SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5281-14T3

LORETTA DAWSON,

Plaintiff-Respondent,

v.

BERNADETTE CROSS,

Defendant-Appellant.

Submitted November 3, 2016 – Decided February 21, 2017

Before Judges Hoffman and O'Connor.

On appeal from Superior Court of New Jersey, Law Division, Special Civil Part, Monmouth County, Docket No. SC-1483-15.

Bernadette Cross, appellant pro se.

Loretta Dawson, respondent pro se.

PER CURIAM

Defendant Bernadette Cross (landlord) appeals from a Small Claims Court judgment for $2387.34 entered against her and in favor of plaintiff Loretta Dawson (tenant). We affirm.

I

The tenant filed a complaint in Small Claims Court seeking the return of $2500 of the $2700 security deposit she gave to the landlord at the commencement of her tenancy. The tenant complained after she moved out of the landlord's premises, the landlord paid herself late fees from the security deposit, resulting in the tenant receiving none of the security deposit. The tenant challenged whether the landlord was entitled to these fees.

The relevant evidence adduced at trial was as follows. The tenant leased residential premises from the landlord for six years, from June 2009 to June 2015.[1] Before she moved into the premises, the tenant gave the landlord a security deposit of $2700. There was a written lease between the parties, which was renewed every year when each year-long tenancy terminated. The lease provided the rental payment of $2000 per month was due the

[1] There is no question the tenant moved out of the leased premises on June 1, 2015. But at one point during the hearing, the tenant testified she moved into the leased premises in June 2011. However, elsewhere in her testimony, she stated she leased the premises for six years, moving out on June 1, 2015. (The trial was in July 2015). The landlord testified the tenant moved into the premises in 2009. We assume the tenant misspoke when she testified she moved into the premises in 2011 and, in fact, lived in the premises for six and not four years. Thus, she moved into the premises in 2009.

first day of the month and, if a tenant's rent payment was five days late, a $100 late fee would be charged.

The tenant testified she did not always pay the rent on time, but claimed the landlord never informed her a late fee was charged. To the contrary, the tenant asserted the landlord assured her she understood the tenant's "circumstances" and would "work with" the tenant. The tenant explained she received "Section 8" rental assistance at the beginning of each month, which was promptly given to the landlord.[2] But the amount received in rental assistance did not pay for the entire monthly rent, so the tenant paid the balance when she received her salary. The tenant was paid on a biweekly basis; she paid some rent out of the first salary check she received in a given month and the balance owed out of the second check.

John Cross, the landlord's son, testified he communicated with the tenant on his mother's behalf during the tenancy. He noted the tenant timely paid her rent until September 2012.

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[2] "Section 8," as it is commonly known, is a rental assistance program which provides funding "[f]or the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing." 42 U.S.C.A. § 1437f(a). The program is administered nationally by the Department of Housing and Urban Development, and locally by the New Jersey Department of Community Affairs. See Bouie v. N.J. Dep't of Cmty. Affairs, 407 N.J. Super. 518, 521 (App. Div. 2009).

Thereafter, when the tenant failed to pay the rent on time, the landlord informed the tenant she incurred a late fee. Neither he nor his mother ever represented to the tenant they would waive a late fee. Mr. Cross also testified about money the landlord removed from the security deposit to pay the cost of property damage caused by the tenant.

The landlord also testified she informed the tenant she incurred a late fee each time the rent was late. During her rebuttal testimony, the tenant insisted the landlord never informed her during the entire six-year tenancy she was going to charge the tenant a late fee. The first time the tenant learned the landlord intended to charge late fees was after she left the premises on June 1, 2015.

The court did not make a finding of fact whether the landlord waived the late fee in the manner the tenant claimed, or whether the landlord advised the tenant every time she failed to pay the rent on time that she incurred a late fee, as the landlord and her son asserted. The court did note the landlord failed to introduce any evidence substantiating the late fees the tenant allegedly incurred. But the court ultimately found in favor of the tenant on the ground the landlord waited too long to collect the late fees.

Specifically, the court determined the landlord was barred from recovering any late fees from the tenant's security deposit under the doctrine of laches. See Cty. of Morris v. William Fauver, 153 N.J. 80, 105 (1998). The court also noted the security deposit grew to $2862 from the accumulation of interest, and found the landlord was permitted to remove $474.66 from the security deposit to pay for the property damage caused by the tenant.[3] The court ordered the balance of the security deposit, $2387.34, returned to the tenant.

II

On appeal, the landlord contends the court improperly applied the doctrine of laches because, among other things, there was no finding the tenant was prejudiced by the landlord's delay in claiming these fees. We agree, but because the terms of the lease precluded the landlord from taking money from the security deposit to reimburse herself for money owed under the lease, we affirm.

At the outset, we note "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty v. Manalapan Twp. Comm., 140 N.J. 366, 378 (1995).

[3] Neither party challenges the trial court's finding the landlord was permitted to remove $474.66 from the security deposit to pay for property damage.

Laches is a remedy that may apply "where there is unexplainable and inexcusable delay in enforcing a known right whereby prejudice has resulted to the other party because of such delay." Fauver, supra, 153 N.J. at 105 (quoting Dorchester Manor v. Borough of New Milford, 287 N.J. Super. 163, 171 (Super. Ct. 1994), aff'd, 287 N.J. Super. 114 (App. Div. 1996)). "Laches may only be enforced when the delaying party had sufficient opportunity to assert the right in the proper forum and the prejudiced party acted in good faith believing that the right had been abandoned." Knorr v. Smeal, 178 N.J. 169, 181 (2003) (citing Dorchester Manor, supra, 287 N.J. Super. at 172). The "core" of applying laches is "whether a party has been harmed by the delay." Ibid.

Here, the trial court did not make any findings the tenant was harmed by the landlord's delay in collecting the late fees from the security deposit. Moreover, there was no evidence the tenant in fact suffered or will suffer any prejudice because the landlord waited until the tenant moved out of the premises to seek late fees. Thus, the evidence does not support the trial court's a finding laches precluded the relief the landlord sought.

However, we affirm the trial court on a different ground and, in so doing, invoke the plain error rule. See R. 2:10-2.

Rule 2:10-2 states an error or omission "shall be disregarded by the appellate court unless it is of such a nature as to have been clearly capable of producing an unjust result, but the appellate court may, in the interests of justice, notice plain error not brought to the attention of the trial . . . court." A new issue of law may be raised on appeal "where upon the total scene it is manifest that justice requires consideration of an issue central to a correct resolution of the controversy and the lateness of the hour is not itself a source of countervailing prejudice." Ctr. for Molecular Med. and Immunology v. Twp. of Belleville, 357 N.J. Super. 41, 48 (App. Div. 2003) (quoting In re Appeal of Howard D. Johnson Co., 36 N.J. 443, 446 (1962)). Further, "[i]t is a commonplace of appellate review that if the order of the lower tribunal is valid, the fact that it was predicated upon an incorrect basis will not stand in the way of its affirmance." Isko v. Planning Bd. of Livingston, 51 N.J. 162, 175 (1968) (citing Marchitto v. Central R.R. Co. of N.J., 9 N.J. 456 (1952)).

Here, even assuming the tenant owed the landlord the subject late fees, as the tenant points out, the lease between the parties plainly states, "The [security] [d]eposit may not be used by either party for any payment due under this [a]greement." The landlord violated the agreement by using the

security deposit as a source to pay herself late fees allegedly due under the agreement. That was a breach of the parties' lease.

Where, as here, "the terms of a contract are clear and unambiguous[,] there is no room for interpretation or construction and the courts must enforce those terms as written." Schor v. FMS Fin. Corp., 357 N.J. Super. 185, 191 (App. Div. 2002) (quoting Karl's Sales and Serv., Inc. v. Gimbel Bros., Inc., 249 N.J. Super. 487, 493 (App. Div.), certif. denied, 127 N.J. 548 (1991)). The provision in the lease was clear and unambiguous and thus we are obligated to enforce it. Accordingly, the landlord is not entitled to the money she removed from the security deposit to pay for any late fees.

After carefully considering the record and the briefs, we conclude the landlord's remaining arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.