NOLA EAST, LLC	*	**NO. 2018-CA-0623**
VERSUS	*	**COURT OF APPEAL**
MYRON SIMS	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
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LOBRANO, J., DISSENTS AND ASSIGNS REASONS.

I respectfully dissent. I would affirm the judgment of the lower court. I find that the lower court properly held the hearing on the eviction proceedings, and a new trial is not warranted. The lessee, Mr. Simms, failed to proffer the evidence he is now claiming he was not allowed to introduce. Regardless of whether Mr. Simms was allowed to address the habitability of the apartment, those defenses regarding habitability did not relieve him of his obligation to pay rent to the lessor, NOLA East.

"In Louisiana, the lessor has the obligation to maintain the leased premises in a condition fit for its intended use, and to make necessary repairs." *KM, Inc. v. Weil Cleaners, Inc.*, 50,209, p. 6 (La. App. 2 Cir. 1/13/16), 185 So.3d 112, 117 (citing La. C.C. art. 2691). "If the lessor fails to fulfill this obligation, the law provides the lessee with two options. He can sue for dissolution of the lease agreement and resulting damages, or he can make indispensable repairs himself and deduct a reasonable cost thereof from the rent due." *Id.* (citing La. C.C. arts. 2693, 2694; *New Hope Gardens, Ltd. v. Lattin*, 530 So.2d 1207, 1210 (La. App. 2d Cir. 1988)). "A lessee is not justified in retaining possession of the leased premises rent-free without pursuing either of these codal remedies." *Id.* (citing *New Hope Gardens, Ltd.*, 530 So.2d at 1210). The Louisiana Supreme Court has explicitly

held that a "lessee may not anticipate refusal or neglect to make the repairs or withhold rent to apply economic pressure on a lessor." *Davilla v. Jones*, 436 So.2d 507, 510 (La. 1983).

It is evident from the record that Mr. Simms failed to pursue either of the two codal remedies provided in articles 2693 and 2694. Louisiana law does not permit him to retain possession of the apartment rent-free without availing himself of these codal remedies.

The majority seems to apply the equitable doctrine of judicial control to deny dissolution of the lease for nonpayment of rent. I do not find any case that extends judicial control to the facts before this Court, and I refuse to extend judicial control in the manner put forth by the majority.

"The doctrine of judicial control is an equitable doctrine by which the courts will deny cancellation of the lease when the lessee's breach is of minor importance, is caused by no fault of his own, or is based on a good faith mistake of fact. *429 Bourbon St., LLC v. RMDR Investments, Inc.*, 2016-0800, p. 17 (La. App. 4 Cir. 11/15/17), 230 So.3d 256, 267, *reh'g denied* (11/17/17), *writ denied*, 2017-02054 (La. 2/2/18), 235 So.3d 1106 (citing *Carriere v. Bank of La.*, 95-3058 (La. 12/13/96), 702 So.2d 648). "Cases which have applied judicial control of leases generally involve circumstances where a lessee had made a good faith error and acted reasonably to correct it." *Id.*, (quoting *KM, Inc.*, 50,209 (La. App. 2 Cir. 1/13/16), 185 So.3d 112, 118). *See also Good v. Saia*, 2007-0145, pp. 26-27 (La. App. 4 Cir. 9/12/07), 967 So. 2d 1161, 1175-76 (collecting cases applying judicial control in circumstances including postal service delay, relying on incorrect receipt by lessor, and inadvertently tendering third party check for insufficient funds).

The record lacks any evidence of a good faith mistake of fact or that nonpayment of rent was due to circumstances beyond Mr. Simms' control.

Withholding rent to put economic pressure on a lessor to make repairs is not a permissible ground for judicial control.

For these reasons, I would affirm the judgment of the district court.