SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3898-16T1

KENDRA FITTS,

Plaintiff-Respondent,

v.

RUJAK REALTY, LLC,

Defendant-Appellant.

Submitted April 11, 2018 – Decided May 2, 2018

Before Judges Currier and Geiger.

On appeal from Superior Court of New Jersey, Law Division, Special Civil Part, Passaic County, Docket No. DC-9171-16.

Terry S. Bogorad, attorney for appellant.

David R. Cubby, attorney for respondent.

PER CURIAM

Defendant Rujak Realty, LLC, appeals the April 26, 2017 order entering judgment in favor of plaintiff Kendra Fitts. After a review of the contentions in light of the record and applicable legal principles, we affirm.

We discern the following facts from the bench trial. In April 2016, plaintiff and defendant executed a lease agreement for the use of a commercial space effective May 1, 2016, and terminating April 30, 2017. Plaintiff operated a business in the space. In August and September 2016, there were break-ins at plaintiff's business through a window. Plaintiff suffered a loss of merchandise on both occasions.

When plaintiff sought to have defendant properly secure the window with grates, defendant refused. As a result, plaintiff asked to terminate the lease early. The parties agreed that plaintiff could vacate the premises prior to the expiration of the lease term conditioned on her signing a lease surrender agreement. Defendant drafted the surrender agreement and plaintiff executed it on September 30, 2016.

Under the lease surrender agreement, plaintiff released defendant "from any liability or responsibilities [under the lease and] . . . any claims or damages which [plaintiff] may have in connection with the premises arising out of [her] tenancy." Defendant, in turn, released plaintiff from any responsibilities to it, after the completion of a final inspection of the premises.[1]

[1] Defendant's counsel represented to the court that it withheld the security deposit only because of plaintiff's early termination of the lease, not for any damage sustained to the premises during plaintiff's occupancy.

The lease surrender agreement was silent as to any obligations for unpaid rent or the security deposit.

Plaintiff subsequently vacated the premises and requested the return of her $6200 security deposit. Defendant refused to remit the security deposit. Consequently, plaintiff filed a complaint against defendant for the return of the monies.

Plaintiff represented herself during the bench trial on April 26, 2017. She testified that defendant's representative told her he would not return the security deposit because he did not know how long it would take to re-lease the space.[2]

Defendant's witness disputed plaintiff's version of events. He testified that when plaintiff requested the early termination of her lease, he agreed, but said in exchange for him relinquishing the $10,000 of unpaid rent owed under the lease, he would keep the $6200 security deposit. The witness stated that the release in the surrender agreement to defendant of all claims or damages meant that plaintiff was releasing the security.

In an oral decision issued from the bench, the judge found the lease surrender agreement did not contain any terms relinquishing plaintiff's right to her security deposit. The judge stated that any ambiguities in the document were construed

[2] Defendant found a new tenant to occupy the unit within two weeks of plaintiff vacating the premises.

against defendant as the drafter of the agreement. He also concluded that had defendant intended to retain the security deposit, it would have included that provision in the lease surrender agreement.

On April 26, 2017, the trial court entered judgment in favor of plaintiff in the amount of $6,200, plus costs. On appeal, defendant argues that the evidence produced at trial did not support the verdict.

"Final determinations made by the trial court sitting in a non-jury case are subject to a limited and well-established scope of review." D'Agostino v. Maldonado, 216 N.J. 168, 182 (2013) (quoting Seidman v. Clifton Sav. Bank, SLA, 205 N.J. 150, 169 (2011)). Although our review of legal determinations made by the trial court is de novo, we do not disturb the factual findings of the trial court unless we are "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." Ibid. (quoting Seidman, 205 N.J. at 169). Additionally, we defer to the trial court's credibility determinations because it "'hears the case, sees and observes the witnesses, and hears them testify,' affording it 'a better perspective than a reviewing court in evaluating the

veracity of a witness.'" Gnall v. Gnall, 222 N.J. 414, 428 (2015) (quoting Cesare v. Cesare, 154 N.J. 394, 412 (1998)).

New Jersey courts "have shown an increasing tendency to analogize landlord-tenant law to conventional doctrines of contract law." McGuire v. Jersey City, 125 N.J. 310, 321 (1991). For a contract to be enforceable, "an agreement must be sufficiently definite in its terms that the performance to be rendered by each party can be ascertained with reasonable certainty." W. Caldwell v. Caldwell, 26 N.J. 9, 24-25 (1958). "The polestar of contract construction is to discover the intention of the parties as revealed by the language used by them." Karl's Sales & Serv. v. Gimbel Bros., 249 N.J. Super. 487, 492 (1991).

Generally, courts give "the terms of an agreement . . . their plain and ordinary meaning." M.J. Paquet v. N.J. DOT, 171 N.J. 378, 396 (2002). "[W]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." Karl's Sales, 249 N.J. Super. at 493 (citing Kampf v. Franklin Life Ins. Co., 33 N.J. 36, 43 (1960)); see also Cty. of Morris v. Fauver, 153 N.J. 80, 103 (1998).

In reviewing a contract, courts may not "remake a better contract for the parties than they themselves have seen fit to enter into, or to alter it for the benefit of one party and to the

detriment of the other." Karl's Sales, 249 N.J. Super. at 493 (citing James v. Fed. Ins. Co., 5 N.J. 21, 24 (1950)). Moreover, "[a] court has no power to rewrite the contract of the parties by substituting a new or different provision from what is clearly expressed in the instrument." E. Brunswick Sewerage Auth. v. E. Mill Assocs., Inc., 365 N.J. Super. 120, 125 (App. Div. 2004).

Here, defendant argues that the language in the lease surrender agreement releasing it from "all claims" includes the forfeiture of plaintiff's security deposit. But the agreement does not reference the security deposit or unpaid rent. The agreement specifically includes a discharge of liability and responsibility to plaintiff for any damages arising out of her tenancy on the premises. However, it is silent as to the parties' rights to the security deposit.

Without a specific reference to the deposit, the trial judge concluded that he could not find the parties intended for plaintiff to relinquish her right to the monies. He stated: "I will note, there's not one single word in here about the rent or about the security deposit. And it is shocking to me that if that's really the intent of what the agreement is, that you wouldn't include it in the agreement."

We agree. Defendant, a sophisticated real estate company, drafted the lease surrender agreement that sought to expressly

limit its liability to plaintiff. Had defendant also intended to retain plaintiff's security deposit, it would have included that provision in the agreement. There is no reference to the security deposit in the agreement. Therefore, we cannot discern a different intent of the parties other than what is contained in the agreement.

We are satisfied that the trial judge's determination that the parties did not intend for plaintiff to relinquish her right to the security deposit was supported by the substantial credible evidence in the record.

Affirmed.