NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0058-21

MICKLE DUNKINS,

Plaintiff-Appellant,

v.

447 SOUTH 13th STREET HOLDINGS, LLC,

Defendant-Respondent.

____

Submitted May 2, 2022 – Decided June 8, 2022

Before Judges Natali and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. SC-000553-20.

Mickle Dunkins, appellant pro se.

Respondent has not filed a brief.

PER CURIAM

In this unopposed appeal, plaintiff Mickle Dunkins appeals pro se from a June 17, 2021 Special Civil Part order dismissing his complaint against

defendant 447 South 13th Street Holdings, LLC. Plaintiff's action sought the return of his security deposit and statutory penalties for violation of the Security Deposit Act (SDA), N.J.S.A. 46:8-19 to -26. We affirm.

On March 12, 2021, plaintiff filed a complaint alleging defendant failed to return his entire security deposit. On June 17, 2021, plaintiff, pro se, and defendant, represented by counsel, appeared for a bench trial. In support of his complaint, plaintiff provided testimony but did not call any other witnesses.

The relevant evidence adduced at trial was as follows. Plaintiff rented an apartment located at 447 South 13th Street for fifteen years.[1] Plaintiff paid a security deposit of $2,100 to the previous building owner when he entered the initial residential lease. The lease was renewed over the years during plaintiff's tenancy.

In March 2016, defendant purchased 447 South 13th Street "AS IS" at a sheriff's sale. Plaintiff testified that between March 2016 and March 2020, he performed trash and snow removal around the premises. Plaintiff contends that he also functioned as a superintendent under a Newark city ordinance.[2]

---

[1] A copy of the lease was not entered as an exhibit at trial.

[2] Plaintiff did not provide a citation to the specific Newark city ordinance at trial nor in his moving brief on appeal.

In February 2020, plaintiff vacated the apartment after providing the thirty-day written notice. Defendant itemized $1,400 in accrued late fees from June 2016 through December 2019 and $365 for three damaged doors and countertops, totaling $1,765, which was listed in a "statement of security deposit refund" dated March 2, 2020. The parties acknowledged the statement was received within thirty days of plaintiff vacating the apartment. Defendant refunded plaintiff $335 from his security deposit.

Plaintiff admitted that the lease contained a late penalty provision and that he failed to pay his rent on time, but claimed that a late fee notice was never provided to him. Hanna Urban, defendant's representative, testified that it was not defendant's practice to send late fee notices to tenants.

After hearing the testimony from the parties, the trial judge entered judgment in favor of defendant and dismissed plaintiff's complaint "with prejudice for failure to meet [his] burden of proof." The judge determined plaintiff was not entitled to the return of his security deposit because "he knew when his rent was due," and as such, "he was not entitled to notice." The judge further explained "the amount of the late fee accrue[d] throughout the term of

the occupancy and nothing in the tenant estoppel certificate,[3] . . . changes that, initiates the obligation on the part of the tenant to pay . . . a late fee whenever rent is late." The judge found that the total charges of $1,765 were "less than the total amount of the security deposit paid of $2,100" and "[the] net due to the defendant of $335 that was [owed] to him."

Plaintiff moved for reconsideration, which was denied

On appeal, plaintiff reiterates the argument presented before the trial court that defendant wrongfully withheld his security deposit. Plaintiff also presents the following new arguments for consideration, that the trial court erred by not finding: (1) breach of fiduciary duty by failing to place the security deposit in an interest-bearing account and providing the required notice; (2) a quid pro quo relationship existed between plaintiff and defendant; (3) snow and trash removal duties were consistent with that of a live-in superintendent; (4) defendant had a duty to mitigate damages; (5) defendant was required to produce photographic evidence of the building purchased in "AS IS" condition; and (6) defendant's representative, who had no personal knowledge of the property, was precluded from testifying.

---

[3] An estoppel certificate is a statement certifying the current status and terms of the lease agreement between the tenant and the landlord for a prospective purchaser of property.

When reviewing a decision in a non-jury trial matter, we "give deference to the trial court that heard the witnesses, sifted the competing evidence, and made reasoned conclusions." Griepenburg v. Twp. of Ocean, 220 N.J. 239, 254, (2015). "[W]e do not disturb the factual findings and legal conclusions of the trial judge unless we are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant[,] and reasonably credible evidence as to offend the interests of justice[.]" Seidman v. Clifton Sav. Bank, SLA, 205 N.J. 150, 169 (2011) (internal quotations omitted). In reviewing the judge's findings, this court "do[es] not weigh the evidence, assess the credibility of witnesses, or make conclusions about the evidence." Mountain Hill, LLC v. Twp. of Middletown, 399 N.J. Super. 486, 498 (App. Div. 2008) (quoting State v. Barone, 147 N.J. 599, 615 (1997)). This court owes no deference, however, to the judge's interpretation of the law and the legal consequences that flow from established facts. Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

N.J.S.A. 46:8-21.1 requires the landlord to return the tenant's security deposit and interest accrued "[w]ithin 30 days after the termination of the [ ] lease . . . less any charges expended in accordance with the terms of [the] lease." Any deductions the landlord makes must be "itemized," and notice must be

forwarded to the tenant. Ibid. If the landlord violates this section of the SDA, the tenant may bring suit, and "the court upon finding for the tenant . . . shall award recovery of double the amount of said moneys, together with full costs of any action and, in the court's discretion, reasonable attorney's fees." Ibid.

It is undisputed from the record that plaintiff was required to pay monthly rent on the first day of the month, and if rent was not paid by the close of business on the fifth day of each month, plaintiff was required to pay a $50 late fee. It is likewise undisputed that plaintiff habitually paid his rent late.

Plaintiff argues the unsigned tenant estoppel certificate precludes defendant from deducting the accrued late fees from his security deposit since defendant's right had been waived. We are unpersuaded by plaintiff's misinterpretation of the certificate, contending that no amount was "due and owing" since defendant failed to provide timely notice of late fees. Nor do we find apposite or binding Burstein v. Liberty Bell Village, 120 N.J. Super. 54, 58-59 (Cty Ct. 1972), relied upon by plaintiff. In that case it was held that where a lessor retains a damage deposit "'in good faith' but in legal error" a court has the discretion not to grant double recovery. We discern no legal error since the judge found defendant acted in "good faith" in deducting the late fees from plaintiff's security deposit.

The record fully supports the judge's findings of fact, which were based on his credibility determinations and review of the evidence admitted at the bench trial. There is ample support for the trial judge's conclusion that plaintiff incurred late fees over a four-year period and damaged defendant's property. Furthermore, plaintiff did not present any evidence to rebut defendant's proofs. The judge appropriately applied plaintiff's security deposit to offset the accrued late fees and damages. See N.J.S.A. 46:8-21.1.

We decline to address issues that are raised for the first time on appeal, as plaintiff had the opportunity to raise these issues in the Special Civil Part during the bench trial, and did not do so. See Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973).

To the extent we have not addressed them, any remaining arguments raised by plaintiff lack sufficient merit to warrant discussion in this opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION