobile home. At the beginning of the hearing and before the court swore the parties in, tenants informed the court that they did not tender rent in June, July and August 2000 due to landlord's failure to repair several problems in their home. Because neither party brought with them a copy of the written Section 8 agreement, the court continued the matter and directed landlord to bring a copy of that agreement to the next hearing. The court advised both parties that it would take further evidence on their claims should they wish to present additional evidence at that time.

The hearing continued on October 30, 2000. The court admitted the Section 8 agreement and allowed further testimony from both tenants and landlord. On November 14, 2000, the court issued its opinion and order in the matter. The court found that the mobile home was not fit for habitation from January 1 to November 1, 2000, and the inhabitable condition materially affected tenants' health and safety. It found that several provisions of the agreement between landlord and tenants were unenforceable due to the preemptive provisions in the Section 8 agreement. The court awarded tenants damages "equal to all of the rent that they paid to the landlord from January 1, 2000 to November 1, 2000 when the premises were brought into compliance with Housing Code Regulations," as well as rent tenants paid into escrow during the pendency of the case up to November 1, invoking 9 V.S.A. 4458. It directed tenants to file with the court a statement itemizing all rental payments they made to landlord from January 1 to November 1, 2000 so the court could enter judgment specifying the dollar amount of damages it ordered. Finally, the court denied landlord's petition for a writ of possession.

Tenants filed the required itemized statement of rental payments totaling \$2,552, which included rent they allegedly paid for June, July and August 2000. On December 1, 2000, landlord asked the court to reconsider its decision. Among the errors landlord asserted the court committed was its determination that tenants paid rent for June, July and August 2000, when tenants stated that they did not in fact pay rent during those months. On January 16, 2001, the court denied landlord's reconsideration motion. Responding to landlord's contention that tenants did not pay rent during June, July and August 2000, the court stated that the "tenants' testimony that they paid rent was credible." Landlord appealed.

Before we address the merits of landlord's appeal, we note that landlord's filing at this Court does not substantially comply with the Vermont Rules of Appellate Procedure. Not only did landlord fail to file a printed case in accordance with our rules, see V.R.A.P. 30, landlord's brief, which consists of a one-page letter, does not come close to meeting the standard set out in V.R.A.P. 28 because it contains no statement of the case, no citation to legal authorities, and no clear statement of the issues on appeal. Normally, we would reject landlord's appeal as being inadequately briefed. See Hill-Martin Corp. v. Alling, 137 Vt. 432, 434 (1979) (brief which merely repeated trial objection without argument or supporting authorities is inadequate, and Court will not address issue that is inadequately briefed.) In light of both parties' pro se status, however, and in the interests of justice in this particular case, we have suspended our rules, reviewed the record below, and will address the one issue we see clearly raised in landlord's brief. See V.R.A.P. 2 (Court may suspend rules on its own motion for good cause).

Landlord claims the court erred by finding that tenants paid rent during June, July and August 2000 when tenants told the court that they did not actually pay rent during that time. We review a trial court's factual findings in the light most favorable to the prevailing party below and we disregard the effect of any modifying evidence. Jarvis v. Gillespie, 155 Vt. 633, 637 (1991). Trial courts, rather than this Court, are responsible for assessing the credibility of witnesses and weighing the evidence admitted at trial. In re N.H., 168 Vt. 508, 512 (1998). Thus, we will uphold a trial court's factual findings on appeal if they are supported by the evidence and are not clearly erroneous. State v. Tongue, 170 Vt. 409, 412 (2000).

After reviewing the record below, we agree that the court erred by awarding tenants damages for the months of June, July and August 2000 because there was no credible evidence to support a finding that tenants paid rent during those months. Tenants represented to the court at the beginning of trial that they did not pay rent in June, July or August. That representation was consistent with landlord's contention that tenants owed back rent. Tenants' itemized post-order statement contradicted their earlier representation, but that statement was neither signed nor sworn. The record therefore contains no credible evidence to support the court's finding that tenants paid landlord rent during June, July and August 2000. Because court explicitly based its damages award on the rent tenants paid from January 1, 2000 to November 1, 2000, the court should not have included rent for the disputed three-month period without some credible evidence to support a finding that tenants actually paid rent during that time. Accordingly, we reverse and remand the damages award for further proceedings to determine only whether tenants paid rent during June, July and August 2000, and if so, how much.

Reversed and remanded for additional proceedings on damages consistent with this decision. In all other respects the trial court's November 14, 2000 and January 16, 2001 orders are affirmed.

BY THE COURT:

---

Jeffrey L. Amestoy, Chief Justice

---

James L. Morse, Associate Justice

---

Denise R. Johnson, Associate Justice