SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1362-16T1

KAREN HOOPER,

Plaintiff-Respondent,

v.

PARKWOOD PLACE APARTMENTS,

Defendant-Appellant.

Submitted December 13, 2017 – Decided January 24, 2018

Before Judges Currier and Geiger.

On appeal from Superior Court of New Jersey, Law Division, Special Civil Part, Essex County, Docket No. SC-2199-16.

Kivelevitz Law Firm, PC, attorneys for appellant (Justin Marcus Smith and Jaim Kivelevitz, of counsel and on the brief).

Karen Hooper respondent pro se.

PER CURIAM

This matter involves a claim under the Security Deposit Act (the SDA), N.J.S.A. 46:8-19 to -26. Plaintiff Karen Hooper claimed that defendant Parkwood Place Apartments, her landlord, wrongfully failed to return a portion of her rent security deposit. Defendant

asserted plaintiff had caused damage to the apartment, owed rent, and owed legal costs. After a one-day trial in the Special Civil part, the judge found the security deposit was wrongfully withheld and subject to the doubling provisions of N.J.S.A. 46:8-21.1, added prejudgment interest pursuant to N.J.S.A. 46:8-19(c), and awarded plaintiff a judgment of $2827.48. Defendant appeals from the September 27, 2016 judgment and November 4, 2016 order denying its motion for a new trial or reconsideration. For the reasons that follow, we affirm in part and modify in part.

I.

We summarize the facts adduced from the record. Plaintiff commenced leasing a residential apartment at Parkwood Place Apartments in Newark on January 1, 2014. The lease was subsidized through the Newark Housing Authority's Housing Choice Voucher Program. Plaintiff posted a $1300 security deposit. Defendant was not the original landlord when plaintiff posted the security deposit; it subsequently became the landlord for the rental unit. The lease was most recently renewed for the one-year period from September 1, 2015 to August 31, 2016. Rent accrued at the rate of $1300 per month, of which plaintiff paid $28 per month with the balance paid through a Section 8 housing subsidy.

After receiving a notice to cease based on noise complaints, plaintiff decided to vacate the apartment before the August 31,

2016 expiration date of the lease and advised defendant in an April 14, 2016 letter that she would be moving out on June 30, 2016. Plaintiff testified she was told by Jenny Rodriguez, the manager of the property, that if she wanted to move out early, that would be fine and she would not be in violation of the lease. Rodriguez testified she told plaintiff "if she wanted to move, she could definitely do that, but because she [was] on Section 8, she would have to provide [her] documentation through the Section 8." Rodriguez admitted she signed a Section 8 lease termination form setting forth a June 30, 2016 move out date, claiming she "had no choice but to sign that form." Rodrigues stated, however, that she was not authorized to advise tenants or sign documents that would release them from their rental obligations. Rodriguez further testified that when a tenant moves out before the expiration of the lease, management charges them rent for the remainder of the lease.

Plaintiff vacated the apartment on June 30, 2016. She admitted she owed defendant $28 for her portion of the June 2016 rent and $50 for a late fee.

Defendant failed to return plaintiff's security deposit and on August 4, 2016 she filed this small claims action, pro se, against defendant demanding damages of $1222. According to the

complaint, plaintiff deducted $78 from the security deposit to cover $28 in unpaid rent and $50 in late fees she owed defendant.

Defendant subsequently prepared an August 22, 2016 security deposit refund letter advising plaintiff that, from the $1250 security deposit on hand, defendant was deducting $600 for unspecified repair costs, $117 for unpaid rent, and $250 for unspecified legal costs, yielding a net refund amount of $283.

The case proceeded to a one-day bench trial on September 27, 2016. Plaintiff testified on her own behalf. Jenny Rodriguez testified on behalf of defendant. Eight exhibits were admitted into evidence.

During the trial, defendant asserted that it was entitled to recover lost rental income for the months of July and August 2016. Defendant did not present any evidence of attempts to find a new tenant to replace plaintiff or any evidence regarding the legal costs it deducted from the security deposit. Defendant also contended that plaintiff was not entitled to any relief under the SDA since she vacated the apartment because she was in violation of the lease.

At the conclusion of the trial, the judge issued an oral decision in favor of plaintiff, awarding her damages in the amount of $2827.48, comprised of double the $1300 security deposit and $227.48 in interest calculated at the rate of seven percent per

annum from January 1, 2014 to June 30, 2016 in accordance with N.J.S.A. 46:8-21.1.

Neither party produced a copy of the lease. The judge found that: (1) defendant served plaintiff with a notice to cease dated March 23, 2016, based on inappropriate conduct directed at a fellow tenant; (2) plaintiff gave adequate written notice to defendant on April 14, 2016, that she would be vacating on June 30, 2016; (3) plaintiff wanted to leave and defendant wanted plaintiff to leave; (4) plaintiff vacated the apartment on June 30, 2016, in accordance with her notice; (5) defendant provided no testimony with respect to mitigation of damages, despite its duty to mitigate its loss by attempting to procure a new tenant.

With regard to defendant's claim that plaintiff had damaged the floors, resulting in repair costs of $600, the judge found defendant did not prove the condition of the floor before plaintiff moved in. The judge noted the property manager, who was defendant's only witness, did not personally inspect the floors. Defendant did not produce an estimate for the floor repairs. The judge determined the documents provided by defendant in support of the repair charges were insufficient and not adequately explained. The judge concluded that plaintiff did not owe defendant for any property damage beyond normal wear and tear.

The judge found defendant failed to comply with the SDA in several respects. Defendant never notified plaintiff where her security deposit was held or the rate of interest earned on the deposit, and defendant had not provided notice to plaintiff regarding the disposition of the security deposit within thirty days after her departure from the unit.

On October 17, 2016, defendant filed a motion for a new trial "to introduce evidence that was not considered in the original trial, which would alter the outcome of the trial." Defendant claimed it "was unable to produce additional witnesses and documentation in time for [the] original court date." Defendant did not file an affidavit or certification in support of the motion. Instead, defendant submitted a two-page brief[1] in which it argued:

> The [c]ourt based its ruling in part on the lack of [a] written lease, as well as lack of testimony on the issue of damage mitigation, and non-testimony as to the condition of a rental unit at the time of rental. In addition, many other items of evidence were mentioned that [d]efendant did not present.
>
> Defendant believes that if it had the opportunity to present this evidence, the court would alter its decision.

[1] The statement of facts was one sentence long, stating: "On September 27, 2016, a judgment was entered against [d]efendant."

> The above testimony and evidence would substantially alter the outcome of the trial, and [d]efendant has the evidence to present.

Defendant did not identify the additional witnesses it would produce or proffer what their testimony would be if a new trial were granted. Defendant also did not identify, describe, or produce any additional evidence it would introduce at a new trial. On November 4, 2016, the trial judge denied defendant's motion. In her handwritten statement of reasons, the judge stated: "Pursuant to R. 4:49-2, [d]efendant has failed to meet their burden of presenting sufficient evidence to warrant a new trial. See Dolson v. Anastasia, 55 N.J. 2 (1969)." This appeal followed.

On appeal, defendant raises the following issues: (1) the trial court erred by doubling the security deposit award where the tenant vacated as a direct result of the tenant's violation of the lease; (2) the trial court erroneously doubled a credit the landlord admitted, promoting an inequitable outcome; (3) the trial court abused its discretion where the landlord had no reasonable opportunity to mitigate its damages; (4) the trial court overlooked that housing authorities ordinarily require landlords to fix scratched floors before move-in; (5) the trial court should have granted reconsideration in light of the relatively sparse record; and (6) the trial court over-stepped its role by interposing itself as plaintiff's de facto counsel.

II.

Our scope of review is limited. An appellate court shall "not disturb the factual findings and legal conclusions of the trial judge unless [it is] 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, S.L.A., 205 N.J. 150, 169 (2011) (quoting In re Trust Created by Agreement Dated December 20, 1961, ex rel. Johnson, 194 N.J. 276, 284 (2008)); see also Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 484 (1974).

Review on appeal "does not consist of weighing evidence anew and making independent factual findings; rather, our function is to determine whether there is adequate evidence to support the judgment rendered at trial." Cannuscio v. Claridge Hotel & Casino, 319 N.J. Super. 342, 347 (App. Div. 1999) (citing State v. Johnson, 42 N.J. 146, 161 (1964)). Instead, "[a]n appellate court 'should give deference to those findings of the trial judge which are substantially influenced by his opportunity to hear and see the witnesses and to have the feel of the case, which a reviewing court cannot enjoy.'" State v. Nunez-Valdez, 200 N.J. 129, 141 (2009) (quoting State v. Elders, 192 N.J. 224, 244 (2007)). However, we owe no deference to the "trial court's interpretation

of the law and the legal consequences that flow from established facts." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). We review such decisions de novo. 30 River Court E. Urban Renewal Co. v. Capograsso, 383 N.J. Super. 470, 476 (App. Div. 2006) (citing Rova Farms, 65 N.J. at 483-84).

III.

The SDA governs security deposits for residential tenants. We have said that "N.J.S.A. 46:8-21.1 was specifically 'intended to protect tenants from overreaching landlords who seek to defraud tenants by diverting rent security deposits to their own use.'" Reilly v. Weiss, 406 N.J. Super. 71, 83 (App. Div. 2009) (quoting Jaremback v. Butler Ridge Apts., 166 N.J. Super. 84, 87 (App. Div. 1979)). The SDA "recognizes that the security deposit remains the tenant's money, although it is designed to provide some protection from loss to the landlord." Hale v. Farrakhan, 390 N.J. Super. 335, 342 (App. Div. 2007) (quoting MD Assocs. v. Alvarado, 302 N.J. Super. 583, 586 (App. Div. 1997)).

The SDA requires the landlord to return the tenant's security deposit and interest accrued "[w]ithin [thirty] days after the termination of the . . . lease . . . less any charges expended in accordance with the terms of [the] . . . lease." N.J.S.A. 46:8-21.1. 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.

Defendant argues plaintiff is not entitled to any remedies under the SDA because she was in violation of the lease. We disagree. As we have previously explained:

> A tenant is not deprived of the benefits of the Security Deposit Act merely because of a default on the lease. Even in a default situation, upon termination, the landlord is obligated by the statute to return the security deposit or notify the tenant in writing, by registered or certified mail as to the reason for retaining it. Breach of this duty warrants imposition of double damages.
>
> [Veliz v. Meehan, 258 N.J. Super. 1, 4 (App. Div. 1992) (citations omitted).]

However, violations of the SDA by the landlord do not entitle the tenant to the doubling remedy of the entire security deposit "if in fact the tenant has violated his obligations under the lease." Reilly, 406 N.J. Super. at 80. Rather, the tenant is only entitled to recover double the net security deposit after deducting actual damages, unpaid rent, and other appropriate charges. See, e.g., Penbara v. Straczynski, 347 N.J. Super. 155, 160 (App. Div. 2002) (noting that, as to any violation of N.J.S.A.

46:8-21.1, the tenant was limited to recovery of double "the net amount 'wrongfully withheld,' not double the amount of the initial deposit") (quoting Kang in Yi v. Re/Max Fortune Properties, Inc., 338 N.J. Super. 534, 539 (App. Div. 2001); Jaremback, 166 N.J. Super. at 89 n.1 (providing that "[w]here the penalty is appropriate under the statute, the only item which should be doubled is the net amount due to the tenant on the security deposit and interest, after deduction of the charges due to the landlord"). When there is a dispute over whether the tenant violated her obligations under the lease by either vacating before the expiration of the lease or causing damages to the unit beyond normal wear and tear, "the trial judge must determine the amount of those offsets and, if they are greater than the security deposit withheld, there is no deposit to return to the tenant and no valid basis for enforcing the notification requirement of the statute." Penbara, 347 N.J. Super. at 160-61(citing Jaremback, 166 N.J. Super. at 87-88).

The burden of proof is not on the tenant to prove the landlord had no reason to retain the security deposit or some portion thereof. Veliz, 258 N.J. Super. at 5. Rather, it is the landlord who must prove it suffered damages and attempted to mitigate those damages, or prove the tenant owed contractual amounts, warranting retention of the security deposit. Ibid. Any retention by the

landlord is limited to such actual damages or charges. Watson v. United Real Estate, Inc., 131 N.J. Super. 579, 582 (App. Div. 1974). Any additional amount retained by the landlord is wrongful, entitling the tenant to double recovery under the SDA. Id. at 582-83; MD Assocs., 302 N.J. Super. at 586 (citing London v. Rothman Realty Corp., 176 N.J. Super. 288, 291 (Cty. Ct. 1980)). The award of a doubled recovery to the prevailing tenant is mandatory. N.J.S.A. 46:8-21.1.

Here, plaintiff gave defendant two and one-half months notice that she was vacating the apartment on June 30, 2016. The record establishes that plaintiff wanted to move out and defendant wanted her to vacate the apartment, and that the proposed move-out date was acceptable to both parties. Moreover, defendant provided no evidence that it attempted to mitigate its damages by attempting to procure a new tenant to replace defendant. Absent such evidence, defendant cannot recover for lost rent. See Sommer v. Kridel, 74 N.J. 446, 457 (1977) (holding a landlord has the burden of proving he met his duty to mitigate damages by using "reasonable diligence in attempting to re-let the premises" where he seeks to recover rents from a defaulting tenant). Therefore, defendant's claim that plaintiff is liable for rent for the months of July and August 2016 is without merit.

The trial judge's credibility determinations and factual findings with regard to the deductions applied by defendant for repair costs, rent still owed, lost rent, and legal costs are supported by substantial credible evidence in the record. We find no basis to disturb them.

The judge awarded plaintiff damages totaling $2827.48, comprised of $2600 for the doubled security deposit and $227.48 in prejudgment interest calculated at the rate of seven percent per annum. Plaintiff sought damages totaling $1222, conceding that she owed defendant rent of $28 and a late fee of $50, which she deducted from the $1300 security deposit. Thus, plaintiff's damages were $1222 before doubling, not $1300. Only the net security deposit, after deducting unpaid rent and late charges, is doubled. Lorril Co. v. La Corte, 352 N.J. Super. 433, 441-42 (App. Div. 2002); Kang in Yi, 338 N.J. Super. 538-39. Accordingly, the judgment should have been in the amount of $2444 plus pre-judgment statutory interest. We modify the judgment to that extent and remand to the Special Civil Part to enter an amended judgment in accordance with this opinion after recalculating the amount of prejudgment statutory interest.

IV.

We next address defendant's motion for a new trial or reconsideration. Motions for a new trial "are addressed to the

sound discretion of the trial court and will not be disturbed unless that discretion has been clearly abused." Quick Chek Food Stores v. Springfield Twp., 83 N.J. 438, 446 (1980)); see also Baumann v. Marinaro, 95 N.J. 380, 389 (1984). If a motion for a new trial is granted following a bench trial, "the trial judge may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment." Ibid.

Defendant has not demonstrated a factual or legal basis for granting a new trial. Defendant offers no explanation why it was unable to obtain additional witnesses or documentary evidence for the scheduled trial date. Nor has defendant identified any proposed additional witnesses or made a proffer as to their expected testimony. Similarly, defendant has not identified or described the contents or import of any additional documents it would introduce at a new trial. On this record, the denial of a new trial was not an abuse of discretion.

A motion for reconsideration "shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred." R. 4:49-2. "Motions for reconsideration are granted only under very narrow

circumstances[.]" Fusco v. Bd. of Educ. of Newark, 349 N.J. Super. 455, 462 (App. Div. 2002).

> Reconsideration should be utilized only for those cases which fall into that narrow corridor in which either 1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence.
>
> [D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990).]

The basis for the motion for reconsideration "focuses upon what was before the court in the first instance." Lahue v. Pio Costa, 263 N.J. Super. 575, 598 (App. Div. 1993). The motion "is properly denied if based on unraised facts known to the movant prior to entry of judgment." Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 4:49-2 (2018) (citing Palombi v. Palombi, 414 N.J. Super. 274, 289 (App. Div. 2010); Del Vecchio v. Hemberger, 388 N.J. Super. 179, 188-89 (App. Div. 2006)). "A motion based on new legal arguments that were not presented to the court in the underlying motion is also properly denied." Ibid. (citing Medina v. Pitta, 442 N.J. Super. 1, 18 (App. Div. 2015)).

The trial judge held that defendant failed to meet those standards. By any measure, defendant's scant moving papers fell far short of satisfying the rule. In particular, defendant has

not shown that the additional witnesses and documents were not known or available at the time of the trial. We discern no abuse of discretion in denying the motion to the extent it sought reconsideration.

V.

Defendant further contends the trial court engaged in inappropriate questioning of plaintiff. A trial judge "may interrogate any witness." N.J.R.E. 614. "Trial judges are vested with the authority to propound questions to qualify a witness's testimony and to elicit facts on their own initiative and within their sound discretion." State v. Medina, 349 N.J. Super. 108, 131 (App. Div. 2002) (citing State v. Ross, 80 N.J. 239, 248-49 (1979)). "The intervention of a trial judge is a 'desirable procedure,' but it must be exercised with restraint." Ibid. (quoting Village of Ridgewood v. Sreel Inv. Corp., 28 N.J. 121, 132 (1958)).

This was a non-jury small claims action in which plaintiff was self-represented. Because this was a bench trial, there was no danger that a jury would place undue emphasis on the questions asked by the judge. See id. at 132. Defendant was not prejudiced in any way by the judge's questioning. We find no error in the manner in which the trial was conducted.

Defendant's remaining arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed in part, modified in part, and remanded. We do not retain jurisdiction.