

*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. 2019-403

APRIL TERM, 2020

Soon K. Kwon* v. Eric Edson & Dina Well	}	APPEALED FROM:
	}	
	}	Superior Court, Chittenden Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 617-6-17 Cncv
		Trial Judge: Robert A. Mello

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

Following a remand, the trial court issued a final order denying landlord's request for back rent. Landlord appeals and challenges the court's findings. We affirm.

This landlord-tenant case came before this Court in a prior appeal. Soon Kwon v. Edson, 2019 VT 59. As summarized in our prior opinion, landlord filed an eviction action seeking payment for back rent and tenants counterclaimed for breach of contract, breach of the implied warranty of habitability, and illegal eviction. Following a bench trial, the trial court granted tenant Edson damages for breach of contract, judgment to tenant Well for compensatory and punitive damages, and judgment to landlord for unpaid rent based on unjust enrichment. This Court affirmed the first two determinations, concluding that the evidence supported the trial court's finding that the parties had an oral agreement allowing tenants to stay in landlord's apartment rent-free for a period of time, that landlord owed tenant Edson for work performed on the property, and that landlord's behavior warranted an award of damages to tenant Well. Id. ¶ 2. This Court concluded that the evidence did not, however, support the terms of the parties' rental agreement as found by the trial court, reversed the judgment for landlord on unpaid rent, and remanded for the trial court to make new findings on the scope of the parties' oral rental agreement. Id.

On remand, the trial court determined that the parties had an agreement allowing tenants to stay in landlord's apartment rent-free until renovations were completed on a different apartment. Because those renovations were never completed, the court determined that landlord was not entitled to back rent under either breach of contract or unjust enrichment. Landlord appealed.

Landlord argues that several findings made by the trial court are not supported by the evidence. In particular, landlord argues that there was no rental agreement allowing tenants to stay in the apartment rent-free, that there was no basis for punitive damages because he did not tow tenant Well's car, and that he does not owe tenant Edson money for the work he performed. These challenges all relate to matters that were raised and affirmed in the prior appeal. As indicated, this Court affirmed the trial court's findings that an oral rental agreement existed between the parties which allowed tenants to stay in landlord's apartment rent-free for a period of time, that landlord owed tenant Edson money for work performed, and that a punitive damage award was appropriate

given landlord's actions, including towing tenant Well's car. The sole matter remanded to the trial court was the scope of the parties' rental agreement. Under the law-of-the-case doctrine, matters that were already decided in a first appeal are final and not subject to further challenge. Whippie v. O'Connor, 2011 VT 97, ¶ 7, 190 Vt. 600 (mem.) ("Under the law-of-the case doctrine, questions necessarily involved and already decided by [a first appeal] decision will not be revisited in this second appeal."). This doctrine applies to both legal and factual issues. Id.

Landlord also argues that the evidence shows that he is entitled to back rent of \$1650 a month. The trial court found on remand that landlord was not entitled to any back rent because the parties had an oral agreement under which tenants were allowed to reside in landlord's apartment until the renovations were completed on a different apartment and those renovations were never completed. On appeal, we "will not set aside findings of fact unless, taking the evidence in the light most favorable to the prevailing party and excluding the effects of modifying evidence, they are clearly erroneous." Smith v. Drummond, 143 Vt. 175, 177 (1983) (quotation omitted). Here, tenants' testimony supports the courts findings. Therefore, there is no basis for reversal.

Affirmed.

BY THE COURT:

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice