

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-465

APRIL TERM, 2007

Homer Durkee and Ruth Durkee	}	APPEALED FROM:
	}	
	}	
v.	}	Franklin Superior Court
	}	
Sherri McMahon and Craig Murray	}	DOCKET NO. S28-06 Fc
	}	

Trial Judge: Geoffrey Crawford

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

In this landlord-tenant dispute, tenants claim that the superior court erred in (1) awarding landlords damages for back rent, (2) awarding only a portion of tenants' requested attorneys' fees, and (3) denying tenants' request for punitive damages. We affirm.

Tenants have rented a mobile home from landlords almost continuously since 1996. During 2005 and 2006, tenants fell behind in their rent and landlords sent several notices to vacate. At this time, the applicable rent was \$350 per month. Tenants made partial payments, but never became fully current with their rent.

In January 2006, landlords filed a complaint seeking back rent and eviction. In response, tenants alleged that landlords breached the warranty of habitability and sought damages. Tenants cited several problems with the mobile home, the most serious of which was the lack of a potable water supply. Landlords knew about the lack of treated water since 1993, when the Village of Swanton sent landlords a notice that the water was untreated and not appropriate for use as drinking water. Although landlords corrected the majority of the problems, potable water was never provided. In February 2006, pursuant to a rent escrow order, tenants began paying rent into court and continued to do so until August 2006, when they moved out.

The court held a bench trial on July 7, 2006, on landlords' claims for back rent and tenants' counterclaim for violations of the warranty of habitability. At trial, tenants requested attorney's fees of \$4,200 based on their attorney's itemized bill. Based on the evidence, the court found that both sides had suffered damage. The court concluded that landlords were entitled to back rent of \$2,523.50. The court also awarded damages of \$1,000 to tenants on their habitability claim. In addition, the court awarded tenants attorney's fees in the amount of \$1,300. Tenants filed a motion to amend judgment, requesting that the rent escrow funds be returned to tenants in full and asking

for attorney's fees of \$4,200 and punitive damages. The court denied the motion.

On appeal, tenants claim that the court erred in awarding landlords damages for back rent. Tenants assert that, pursuant to statute, they were entitled to withhold rent and there was no basis for the court to release these payments to landlords because not all deficiencies were corrected. We disagree with tenants' interpretation of the statute and affirm the court's judgment.

The statute in question provides,

If the landlord fails to comply with the landlord's obligations for habitability and, after receiving actual notice of the noncompliance from the tenant, a governmental entity or a qualified independent inspector, the landlord fails to make repairs within a reasonable time and the noncompliance materially affects health and safety, the tenant may:

- (1) withhold the payment of rent for the period of the noncompliance;
- (2) obtain injunctive relief;
- (3) recover damages, costs and reasonable attorney's fees; and
- (4) terminate the rental agreement on reasonable notice.

9 V.S.A. § 4458(a). Thus, although the statute authorizes tenants to withhold rent during a period of noncompliance, this right is not synonymous with a finding that the entire payment was justifiably withheld. The question of how much in damages a tenant is entitled to for habitability violations is a question of fact for the court to determine. See Gokey v. Bessette, 154 Vt. 560, 565 (1990) (affirming trial court's award of damages for breach of the warranty of habitability where based on credible evidence). In discussing the common-law implied warranty of habitability, we explained that a tenant may withhold rent when a landlord violates the warranty of habitability, and thus force the landlord to bring suit. Hilder v. St. Peter, 144 Vt. 150, 162 (1984). The trier of fact must then evaluate the seriousness of the breach and the effect on tenant. Consequently, "[w]hether a portion, all or none of the rent will be awarded to the landlord will depend on the findings relative to the extent and duration of the breach." Id. at 163. In this case, the court found that landlords breached the warranty of habitability, and, based on all the evidence, that tenants were entitled to \$1,000, an amount less than the rent withheld by tenants. We find no basis to disturb this result.

In addition, tenants are dissatisfied with the amount of attorney's fees awarded by the trial court. Pursuant to statute, when the landlord violates the warranty of habitability, tenant is entitled to attorney's fees. 9 V.S.A. § 4458(a)(3); Bisson v. Ward, 160 Vt. 343, 347 (1993) (holding that where landlord violates warranty of habitability, award of attorney's fees is mandatory under the statute). The trial court has broad discretion to set a reasonable value for legal services and we will not disturb its award unless there is "strong evidence of excessiveness or inadequacy." Gokey, 154 Vt. at 567 (internal quotations omitted).

Tenants claim that the trial court erred in denying the full amount of requested fees because the court erroneously concluded that the matter could have been resolved more expeditiously. Tenants' argument rests primarily on its assertion that the trial court failed to admit letters, which would have shown that landlords blocked tenants' attempts to settle the dispute. Thus, tenants assert

that they are entitled to the full amount requested. We are not persuaded by tenants' argument. The letters did not reveal information that the trial court did not already consider. The court was aware that the parties had attempted to settle, but had been unable to reach an agreement. In explaining why it did not award the full amount requested, the court found that the matter could have been resolved more expeditiously and, thus, the time spent by tenants' attorney exceeded what was reasonable. Further, in response to tenants' motion to amend judgment, the court reasoned that given the issues raised in the case, the requested amount of fees was unreasonable. The trial court may rely on its own experience and knowledge in assessing the reasonableness of a request for attorneys' fees and fashioning an award. Id. The amount awarded in this case was within the court's discretion.

Finally, tenants argue that the trial court erred in failing to award punitive damages. Punitive damages are generally not available in breach of contract cases, unless the breaching party acted with malice. Monahan v. GMAC Mortgage Corp., 2005 VT 110, ¶ 53, 179 Vt. 167. "Actual malice may be shown by conduct manifesting personal ill will, evidencing insult or oppression, or showing a reckless or wanton disregard of plaintiff's rights." Id. ¶ 4 (internal quotation omitted). Tenants claim that landlords' continuing failure to fix the water problem constituted malice. The trial court did not make specific findings related to punitive damages, but did not include any such damages in its award to tenants. The court did explain that although landlords never remedied the drinking water problem, landlords remedied the majority of tenants' complaints. The court also found that both parties had suffered damages as a result of their landlord-tenant relationship. Based on these findings, we conclude that the court did not abuse its discretion in declining to award punitive damages. Bolsta v. Johnson, 2004 VT 19, ¶ 9, 176 Vt. 602 (mem.) ("The trial court's findings regarding punitive damages will be disturbed only if the court abused its discretion.").

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice