

Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

SUPREME COURT DOCKET NO. 2020-059

AUGUST TERM, 2020

Cherylyn Ramos* v. Richard Niquette	}	APPEALED FROM:
	}	
	}	Superior Court, Chittenden Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 1131-12-19 Cncv
		Trial Judge: Helen M. Toor

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

Tenant appeals a superior court order affirming a decision of the Burlington Housing Board of Review. We affirm.

Plaintiff was formerly a tenant in defendant landlord’s apartment. After tenant vacated the apartment, landlord kept a portion of tenant’s security deposit and provided a list of deductions. Tenant disputed the basis for some of the deductions. The Board held a hearing at which tenant and landlord were present and testified. Except for a deduction related to the stove, the Board found that all the deductions were for damage attributable to tenant and the amounts were reasonable. In particular, the Board found that tenant was responsible for a hole through a wall between two bedrooms through which a cable installed in one room passed into another.

Tenant appealed the Board’s decision to the superior court under Vermont Rule of Civil Procedure 74. The superior court applies a deferential standard of review to decisions of the Board and reviews to determine whether the Board made legal errors or findings unsupported by the evidence. In re Soon Kwon, 2011 VT 26, ¶ 6, 189 Vt. 598 (mem.). The superior court concluded that the Board’s findings were supported by the evidence. The court explained that it was up to the Board as factfinder to determine issues regarding credibility and it was within the Board’s discretion to believe landlord over tenant. The court affirmed.

Tenant now appeals to this Court. On appeal, “our standard of review is the same as the superior court’s when reviewing board findings, which is to say, we employ on-the-record, as opposed to de novo, review.” Id. ¶ 7. As to questions of law, “our review is de novo.” Id.

Tenant contends that the Board erred in accepting landlord’s testimony based on photographs taken by landlord instead of crediting her photographs, which she alleges more clearly show the location and condition of the apartment. She also asserts that landlord improperly deducted \$200 for unpaid rent. She contends that the superior court erred in affirming the Board’s decision to credit landlord’s evidence over hers, arguing that this allows the Board to always believe a landlord over a tenant. Tenant also contends that landlord’s assertion that he did not

know about tenant's improper installation of a cable is incorrect. Tenant argues that the installation was done by the cable company and the damage was not her responsibility.

Landlord's evidence about the hole in the wall and the condition of the rental unit included testimony and photographs. Landlord testified that the lease did not allow installation of a cable without landlord's permission, that landlord would not have consented to the improper installation through the wall, and that landlord did not see the improper cable installation during the tenancy. Landlord also provided an accounting of rental payments received. Essentially, tenant asks this Court to evaluate the evidence again and to make different assessments regarding the veracity and persuasiveness of the parties' evidence. On appeal, we do not "reweigh the evidence or assess the credibility of witnesses." Sweet v. St. Pierre, 2018 VT 122, ¶ 13, 209 Vt. 1. As the superior court explained, as factfinder, it was up to the Board to decide the credibility to give to the parties' evidence and testimony. See Omega Optical, Inc. v. Chroma Tech. Corp., 174 Vt. 10, 20 (2002) ("Determinations of credibility are solely the province of the factfinder . . ."). The Board did not abuse its discretion in crediting landlord's evidence and testimony over tenant's. Contrary to tenant's assertion, this does not amount to a blanket ruling that the evidence of a landlord will always be credited over that of a tenant. The Board's findings were specific to the facts of this case. Therefore, there are no grounds to reverse the superior court's order.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

William D. Cohen, Associate Justice