Superior Court of New Jersey

IRMA RAMIREZ,
Plaintiff/Respondent,

v.

DARIA ORTIZ,
Defendant/Appellant.

APPELLATE DIVISION
DOCKET NO: A- 002548-23-T2

Civil Action

On Appeal from a Final Judgment of the New Jersey Superior Court, Special Civil Part, Essex County, ESX-LT-001658-24

Sat Below: Annette Scoca, J.S.C.

BRIEF AND APPENDIX OF DEFENDANT/APPELLANT DARIA ORTIZ

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PROCEDURAL HISTORY

On January 25, 2024, Plaintiff filed the instant nonpayment of rent eviction complaint ESX-LT-001658-24 against Defendant. The complaint alleged six months of unpaid rent. (Da1)

On March 12, 2024, both parties appeared *pro se* for trial. Following trial, the court entered Judgment for Possession in favor of the Plaintiff.[1] (Da25)

On April 2, 2024, Defendant appeared on a motion for reconsideration. The court denied the motion and the court also denied a stay but granted an Order for Orderly Removal.[2] (Da28, Da29)

On April 15, 2024, Defendant proceeding *pro se* filed the instant appeal. (Da32, Da35)

On July 31, 2024, Essex-Newark Legal Services filed a notice of appearance as counsel for Appellant/Defendant Daria Ortiz. (Da39)

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[1] Transcript for March 12, 2024 has number designation 1T.
[2] Transcript for April 2, 2024 has number designation 2T.

STATEMENT OF FACTS

In 2020, Defendant/Appellant Daria Ortiz and her minor child moved into the first floor unit at 189 1st Ave W, Newark, NJ, a property owned by Plaintiff/Respondent Irma Ramirez aka Irma Melendez. (Da30)

In October 2020, the parties signed a written lease agreement setting the monthly rent at $1,200. (Da30)

Experiencing a decrease in income due to the pandemic and fearful that she might soon need help with the rent, Ms. Ortiz applied for rental assistance with the Department of Community Affairs (DCA). (1T8-6) Awaiting word on her application, and despite financial difficulty, Ms. Ortiz continued to pay rent to Plaintiff. (1T8-10, 1T10-4, 1T15-13)

In July 2023, not having heard back, Ms. Ortiz placed a call to the Department. It was then that she learned that in November 2022, Ms. Ramirez had received and cashed a DCA check in the amount of $21,000 representing rental assistance approved for Ms. Ortiz. (1T10-4) Shocked that Ms. Ramirez had kept this from her while she continued to accept her rent, Ms. Ortiz confronted Ms. Ramirez. (1T10-4)

At first, Ms. Ramirez claimed that the check she had received was from FEMA and had nothing to do with Ms. Ortiz. (1T10-4) When Ms. Ortiz insisted that DCA had made it clear that the check was emergency COVID rental relief for her

household, Ms. Ramirez then agreed verbally to give Ms. Ortiz a credit against future rent. (1T7-6, 1T28-9)

Starting with July 2023, Ms. Ortiz began using the credit which Ms. Ramirez had agreed she could use to cover the rent. Knowing that she had a substantial rent credit to use, Ms. Ortiz relied on the credit to cover the rent for August, September, October, November and December 2023 and January 2024. (1T28-4, 1T28-9)

In January 2024, Plaintiff filed the instant eviction action alleging nonpayment of rent for the months of August 2023 through January 2024. (Da1) The complaint represented that the rent was $1,500 per month. (Da1) The complaint did not have attached to it a rent ledger or a copy of a lease agreement. (Da1)

On March 12, 2024 both parties appeared *pro se* for trial. (1T3-6) After the parties had been sworn, the court began an examination of the Plaintiff. (1T3-18) Asked by the court whether there was a written lease, Plaintiff's testimony was "no," that it was an oral month-to-month lease at the rate of $1,500 per month. (1T5-5) Asked by the court whether from the filing of the complaint to the present, the tenant had ever "reached a zero balance," Plaintiff's testimony was "Nope, and she hasn't paid since." (1T5-11) Asked by the court if Plaintiff received rental assistance on Defendant's behalf, Plaintiff admitted to having received a DCA payment in November 2022 but characterized the payment as being for "backed up rent" dating

back to 2020. (1T6-25) Asked by the court if what was due and owing amounted to $12,000, Plaintiff's testimony was "yes." (1T7-25)

With that the court then turned to Ms. Ortiz for an explanation. (1T8-4)

Ms. Ortiz began by describing how in 2020 she had applied to DCA for rental assistance but that "They took almost two years to help." (1T8-6) At that point, the court interjected that it was only concerned with the period of August 2023 to the present. (1T8-12) In response Ms. Ortiz explained that the reason she was talking about 2020 was because she had learned that DCA had made a $21,000 rental assistance payment on her behalf to the Plaintiff. (1T8-15)

Ms. Ortiz next testified that the payment covered the very months Plaintiff had also accepted rent from her. Accordingly, she explained, the Plaintiff had been "double paid." (1T8-18)

> **"She was paid from me and she was paid from the program." (1T8-19)**

Having now heard from the tenant that the Plaintiff may have double billed for rent, perhaps in the amount of $21,000, the court asked nothing of the Plaintiff. (1T8-21)

Instead, the court announced that it would be doing a calculation of payments starting with the very first month Ms. Ortiz had come into possession. (1T9-2, 1T9-8) Thereafter the court proceeded on a month by month inquiry of Ms. Ortiz

demanding from her proof of payments she had made to Plaintiff starting with 2020. (1T9-8)

Plaintiff interjected that she had never given the Ortiz household rent receipts. (1T11-23)

> **"The rent receipts that I give my tenants are here. I never gave her one because they were paying little-by-little. They didn't want a receipt." (1T11-23)**

With the court focused on solely examining the Zelle transfers, Plaintiff addressing the court made it known that Defendant had also paid some months in cash. (1T12-2).

> **"...she was sending some by Zelle and she was paying some in cash." (1T12-4).**

The court's response was "Hang on, I'm just going by the [Zelle] transfers." (1T12-6) Looking at the receipt produced by Ms. Ortiz showing a Zelle transfer to Plaintiff in December 2020 in the amount of $1,200, the court noted that a double payment to Plaintiff had occurred:

> **THE COURT: Okay. What this was showing if this is correct, in December of 2020 you were paid $1,500 by DCA. Okay. And in December of 2020 the tenant sent you a check for $1,200. So that's a double payment. (1T12-6).**

Thereafter, the court continued examining with Ms. Ortiz dozens of printed Zelle transfer receipts. The examination included the Court asking Defendant to hand over her cell phone so that it could cross-reference. (1T12-21).

> **THE COURT: So August '20 I see a Zelle. August is – we're starting from – actually I'm concerned with October of 2020, because that's when you're saying she received, October. So let's see October. Okay. Zelle 10-23-20 to Aerial Ortiz, 10-16, Irma Melendez $1,200. There's a payment in October. November, let's see. Okay. Melendez $1,200 for October — I mean November. December $1,200 that's December of 2020. Okay. Let's see '21. Okay. There's one for $500 in January of '21. February. (1T13-21).**

As Ms. Ortiz continued presenting her receipts, she would hear from the court "You really should have your proofs ready for the court." (1T15-23).

> **THE COURT: That's a transfer. That's not even a Zelle. So how did — I don't see a payment here for January.**
> **MS. ORTIZ: Of 2022**
> **THE COURT: Yeah. It just says, there's a Zelle transfer for $20, one for 60, there's a banking transfer to check 9930 for $1,200. (1T19-14).**

As the hour wore on, the court expressed its growing frustration. Addressing Ms. Ortiz, the court stated:

> **THE COURT: Ma'am, please listen to me very carefully. You're saying you don't owe her, I have to determine what proofs confirm that you don't owe her.**
> **MS. ORTIZ: Right.**
> **THE COURT: That's why we're going through this painstaking activity. Do you understand that?**
> **MS. ORTIZ: Yeah.**
> **THE COURT: I can't just accept your word that you don't owe the landlord. (1T21-10)**

Ms. Ortiz, who had not anticipated the court requiring that she prove four years of payments, was missing some rent receipts. (1T23-12) Certain that rent for those months had in fact been paid, Ms. Ortiz so testified. (1T12-5, 1T26-3) The court insisted it could not credit those months.

> **THE COURT: May is not there either.**
> **MS. ORTIZ: She got paid for it.**
> **THE COURT: How about June?**
> **MS. ORTIZ: She got paid, it's okay, I don't have the proof it is what it is.**
> **THE COURT: I'm sorry.**
> **MS. ORTIZ: She definitely got paid for those months, but —**
> **THE COURT: I don't have proof.**
> **MS. ORTIZ: She's not including that in what I owe her.**
> **THE COURT: I don't have proof from you.**
> **(1T24-14)**

It was then that the court asked Plaintiff whether Plaintiff had a receipt book. (1T26-16) Plaintiff deflected by asking "Receipt for what?" (1T26-17) When pressed, Plaintiff stated "These are the receipts that I use for my tenants." (1T26-22) Examining the book, the court pressed Plaintiff:

> **THE COURT: So did you give her receipts?**
> **MS. RAMIREZ: I never gave her receipt.**
> **THE COURT: Take your receipt books back.**
> **(1T27-4)**

The court then resumed its accounting relying only on Defendant's Zelle transfer receipts. (1T27-9).

A question arose as to the correct amount of the monthly rent. (1T30-15) To that end, Defendant offered the October 2020 lease that she and Ms Ramirez had both signed and which set the rent at $1,200. (1T30-15, Da1) Plaintiff, who had earlier testified to a month to month oral tenancy with no written lease, now offered an unsigned written lease which set the rent at $1,500 and which Plaintiff had submitted to DCA in connection with Defendant's rental assistance application. (1T5-5, 1T30-15, 2T7-3) Faced with the two versions, the court chose to accept the unsigned lease. (1T31-15, 2T7-3)

> **MS. ORTIZ: I have a lease here and it's $1,200 a month, it's not 15.**
> **THE COURT: Do you understand that I'm not accepting that as true? That's my ruling. (1T31-15)**

Concluding its accounting, the court declared Ms. Ortiz owed to Plaintiff either $22,400 or $8,000 depending on "how you do your math." (1T31-21, 1T32-6) Expressing its uncertainty as to which of the two figures was correct, the court ruled that it would give Ms. Ortiz the opportunity to repay the lower figure. (1T32-23) It then entered Judgment for Possession in the amount of $8,000.00. (1T32-24, Da25)

On April 2, 2024, Ms. Ortiz, on a motion for reconsideration, appeared before the court prepared with additional rent receipts which she hoped would show that even without accounting for cash payments she not only had a zero balance but that Plaintiff still owed her a rent credit. (2T9-18)

The court summarily refused to entertain the motion, reasoning that "a full blown trial" had already been conducted. (2T3-19, 2T10-9, Da28) Her request for a stay pending appeal also denied, Ms. Ortiz and her child thereafter vacated the unit. (2T12-7, Da28, Da29)

On April 11, 2024, Ms. Ortiz proceeding *pro se* filed this appeal.(Da32, Da35)

On July 31, 2024 Essex-Newark Legal Services filed its notice of appearance. (Da39)

LEGAL ARGUMENT

STANDARD OF REVIEW

The burden of proving a tenant's default in a nonpayment of rent action always rests with the Plaintiff. It is the Plaintiff who must submit evidence proving the tenant's default in rent. In the case at bar the court proceeded on an examination of payments focused solely on the Defendant. The legal error complained about in this case is that in the absence of Plaintiff being able to show the tenant's default, the court shifted the burden onto the tenant. As such, the standard of review is *de novo.* A "trial court's interpretation of the law and the consequences that flow from established fact are not entitled to any special deference." Manalapan Realty v. Manalapan Twp. Comm., 140 N.J. 366, 378 (1995).

I. THE COURT'S ASSUMPTION OF THE BURDEN OF PROOF AND ITS RELIANCE SOLELY ON DEFENDANT'S RECORDS CROSSED THE LINE OF IMPARTIALITY (1T21-10)

The Anti-Eviction Act N.J.S.A. 2A:18-61.1 places the burden of establishing good cause for eviction on the landlord. Fromet Properties, Inc. v. Buel, 294 N.J.Super. 601, 610 (App.Div.1996); see also 447 Associates v. Miranda, 115 N.J. 522, 530–31, (1989); Sudersan v. Royal, 386 N.J.Super. 246, 251 (App. Div. 2005); Village Bridge Apartments v. Mammucari, 239 N.J.Super. 235, 240 (App. Div. 1990). This is consistent with the Act's stated legislative purpose of "prevent[ing] the eviction of blameless tenants." Chase Manhattan Bank v. Josephson, 135 N.J. 209 (1994).

Additionally, the landlord has the burden of proof regarding any disputed fact relevant to good cause under N.J.S.A. 2A:18-61.1. See Hale v. Farrakhan, 390 N.J. Super. 335, 341 (App. Div. 2007) citing Fromet Properties Inc. v. Buel, 294 N.J.Super. 601 (App. Div. 1996);

In the case at bar, Plaintiff's allegation that the Defendant owed it rent was met with the defense by the tenant that Plaintiff, having received $21,000 in rental assistance, had double billed. With the receipt of assistance uncontroverted, it became Plaintiff's burden to prove that notwithstanding receipt of the $21,000 rental assistance payment, it was still owed rent. In that regard, Plaintiff needed to show how it applied the rental assistance, what payments the tenant had made and for what

months rent remained unpaid. In the event Plaintiff should fail to meet that burden, the fair application of law would require dismissal of Plaintiff's case.

The record below shows that Plaintiff did little to nothing toward meeting its proof burden. The record shows that Plaintiff who had not attached to its complaint a rent ledger, also did not produce one at trial for the court to review. The record also shows that Plaintiff having received $21,000 in rental assistance and facing the charge that it may have double billed, did not offer proofs to the court as to what months of rent it had allocated that assistance to. The record shows that Plaintiff also came to court with no receipts or records of payments made by the tenant and its testimony would be it never gave receipts to the tenant. This included not having any records as to payments in cash for rent that Defendant made, something Plaintiff acknowledged had taken place.

In the absence of a rent ledger, the court took on the task of creating one. In the face of allegations of double billing by the Plaintiff and in the absence of any records from the Plaintiff as to how it had applied the DCA rental assistance payment, the court expanded the scope of the action to encompass the entire history of the tenancy. In the absence of any records from the Plaintiff as to rent payments received, the court conducted an exhaustive one sided examination of the Defendant's Zelle payment records on her cell phone going back to the very inception of the tenancy. As to payments of rent made in cash, something which both

the Plaintiff and Defendant agreed had taken place, well those the court held would simply go uncounted. Defendant was not to be given credit for even a single rent payment in cash.

The court's failure to dismiss this action where Plaintiff did not come prepared to meet its burden of proof violated Defendant's right to a fair adjudication of her case. Further, having excused the Plaintiff from its burden of proof, the procedures which the court employed violated the Defendant's right to an impartial and fair adjudication of her case. On that basis and other grounds, the judgment below must be vacated.

II. THE COURT'S FINDING THAT DEFENDANT OWED $8,000 IN RENT LACKS ANY BASIS IN FACT (1T32-19)

Pursuant to N.J.S.A. 46:8-49.2(a) a landlord shall provide a receipt, either printed or emailed, to a tenant for each cash payment made to the landlord for any amount due to the landlord pursuant to a residential lease, renewal, or extension agreement. The receipt shall accurately indicate the amount of the payment, the purpose of the payment, when the payment was received, the printed or typed names of both the landlord and tenant, and who accepted the payment. Id.

The statute makes a landlord's failure to provide rent receipts a defense in any action or proceeding to recover possession for the nonpayment of rent. N.J.S.A. 46:8-49.2(c).

A showing that there is a default in payment of rent is predicated upon proof that the amount of rent alleged to be in default is due, unpaid and owing. Passaic Housing Auth. v. Torres, 143 N.J. Super. 231 (App. Div. 1976) (quoting Levine v. Seidel, 128 N.J.Super. 225, 229 (App.Div.), cert. denied 65 N.J. 570 (1974)). Where there is a failure to establish that the amount claimed is legally owing, the court is deprived of the jurisdiction to enter judgment for possession. Id. See also Marini v. Ireland, 56 N.J. 130, 139 (1970).

In the case at bar, having concluding its one-sided accounting, the court found that Ms. Ortiz owed Plaintiff either $22,400 or $8,000 depending on "how you do

your math." (1T32-6) Then expressing uncertainty as to which of the two figures was correct it then entered Judgement for Possession in the amount of $8,000.

Defendant submits that however one does one's math, the result will always be inaccurate where a category of payments made go uncounted. In the case *sub judice*, both the Plaintiff and the Defendant testified to rent being paid on some occasions in cash. Further, Plaintiff's testimony was that she had not provided any receipts to Ms. Ortiz on any occasion.

The significance of those two statements was that it would be impossible to account for cash payments. Therefore conducting an accurate accounting of all rent payments made by Ms. Ortiz could not be possible.

This fact however was not lost on the court. It instead determined that since Defendant could not prove her cash payments, they simply would go uncounted. The Defendant was not to be given credit for even a single cash payment. That Ms. Ortiz was unable to prove her cash payments was because Plaintiff had in violation of N.J.S.A. 46:8-49.2(a) failed to provide her with receipts. The statute creates a defense against nonpayment when the tenant pays cash and does not receive receipts.

Defendant submits that in the absence of records from the Plaintiff as to all rent payments it received including those in cash, and a showing by Plaintiff as to how the rental assistance it received was applied, the court's finding that Defendant owed $8,000 in rent to the Plaintiff lacks any basis in fact.

CONCLUSION

For all the forgoing reasons, the court's ruling in this case must be reversed and Judgment of Possession vacated.

Respectfully submitted,

Dated: October 17, 2024

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IRMA RAMIREZ,	:	SUPERIOR COURT OF NEW JERSEY
	:	APPELLATE DIVISION
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	:	Essex County Docket No. ESX-LT-001658=24
	:	SAT BELOW: Annette Scoca, J. S. C.

BRIEF AND APPENDIX OF PLAINTIFF/RESPONDENT IRMA RAMIREZ

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STANDARD OF REVIEW

As will be delineated in the Legal argument, generally with respect to an Appellate Court's review regarding a Court's decision granting the landlord a Judgment of possession it is based on an "abuse of discretion" standard. Hous. Auth of Morristown v Little, 135 N J 274, 280 (1994). It is further agreed that the burden of proving if the tenant is delinquent in their rental obligations rests with the landlord and that case must be dismissed once it is shown that the rent has been paid by the tenant. Stanger v Ridgeway, 171 N J Super 466, 473 (App. Div. 1979).

PROCEEDURAL HISTORY

On or about January 25, 2024, the Plaintiff/Respondent filed a tenancy action in the Essex County Superior Court premised on non-payment of rent under Docket No. ESX-LT-001658-24 seeking to evict the Appellant/Tenant. (Db Da1-Da10) The case was scheduled for trial on March 12, 2024 and both litigants appeared Prose. After the trial, the Court entered a Judgment of Possession for Respondent Landlord noting that if the Appellant paid $8,000.00 in back rent, the tenancy could continue. (Db Da25-da27).

Respondent pursued a Motion for Reconsideration heard by the Court on April 2, 2024. The Court denied the Respondent's Motion for Reconsideration as well as a Request for a Stay of Eviction. The Trial/Motion Judge did allow for an application for an Orderly Removal. (Db, Da28-Da29).

The Appellant tenant filed a Prose Notice of Appeal on or about April 15, 2024. (Db, Da32-Da38). The Respondent Landlord, through counsel filed a Case Information statement and otherwise entered an appearance on behalf of the Respondent on May 1, 2024. (Pa1).

COUNTER STATEMENT OF FACTS

Respondent acknowledges that she filed a Complaint seeking to evict the tenant predicated on the claim for non-payment of rent on or about January 25, 2024 in the Essex County Superior Court. (Db, Da1-Da10). The case was scheduled for trial before the Court on March 12, 2024, On the date of the trail, both parties appeared Prose.

It was confirmed that the matter concerned property identified as 189 First Avenue, Newark, New Jersey 07107. It was a structure containing five units and Appellant was a tenant living on the first floor. (1T, P. 4, line 7- P. 5, line 5). The Respondent also maintained that Appellant was a month to month tenant and the rent was $1500.00 a month. The Respondent also stated that the Appellant owed rent for roughly 8 months from August, 2023 through March, 2024. (1T, P. 6, line 2- line 18). Respondent also acknowledged that she received Covid Relief on behalf of the Appellant/tenant of $21,000 in late November, 2022. Respondent also had to create a lease to provide to DCA. It was further Respondent's position that she had not received rent for the last 8 months. This Landlord, therefore, was looking for a Judgment of Possession and $12,000.00 of outstanding rent. (1T, P. 7, line 2- P. 8, line 3).

As was presented in the Appellant's Brief, she (Appellant) claimed that even though Respondent received $21,000.00 for back rent, she paid those months and also claimed that Respondent received double payment between 2020 and the end of 2022. Appellant further argued that Respondent never advised her that she received the check from DCA. However, to address the issue if Appellant paid all her rent, the Court asked for any receipts or proof of payments (by Zelle) to in essence conduct an accounting of all payments that had been made. (1T, P. 8, line 6- P. 10, line 25).

Over the issue regarding Appellant's claim that the Respondent was being paid twice, the Judge compared payments that were made dating back to October 2020. DCA paid $1500 to the Respondent and the Appellant tenant Zelled $1200. The Respondent also stated that she never gave the Appellant a receipt because her payments were sporadic. (1T, P. 10, line 20- P. 11, line 25).

After comparing Zelle payments that the Appellant made as opposed to payments Respondent received from the DCA, the Court determined that over 4 years at $1500 a month the rent should have been $72,000.00. The DCA paid $21,000.00. The Court also determined that the Appellant paid the Landlord $13,200.00 in 2021 and $7,700.00 in rent for 2022. The Appellant also admitted that she stopped paying rent to the Respondent landlord in July, 2023 believing that she should be credited for those payments. (1T, P. 26, line-P. 28, line 14). In the Court's

precise calculations there were payments made to the Respondent of $49,600.00 which left a rental arrear balance of $22,400.00. (1T, P. 28, 18-P. 29, 16).

Additionally, the Court made a formal ruling that the monthly rent was $1,500.00 based on the lease that the Landlord had produced during the trail. However, in the end, the Court accepted the Appellant's claim that if the rent was only $1200 a month, the rental arrears owed up to March, 2024 was only $8,000.00. As such, to benefit the Appellant/tenant, the Court entered a Judgment of possession for the Respondent listing the arrears at only $8000.00 rather than $22,400.00. (1T, P. 31, line 5- line 25). Again, the Court actually also assessed the arrears were potentially $9600.00 but again listed the arrears as $8,000.00 giving the Appellant a chance to potentially pay the arrears. (1T, P. 33, line 5- line. 24). (Db, Da25-Da27).

As also noted, the Appellant filed a Motion for Reconsideration was heard by the Court on April 2, 2024. The Judge refused to revisit the trial and denied the Appellant's application ruling that no need evidence was actually submitted to justify the Court altering its decision reached at trial. The Court also denied the Appellant's request for a Stay of the proceedings because believed only the Appellate Court could grant a stay. However, even though the Court denied or otherwise refused to entertain the Appellant's motion for Reconsideration, the Court granted her an Order for an Orderly removal affording her an additional seven days to officially vacate the leased premises. (2T, P. 8, line 24- P. 11, line 15). As further

noted, the Appellant subsequently pursued this Appeal based on her disagreement with the lower Court's decision. The Respondent had counsel enter an appearance in this case on or about May 1, 2024.

LEGAL ARGUMENT

POINT ONE

THERE WAS NOTHING IMPROPER REGARDING THE TRIAL JUDGE'S RULING THAT THE RESPONDENT WAS ENTITLED TO A JUDGMENT OF POSSESSION BASED ON THE COURT'S BELIEF THAT SHE WAS OWED OUTSTANDING RENT OF AT LEAST $8,000.00. (Db Da25-Da27).

A Court's ruling regarding a Complaint for Possession is reviewed by our Appellant Court's based on an abuse of discretion standard. Cmty Realty Mgnt. V. Harris, 155 NJ 212, 236 (1998). As such, the Court's review does not consist of weighing the evidence anew and otherwise making independent factual findings regarding the submissions below. The Court's role is rather to determine whether there existed adequate evidence to support the judgment (decision) rendered by the Court below. Cannuscio v Claridge Hotel & Casino, 319 N J super 342, 347 (App Div 1999).

The lower Court's factual findings following a bench trial are accorded a high deference by the Appellate tribunal and will be otherwise left undisturbed as long as those findings are substantially supported by the credible evidence gleaned from the record. Reilly v Weiss, 406 N J Super 71, 77 (App Div 2009). It is not the higher Court's function to weight the evidence, assess the credibility of witness testimony or make conclusions about the evidenciary submissions. Manalapan Realty, L P v Twp Comm. Of Manalapan, 140 N J 360, 378 (1995). And while the Appellate Court

owes absolutely no deference to the lower Court's interpretations of the law or the legal consequences that flow from the trial Judge's factual findings, the higher Court has no justifiable grounds to formulate new rulings regarding such evidence which lead to the factual findings of the trial Court. D'Agostino v Maldanado, 140 N J 366, 378 (1995).

The Anti-eviction statute, N J S A 2A:18-61.1; was also designed to protect residential tenants against unfair and arbitrary evictions. As such, the statute provides that a tenant cannot be evicted in a summary dispossess proceeding unless the Landlord provides Notice where required and meets the proper grounds to justify evicting the tenant from the leased premises. This is based on one of the specific 18 grounds otherwise listed in the tenancy statute. Maglies v Estate of Guy, 191 N J 108, 120-121 (2007). Among those grounds that could lead to a tenant being evicted is the requirement the tenant must pay the Landlord monthly rent or rent as agreed between the parties. From the most basic standpoint, the payment of rent is what entitles the tenant to live and otherwise make use and enjoyment of the leased premises.

Although the Court in the instant case acknowledged that the Landlord was paid $21,000 towards unpaid rent for the years 2021 and 2022 (as Covid relief), the Judge also painstakingly compared what the tenant claims she paid towards those same months that were meant to have been covered by DCA Covid relief. By

engaging in this inquiry, the Court in no way sought to subvert or shift the burden of proof between the litigants. The Judge's goal was to compare all the months the Appellant claims that she paid rent at $1200.00 a month in contrast to the $1500.00 that was paid by the Department of Community Affairs through the Covid relief.

However, even though the Judge ruled that the rent was $1500 a month based on the lease that was provided by the Respondent in connection with receiving the Covid relief payments, the Court ultimately decided that the outstanding rent was only $8,000.00 as opposed to $22,400. This decision was ultimately based on the Judge agreeing to accept the Appellant's claim that her rent was only $1200 a month over the Respondent's claim that the rent was actually $1500 a month dating back to the inception of the tenancy in 2020. This also establishes that, in the end, the Court gave greater deference to the Appellant concerning her claims regarding the monthly rent.

Again, even though the Judge made a factual finding that the rent was $1500.00 a month, the Court actually deferred to the tenant by revising its ruling that the rental arrears should be only $8,000 and if paid would preserve the tenancy. This number was reached largely based on the calculation that the monthly rent was $1200 rather than $1500 a month. We respectfully submit that this was done to potentially assist the Appellant in remaining in the leased premises.

We also submit that it must further be remembered that Appellant acknowledged that she had not paid rent since July, 2023 through March, 2024 believing that Respondent should have used the Covid payment to credit her for those particular months. However, once the Court concluded its inquiry regarding the payments, it was again determined that the Covid payments in question obviously did not cover these later months. Additionally, even though theses later months July, 2023 through March, 2024 were the actual months included in the Respondent's Complaint regarding unpaid rent, the Court's own inquiry and factual findings resulted in the Judge obviously concluding that the Appellant was not entitled to a rental credit concerning the 8 months addressed in the Complaint.

Additionally, since the Court was able to reach these finding and conclusions in absence of the Respondent having an actual ledger based on the detailed inquiry that was conducted during the trial, there was nothing unreasonable or improper in relation to the Judge's factual findings. Because the Court afforded a reasonable opportunity to both parties to present their respective proofs, we submit that there was nothing improper in the Court's ruling and there was no abuse of discretion. For these reasons, we respectfully submit that the Court's ruling must stand as the Judge in no way abused her discretion in connection with the decision that was reached at the end of the trial on March 2, 2024.

POINT TWO

THE COURT MADE PROPER FACTUAL FINDINGS THAT RENT WAS OUTSTANDING AND DUE AND OWING TO THE LANDLORD (Db Da25-Da27).

It is well known and acknowledged in our case law that in an eviction action premised on non-payment of rent, the claimed amount of unpaid rent must be legally owed by the tenant. Housing Auth of Passaic v Torres, 143 N J Super 231, 236 (App Div 1976). An available defense to an action for non-payment is that the rent claimed at this stage is not legally owed. Chau v Cardillo, 250 N J Super 378, 384 (App Div 1990). It is also well known that a landlord may not charge rent that is in excess of the local Municipal rent leveling Board and that this works as a defense on behalf of the tenant. This is also a defense that must be raised during the trial where the Landlord is seeking eviction for nonpayment. 316 49 St. Assocs. Ltd. P'ship v Galvez, 269 N J Super 481, 488 (App Div 1994).

As has been addressed, the instant matter involved a basic tenancy complaint where the Landlord was seeking to evict the tenant for alleged nonpayment of rent. In order to assess if the Respondent Landlord was entitled to any back rent, the Judge again engaged it its own accounting to assess if there was outstanding rental arrearages. While we acknowledge that the Respondent did not have a Ledger or receipts in relation to the Appellant's rental payments, Appellant testified that she most often zelled most of her payments to the Landlord.

In comparing the months potentially covered by Covid relief and the payments made by the Appellant via Zelle, the Court reached the factual finding that there was a rental balance owed regarding unpaid rent. This finding was again further based on the Appellant's own admission that there were at least 8 months between July, 2023 and Month, 2024 that she did not pay or refused to pay. This again was based on her erroneous belief that she was still entitled to a rental credit based on the prior Covid payment from the DCA. Based on the Court's findings, this turned out to be incorrect. As a result of a trial, the court a proper factual finding that there was money owed and further took a lenient stance in deciding the arrears amounted to only $8,000.00. This was a finding made in fact and was supported by the evidence that had been submitted by both litigants during the trial.

While the landlord also has the burden of proof to establish the grounds necessary to support that they are entitled to a judgment of possession, once such a finding has been issued by the Court (that there is rent legally owed by the tenant), such grounds have been met. This is all that is required for a Complaint premised on the most basic legal theory seeking possession of the leased premises. Hale v Farrakan 390 N J Super 335, 341 (App Div 2007). Since these were legitimate factual findings issued by the trial Court, we respectfully submit that such findings are entitled to the deference of this Court. Because the trial resulted in the

Court legitimately and legally finding that the Respondent Landlord was entitled to outstanding rent, we respectfully submit that the Courts must stand.

CONCLUSION

Based on the foregoing legal argument, we respectfully submit that the lower Court's legal ruling and (factual findings) must be affirmed.

DATED: 01/2/2025

FGS

Franklin G Soto, Esq.,
Attorney for Respondent

Superior Court of New Jersey

IRMA RAMIREZ, Plaintiff/Respondent, v. DARIA ORTIZ, Defendant/Appellant.	APPELLATE DIVISION DOCKET NO: A- 002548-23-T2 Civil Action On Appeal from a Final Judgment of the New Jersey Superior Court, Special Civil Part, Essex County, ESX-LT-001658-24 Sat Below: Annette Scoca, J.S.C.

REPLY BRIEF OF DEFENDANT/APPELLANT DARIA ORTIZ

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On the Brief

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STATEMENT OF FACTS AND PROCEDURAL HISTORY

Defendant Daria Ortiz relies on the Statement of Facts and Procedural History as set forth in her original brief.

STANDARD OF REVIEW

Contrary to Plaintiff/Respondent's position, what took place below involves questions of law, not of fact. As such, the standard of review is *de novo*.

LEGAL ARGUMENT

I. THE BURDEN OF PROOF IS NOT A SHARED ONE WITH THE COURT

The record in the case at bar is that of a Plaintiff who came to trial unable to prove her case. It is also that of a court which, facing that situation, chose not to dismiss the Plaintiff's complaint but to instead take up the task of creating a rent ledger solely relying on what records Defendant kept on her cell phone. This conduct on the court's part, Defendant Daria Ortiz urged in her original brief, crossed the line of impartiality, denied her the right to a fair and impartial adjudication and resulted in her wrongful eviction.

Plaintiff/Respondent in Point II of its brief to this Court offers the following:

> "While the landlord *also* has the burden of proof necessary to support that they are entitled to a judgment of possession, once such a finding has been issued *by the Court* (that there is rent legally owed by the tenant) such grounds have been met." (emphasis added). Plaintiff's Brief Page 12

Plaintiff would have this Court uphold the judgment below on the reasoning that, where the trial court through its own inquiry established the grounds necessary to sustain a judgment against the tenant, the required proof for entry of judgment has been met.

Defendant submits that contrary to Plaintiff's position, responsibility for meeting the burden of proof belongs exclusively with the Plaintiff and is not a shared one with the Court. As such, the trial court here, faced with Plaintiff's inability to

carry its burden had no choice but to dismiss the complaint. That the court instead painstakingly undertook to construct evidence for the Plaintiff represents a major transgression against judicial integrity and due process. For the sake of upholding the public's confidence in the impartiality of the judiciary and for the protection of other tenants who like her come unrepresented before the court, Defendant humbly requests that this Court speak strongly to the issues here presented.

II. THE TRIAL COURT'S FINDING THAT THE PLAINTIFF IS OWED $8,000 IN BACK RENT HAS NO BASIS IN FACT

In Point I of her brief, Plaintiff/Respondent asks that this Court uphold the validity of the judgment amount on the basis that the $8,000 figure represented a downward revision for the purpose of potentially assisting the tenant in remaining in the leased premises. Defendant submits that the court's adjudication of this matter including how it arrived at the conclusion that there was $8,000 in unpaid rent, has absolutely no basis in fact if for no other reason than that the court failed to consider payments made in cash. Far from a choice between two figures, the judgment amount must be one that is based on findings that are clear and definite. Defendant submits that in the absence of clear and definite findings that rent is owed, the court below lacked jurisdiction to enter judgment.

CONCLUSION

For all the forgoing reasons, the court's ruling in this case must be reversed and Judgment of Possession vacated.

Respectfully submitted,

Dated: January 29, 2025

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and,

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