STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

(FILED: September 26, 2018)

776 HARTFORD AVENUE, LLC MOBILE HOME PARK, **Plaintiff,**	:	
v.	:	**C.A. No. KD-2017-1297**
ELIZABETH TAYLOR, **Defendant.**	:	

DECISION

MCGUIRL, J. Before the Court is the appeal from a judgment of the District Court ordering Elizabeth Taylor (Defendant or Tenant) to pay 776 Hartford Avenue, LLC Mobile Home Park (Plaintiff or Landlord) $2806.45 in rental monies. Jurisdiction is pursuant to G.L.1956 § 9-12-10.

I

Facts and Travel

A trial was held over three days on April 13, 2018, April 20, 2018, and April 24, 2018. Plaintiff called three total witnesses and Defendant called four witnesses. Katherine Duggan—owner and manager of Plaintiff—testified on behalf of the Plaintiff. Plaintiff also called two witnesses—Angelo Palazzo, an electrician who has performed electrical services for Plaintiff, and Christopher Brogan—who testified to the issue of damages. The Defendant testified on her own behalf. The defense also called three additional witnesses—Michael Carnevale, Building Inspector and Zoning Official in the Town of North Providence; Joshua Lebeau, the owner and

operator of Home Inspection by JML, a home inspection company; and Steven Briggs—who primarily testified to the issue of damages.

A

Testimony of Katherine Duggan

Katherine Duggan is the owner and manager of Plaintiff. Plaintiff rents a lot of land to Defendant where Defendant has placed her mobile home. As the owner and manager of Plaintiff, it is Ms. Duggan's responsibility to collect rent and execute evictions. Ms. Duggan testified that Defendant owns a mobile home that sits on lot seven (7) at 776 Hartford Avenue. Ms. Duggan also testified that she sent notice to Defendant on May 1, 2017, that an increase in rent would be imposed sixty days from that date.

Ms. Duggan sent Defendant notice on September 27, 2017, with respect to arrearage in rent. Ms. Duggan testified that, as of that date, Defendant was in arrears on her rent for a total of $1500—reflecting Defendant's unpaid rent for three previous months. Ms. Duggan then established that, since notice of arrearage had been sent to Defendant, rent had not been paid and that rent was owed to Plaintiff from July 2017 through April 2018.

On cross-examination, it was determined that Ms. Duggan became the owner of Plaintiff in November of 2016. Ms. Duggan testified that once she became owner of the mobile home park, Defendant indicated to her that she was having problems with her mobile home due to the trailer not being level. Ms. Duggan testified that Defendant believed the issue regarding the leveling of the mobile home was due to the absence of a concrete slab underneath the trailer.

Ms. Duggan was aware that Defendant had brought the leveling issue to the attention of the former owner. Ms. Duggan testified that she did not make any promises to repair the trailer to Defendant, but did indicate that she would—and did—have someone evaluate the trailer in the

spring of 2017. Upon inspection, Ms. Duggan testified that she told Defendant that she would not install a concrete slab underneath Defendant's trailer. Ms. Duggan then testified that Defendant contacted her and indicated that she would not pay rent—beginning in July of 2017—due to the issue with the leveling of the trailer. Ms. Duggan also suggested that Defendant's failure to pay rent was due in part to her inability to afford the rent. However, this testimony was contradicted by the fact that Defendant had deposited money in an escrow account every month in the amount due for rent.

Ms. Duggan then testified that she was aware of Defendant's claim that her trailer was becoming structurally damaged and that Defendant sent her a detailed account of said damages. Specifically, Ms. Duggan testified that she was aware of cracks in the wall of the trailer, as well as decreased water pressure in the trailer.

B

Testimony of Elizabeth Taylor

Defendant purchased her mobile home in March of 2010. Defendant indicated that the trailer was in excellent condition when she purchased the trailer. However, in 2014, it appears that Defendant made a number of repairs, including redoing the bathroom, installing a new shower, bathtub and toilet, and adding a new roof.

Defendant has had experience in maintaining a mobile home as her family has owned a mobile home for nearly forty years in the State of Maine. Defendant testified that her family owns the land and the trailer and that the family—including herself—takes care of the mobile home in Maine. Defendant testified that she observed the family mobile home being inspected approximately once a year. Defendant's brother, Eric Taylor, helped Defendant with her property in Rhode Island. As such, Defendant testified that she knew trailers required yearly

inspections. Defendant also testified that she knew that the support system underneath a mobile home needed to be inspected yearly. As such, Defendant testified that when she purchased her own mobile home, she did so with the experience required to understand the maintenance needs of a mobile home.

During her testimony, Defendant relies on a number of photographs entered as exhibits to show damage to the trailer. For example, Defendant notes a number of cracks in the wall. As a result, Defendant testified that she, with the help of her brother, Eric Taylor, attempted to level the mobile home by installing cinderblocks underneath. However, Defendant observed the cinderblocks sinking into the ground, and it appears that the cinderblocks did not help with leveling the trailer. After the cinderblocks failed to level the mobile home, Defendant testified that she hired two people to assess the structure of the mobile home. It was determined that in order to be leveled, the trailer had to be mounted on a concrete slab. Defendant, however, did not hire anyone to install a slab at this time. Defendant then testified that after her attempt to level the mobile home with cinderblocks, damage to the trailer—for example, cracks in the molding began to appear—increased.

In December of 2016, Defendant contacted Ms. Duggan regarding the structural issues she was having with her trailer. After this conversation, Defendant testified that Ms. Duggan sent someone to lot seven—where Defendant's mobile home was situated—to evaluate the trailer and estimate the cost of installing a concrete slab. Defendant testified that Ms. Duggan indicated that a slab could not be installed until the spring because at present, the ground was too frozen to build on. When Defendant contacted Ms. Duggan in the spring of 2017, Defendant testified that Ms. Duggan "changed her mind" and refused to install the concrete slab. Defendant indicated that she believed Ms. Duggan had certain financial issues that prevented her from installing the

slab. As a result, Defendant notified Ms. Duggan that she would not pay rent until the concrete slab had been installed. The rental monies were placed in an escrow account until this issue was resolved.

II

Standard of Review

The parameters for appeal of District Court judgments to Superior Court are governed by statute. Section 9-12-10 of the Rhode Island General Laws, entitled "Claim of appeal of superior court," in pertinent part provides that a party may appeal a judgment of the district court by "claiming an appeal from the judgment of the district court, in writing, filed with the clerk of the division within two (2) days, exclusive of Saturdays, Sundays, and legal holidays, after the judgment is entered. . . ." With respect to the appeal of landlord and tenant matters heard in District Court, § 9-12-10.1 entitled "Claim of appeal to superior court in landlord tenant actions," mandates, in pertinent part, that a party claim such an appeal "in writing, filed with the clerk of the division within five (5) days after the judgment is entered. . . ." Additionally, Chapter 18.1 of Title 34 applies to commercial leases. Pursuant to G.L.1956 § 34-18.1-9(4), "Any aggrieved party may appeal to the superior court from a judgment of the district court by claiming such appeal in writing filed with the clerk within forty-eight (48) hours, exclusive of Sundays and legal holidays, after the judgment is entered." This matter is on appeal from a judgment for possession entered in Plaintiff's favor in the District Court, and now, it is presently before the Court for trial *de novo*. *See* § 9-12-10; *see also Harris v. Turchetta*, 622 A.2d 487, 490 (R.I. 1993).

In a non-jury trial, "'[t]he trial justice sits as a trier of fact as well as of law.'" *Parella v. Montalbano*, 899 A.2d 1226, 1239 (R.I. 2006) (quoting *Hood v. Hawkins*, 478 A.2d 181, 184

(R.I. 1984)). '"Consequently, [the trial justice] weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences."' *Id.* (quoting *Hood,* 478 A.2d at 184). The trial justice may also "'draw inferences from the testimony of witnesses, and such inferences, if reasonable, are entitled on review to the same weight as other factual determinations.'" *DeSimone Elec., Inc. v. CMG, Inc.*, 901 A.2d 613, 621 (R.I. 2006) (quoting *Walton v. Baird*, 433 A.2d 963, 964 (R.I. 1981)). Furthermore, "[w]hen rendering a decision in a non-jury trial, a trial justice 'need not engage in extensive analysis and discussion of all the evidence. Even brief findings and conclusions are sufficient if they address and resolve the controlling and essential factual issues in the case.'" *Parella*, 899 A.2d at 1239 (quoting *Donnelly v. Cowsill*, 716 A.2d 742, 747 (R.I. 1998)). Indeed, the trial court is not required to '"categorically accept or reject each piece of evidence in [its] decision for [the Supreme] Court to uphold it because implicit in the trial justices [sic] decision are sufficient findings of fact to support his rulings."' *Notarantonio v. Notarantonio*, 941 A.2d 138, 147 (R.I. 2008) (quoting *Narragansett Elec. Co. v. Carbone*, 898 A.2d 87, 102 (R.I. 2006)).

III

Analysis

A

Residential Landlord and Tenant Act

In Rhode Island, "a landowner has a duty to exercise reasonable care for the safety of persons reasonably expected to be on the premises, and that duty includes an obligation to protect against the risks of a dangerous condition existing on the premises, provided the landowner knows of, or by the exercise of reasonable care would have discovered, the dangerous condition." *Tancrelle v. Friendly Ice Cream Corp.*, 756 A.2d 744, 752 (R.I. 2000) (citing

Cutroneo v. F.W. Woolworth Co., 112 R.I. 696, 698, 315 A.2d 56, 58 (1974)). If the landowner rents residential property to tenants, the Residential Landlord and Tenant Act (the Act), codified in G.L. 1956 chapter 18 of title 34, imposes a still higher standard of care. It states that "[a] landlord shall: . . . [m]ake all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition." Sec. 34–18–22(a)(2). The act "supersede[s] any common-law rules relating to residential tenants and landlords in conflict with its provisions." *Errico v. LaMountain*, 713 A.2d 791, 794 (R.I. 1998). Under the Act, a "tenant" is defined as a "person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others." Sec. 34–18–11(17). Additionally, "premises" is defined under the Act as "a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas, and facilities held out for the use of tenants generally, or the use of which is promised to the tenant." Sec. 34–18–11(12).

Here, Defendant's defense in her failure to pay rent is that Plaintiff violated her duty to maintain the premises as imposed by the Act. However, Plaintiff objects to this defense and argues that the Act does not in fact govern in this case because the mobile home that Defendant claims the Landlord failed to maintain is not a "premises" for the purposes of the Act because it is *owned by the tenant and not rented out by the landlord*. Therefore, Plaintiff contends that the Landlord had no duty to the mobile home.

Ordinarily, in a trespass and ejectment case, this Court would enforce the standard of care provided by the Act, supplemented by common law. That is, in addition to a landlord's statutory duty to make repairs and do whatever is necessary to maintain the premises in a fit and habitable condition, the landlord would have an obligation to exercise reasonable care for the safety of those expected to be on the premises and to protect against dangerous conditions existing on the

premises. *See Tancrelle*, 756 A.2d at 752 (summarizing landowners' duty to those reasonably expected to be on the premises). However, this case presents the Court with an unusual set of facts, in that the damaged mobile home in question is actually the property of the tenant, and not the Landlord. As such, the Landlord is excused from any duty she may have had under the Act to maintain the mobile home in a fit and habitable condition. The Landlord had no control over the mobile home itself, but only over the land on which the mobile home sat. As such, it was not the responsibility of the Landlord, under the terms of the Act, to construct a slab underneath the mobile home so as to prevent damage. Rather, that duty rests on the Tenant, the owner of the mobile home itself.

B

Mobile and Manufactured Homes Act

Section 31-44-7 of the Rhode Island General Laws—also known as the Mobile and Manufactured Homes Act—also governs the relationship between our Plaintiff and Defendant. Section 31-44-7 requires in relevant part:

> "All terms and conditions of the occupancy must be fully disclosed in a written lease by the mobile and manufactured home park owner to any prospective mobile and manufactured home park resident at a reasonable time prior to the rental or occupancy of a mobile and manufactured home space or lot. The disclosures shall include, but shall not be limited to, the following:
>
> (1) The licensee shall agree at all times during the tenancy to:
>
> (v) Maintain all mobile and manufactured homes *rented by the owner* in a condition which is structurally sound and capable of withstanding adverse effects of weather conditions." (emphasis added).

Importantly, the mobile home in question in this case is not rented by the owner or Landlord but rather, is owned by the Defendant. Again, it appears that given this set of facts, the

statute does not require the Landlord to maintain this particular mobile home because it is not technically the Plaintiff's property. There is no provision in the Mobile and Manufactured Homes Act that would suggest that the Plaintiff is obligated to install a cement slab underneath a mobile home owned by the Defendant. Rather, Plaintiff's duty under § 31-44-7 to maintain any mobile home in a structurally sound condition applies only to those mobile homes which she owns and subsequently rents to other tenants. As such, Plaintiff violated no provision in the Mobile and Manufactured Homes Act when she failed to install a concrete slab underneath Defendant's mobile home.

C

International Building Code

The International Building Code (IBC) was enacted for the purpose of "establish[ing] the minimum requirements to provide a reasonable level of safety, public health and general welfare through structural strength, means of egress facilities, stability, sanitation, adequate light and ventilation" and the like. International Code Council, *International Building Code* (*IBC*) § 101.3. The IBC states that "[w]here there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable" and that "[t]he provisions of this code shall not be deemed to nullify any provisions of local, state or federal law." IBC §§ 102.1, 102.2. That being said, it is clear that the Residential Landlord and Tenant Act and the Mobile and Manufactured Homes Act would control in this instance. However, in the interest of thoroughness, this Court will examine the minimum requirements applicable to the maintenance of Defendant's mobile home as is required by the IBC.

Section 102.6, entitled Existing Structures, states in pertinent part: "The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue

without change, except as otherwise specifically provided in this code." At trial, Michael Carnevale, the Building Inspector and Zoning Official for the Town of North Providence, testified that at the time the mobile home was constructed, a cement slab was not required. As such, a cement slab is not required under the IBC. The parties have further agreed, and it is uncontested, that the IBC nor any other code at the time of the mobile home's construction, mandates the installation of a cement slab underneath Defendant's mobile home.

D

Lease Agreement

Plaintiff and Defendant also entered into a Lease which included a section entitled "Lessor's Obligations." That section, pertaining to the obligations of the landlord, states in pertinent part:

> "**Section 5. Lessor's Obligations**: The Lessor shall agree at all times during the tenancy to:
>
> (i) Maintain the premises when necessary to prevent the accumulation of stagnant water[;] . . .
>
> (iii) Keep any exterior area of the mobile and manufactured home park *within his or her control, not the responsibility of each resident*, free from any species of weed or plant growth which are noxious or detrimental to the health of the residents[;] . . .
>
> (v) Maintain all electrical, plumbing, gas, or other utilities provided by the Lessor in good working condition. . . .
>
> (vi) Maintain all utilities provided to mobile and manufactured homes within the park up to and including the connection to the individual mobile/ manufactured home, and all water and sewage lines and connections in good working order, and in the event of any emergency, make necessary arrangements if possible for the provisions of the service on temporary basis; and there shall be no additional charge for the use of water because resident has children; . . .

> (xi) Maintain any road in the mobile and manufactured home park within the Lessor's control in good condition, provide adequate space for parking of one car for each lot and be responsible for damage to any vehicle, excluding damages from speed bumps, which is the direct result of any unrepaired or poorly maintained access road within the park and that is within the Lessor's control[.]" (emphasis added).

Of note, no provision in the Lease Agreement requires the Landlord to generally maintain any mobile home personally owned by a tenant. Rather, after review of the Lease in its entirety, it is clear that the Landlord is only responsible for those exterior areas surrounding the mobile home which the Landlord had control over. No obligation to install a slab underneath a mobile home is presented in the Lease Agreement. As such, it is clear that, by refusing to install such a slab, the Landlord did not violate any provision of the Lease Agreement. Installation of a cement slab underneath the mobile home, under the terms of the Lease, would be left to the tenant as the owner of the mobile home.

E

Damages

A majority of the witness testimony presented to this Court pertained to the issue of damages. However, because this Court finds that the Landlord was under no duty to maintain the mobile home, it is unnecessary to address the issue of damages at this time.

IV

Conclusion

For the foregoing reasons, this Court finds that Plaintiff did not owe a duty under the Residential Landlord and Tenant Act, the Mobile and Manufactured Homes Act or the Lease Agreement to maintain Defendant's mobile home in a fit and habitable condition. As such, this Court orders Defendant to pay the sum of $2806.45 in unpaid rental monies.

Counsel shall submit an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	776 Hartford Avenue, LLC Mobile Home Park v. Elizabeth Taylor
CASE NO:	KD-2017-1297
COURT:	Kent County Superior Court
DATE DECISION FILED:	September 26, 2018
JUSTICE/MAGISTRATE:	McGuirl, J.
ATTORNEYS:	
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