

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-308

FEBRUARY TERM, 2018

Stephen Taran v. Heather Holcomb*	}	APPEALED FROM:
	}	
	}	Superior Court, Rutland Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 98-2-17 Rdcv

Trial Judge: Helen M. Toor

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

Defendant tenant appeals the superior court's order granting plaintiff landlord a writ of possession and denying tenant's counterclaims. We affirm.

In February 2017, landlord filed a complaint seeking a writ of possession and back rent. In May 2017, tenant filed an amended list of counterclaims, including breach of the implied warranty of habitability, retaliatory eviction, violation of the Consumer Protection Act, and infliction of emotional distress. At the conclusion of a June 27, 2017 evidentiary hearing, the superior court made the following findings. In the fall of 2015, landlord and tenant entered into an oral agreement under which tenant would pay landlord a reduced monthly rent of \$500 for an undetermined period of time if she cleaned up the house and her boyfriend provided labor for needed repairs. The parties agreed that tenant was to provide landlord with a list of materials needed for the boyfriend to make the repairs. Tenant never sent a specific list of materials to landlord, and the repairs were never done. Tenant paid rent for an undetermined number of months before ceasing her payments. In December 2016, a pipe broke in the house, resulting in tenant's loss of heat and running water. Tenant did not inform landlord of this situation.

Based on these findings, the court denied defendant's counterclaims, relying in particular on the fact that tenant did not inform landlord of the loss of heat and water at the home following the December 2016 incident. The court granted landlord a writ of possession, but denied his claim for back rent because of his failure to keep written records of the rent paid and the fact that rental of the house was not worth \$500 because of the loss of heat and water.

Tenant appeals, raising twenty claims of error, none of which have merit. She argues that the court erred by not ruling on her request to compel a copy of an inspection report of the house done by an insurance inspector. The court granted the inspector's motion to quash at the beginning of the hearing after tenant agreed that she was no longer asking the court to do anything about it. In any event, she asserts that the report was needed to prove landlord was aware of major defects in the house, but the report was done several months before tenant lost heat and water.

Tenant also argues that the court denied her counterclaims without distinguishing them, but the only evidence she presented at the hearing went to the alleged breach of the implied

warranty of habitability, which the court specifically addressed. When the court asked tenant what the basis was for her claim under the Consumer Protection Act, she stated that landlord never provided her with materials for repairs, neglected the house, and lied to her. However, based on tenant's own testimony, the court found that she never provided landlord with a list of needed materials. Moreover, plaintiff offered little if any evidence to satisfy the elements of any claim under the Consumer Protection Act. See Terry v. O'Brien, 2015 VT 132, ¶ 28, 200 Vt. 511 (setting forth test for determining what constitutes deceptive act under Consumer Protection Act). Nor did she offer any evidence to support a claim of retaliatory eviction or of infliction of emotional distress.

Tenant also states that the court's ruling was clearly erroneous because it denied landlord back rent for many more months than the six-month period between when she lost heat and water and when the hearing was held. This may be a valid argument in favor of granting landlord some back rent, but landlord did not file a cross-appeal, and the argument does not demonstrate that the court erred in denying tenant's counterclaims. The other arguments tenant raises also lack merit. The evidence presented at the hearing, as well as the court's findings and conclusions, amply support the court's grant of a writ of possession and its denial of tenant's counterclaims.

Affirmed.

BY THE COURT:

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice