STATE OF VERMONT
RUTLAND COUNTY

RONALD GRANDE	)	**Rutland Superior Court**
	)	**Docket No. 253-4-08 Rdcv**
v.	)	
	)	**on appeal from**
JRLJ, LLC	)	**Docket No. 1112-11-07 Rdsc**

SMALL CLAIMS COURT APPEAL
Decision

On October 17, 2007, tenant Ronald Grande filed a complaint in Rutland Small Claims Court against landlord JRLJ, L.L.C. seeking return of his security deposit. After subsequently receiving the amount requested in the mail, Mr. Grande sought damages for willful withholding under 9 V.S.A. § 4461(e), which Landlord disputed. In a Decision and Order dated March 6, 2008, in Docket No. 1112-11-07 Rdsc, the Small Claims Court Judge determined that Landlord had not willfully failed to return the security deposit within 14 days, and accordingly entered judgment in favor of Landlord and dismissed the complaint. Mr. Grande has appealed.

This Court has reviewed the record; heard oral argument on June 30, 2008; listened to the tape recording of the hearing held in Small Claims Court on February 28, 2008; reviewed Mr. Grande's Statement of Basis of Appeal filed March 31, 2008; reviewed Mr. Grande's memorandum of law filed May 22, 2008; and reviewed Defendant's memorandum of law filed June 19, 2008. Mr. Grande represented himself in the Small Claims Court and in this appeal. Defendant was represented in both proceedings by Stephen Cosgrove, Esq.

It is not the function of the Superior Court to substitute its own judgment for that of the Small Claims Court Judge. Rather, the role of the Superior Court is to determine whether or not the evidence presented at the hearing supports the facts that the Judge decided were the credible facts, and whether or not the Judge correctly applied the proper law and procedure.

Decision and Order of the Small Claims Court

The Small Claims Court Judge made the following findings of fact in the written decision of March 6, 2008. Mr. Grande rented an apartment from Landlord for $590.00 per month, and made an upfront payment of $590.00 for security deposit, $246.00 for his subsidized portion of first month's rent, and $590.00 for last month's rent. Mr. Grande vacated the apartment on September 30, 2007. *Landlord used $590.00 of the initial payment toward the last month's rent.* The building manager inspected the apartment after 5:00 p.m. on the day Mr. Grande vacated, September 30, 2007, and determined that Mr. Grande was entitled to a full refund of his security deposit.

Landlord prepared a check for $*590.00* on Tuesday, October 2, 2007. This check was not postmarked, however, until Tuesday, October 16, 2007. During this time, Mr. Grande made phone calls inquiring as to the whereabouts of his security deposit, including a phone call on Monday, October 15th, *Columbus Day Holiday,* in which he informed the building manager that he "would be okay" if the deposit was delivered by overnight mail. The check was not delivered in the mail until October 22, 2007. The Judge made no findings regarding why the check was not mailed until October 16th after having been prepared on October 2nd.

The Judge concluded that Mr. Grande was not entitled to recover any further money from Landlord because Landlord did not willfully fail to return the security deposit within 14 days as required by 9 V.S.A. § 4461. She reasoned that the check was postmarked on Tuesday, October 16th, and that it was not received until October 22nd because it was sent with an incorrect zip code. She additionally reasoned that Landlord would not have "jeopardize[d] antagonizing" Mr. Grande by willfully withholding his money out of retribution.

Issues of Fact: Findings Not Supported by the Evidence

Mr. Grande correctly points out that the Judge made factual findings that are not supported by the evidence. The ones pertinent to the issues on appeal are highlighted in the summary above by italics and described specifically below. References are to paragraph numbers in the Findings of Fact in the written decision of March 6, 2008.

¶ 3. The Judge found that $590 of the $1,180.00 payment was credited toward the last month's rent. The record does not support this finding. The taking of evidence on this point was done in a confusing manner, but the evidence is clear that no portion of the $1,180.00 at issue was applied by the Landlord to the last month's rent. Rather, it was held by the Landlord and treated as an additional component of the security deposit, making $1,180.00 the total amount of the security deposit held by the Landlord. In Exhibit B, the cover letter from the Landlord sent with the return of the security deposit clarifies this, as the Landlord states, "Enclosed is our check representing your full security deposit of $1,180.00."

¶ 6. The Judge found that a check to Mr. Grande for the security deposit was cut in the amount of $590.00. The evidence does not support this. The undisputed evidence is that the amount of the check made out to Mr. Grande for return of the security deposit was $1,180.00.

¶ 8. The Judge found that Monday, October 15, 2007 was Columbus Day Holiday. It was not. Columbus Day was on October 8, 2007.

In sum, the facts supported by the evidence are that Mr. Grande paid, at the beginning of the lease term, in addition to first month's rent, $590 for a security deposit and $590 for last month's rent; that the last month's rent component was not used for last month's rent but was retained by the Landlord as an additional component of security

deposit, making $1,180.00 the total amount of security deposit held by the Landlord on September 30, 2007; and that when the Landlord cut a check to Mr. Grande to return the full security deposit to him to which he was undisputedly entitled, the amount of the check cut and eventually sent to him was $1,180.00.

Issues of Law: Statutory Requirements

The essence of the decision was the Court's conclusion that the security deposit was not mailed late because it was mailed on the first business day after a holiday, but that even if it was mailed late, the failure to mail the check on time was not "willful." Mr. Grande's appeal calls for this court to review the Small Claims Court's interpretation of statutory requirements for computation of the time in relation to a landlord's duty to return a security deposit, and for the meaning of the term "willful" in the context of the statute.

Security deposits are paid by tenants for the purpose of securing the performance of the tenant's obligation to pay rent and maintain the apartment free from damage beyond normal wear and tear, and are refundable to tenants at the expiration of the tenancy, subject to specific requirements as to any amount retained by the landlord. 9 V.S.A. § 4461(a). In order to ensure that appropriate refunds are promptly delivered at the end of the tenancy and that the tenant has swift notice and opportunity to contest any deduction, landlords are required to return the security deposit, along with a written statement itemizing any deductions, "within 14 days from the date on which the tenant vacated or abandoned the dwelling unit," by hand-delivering or mailing the deposit. *Id.* §§ 4461(c), (d).

There are no exceptions to this requirement, and if the landlord fails to return the deposit within 14 days for any reason, the landlord "forfeits the right to withhold any portion of the security deposit." *Id.* § 4461(e). In addition, if the failure to return the deposit within 14 days is willful, the landlord "shall be liable for double the amount wrongfully withheld, plus reasonable attorney's fees and costs." *Id.*

The issue in this case is whether Landlord willfully failed to return Mr. Grande's security deposit within 14 days. The Judge determined that there was no willful failure because (1) Landlord mailed the check from New Jersey on Tuesday, October 16th, and (2) Landlord would not have "jeopardize[d] antagonizing" Mr. Grande by engaging in retribution. For the following reasons, these determinations do not support the conclusion that no willful failure occurred.

First, Landlord did not return the security deposit in time. Section 4461(d) requires security deposits to be returned by hand-delivering the deposit or putting it in the mail within 14 days from the date the apartment is vacated, which in this case was September 30, 2007. The computation of the 14 days is governed by V.R.C.P. 6(a), which provides that the day of the event from which the designated period of time begins to run (in this case, September 30th) shall not be included, and that the last day of the period shall be included unless it is a weekend or legal holiday. Landlord was therefore

required to hand-deliver or mail the security deposit by Monday, October 15th. The Judge appears to have erroneously excluded Monday, October 15th from her calculation of time out of a belief that it was a federal holiday (Columbus Day). In fact, Columbus Day was one week earlier—October 8, 2007. Monday, October 15th was an ordinary business day, and Landlord was required to mail the $1,180.00 by the 15th if it was to be on time. When Landlord mailed the check on Tuesday, October 16th, it was one day late.

The date of receipt of the deposit by tenant is not material. Section 4461(d) clearly states that the timeliness of returns is determined by whether the landlord has hand-delivered or mailed the deposit and accompanying statement of deductions within 14 days. Thus, in this case, the relevant time for determining whether Landlord complied with § 4461 was the date the $1,180.00 was put into the mail.

Second, § 4461 is intended to serve the remedial function of requiring security deposits to be returned to tenants within the prescribed time period, and does not contain any exceptions or grace periods for late returns. In other words, § 4461 does not distinguish between deposits that are returned one day late or extremely late. Under the statute, late is late, and any late return is subject to the penalty provisions set forth in § 4461(e). It makes sense in context that timeliness of the return of deposit funds is important. Tenants may have immediate need of the funds for subsequent rental arrangements. Moreover, if the requirement is not strict, landlords have no incentive to be prompt, and may wrongfully deprive a tenant of funds through simple inattention or inadvertence.

Third, although the Judge did not define the term "willful," she appeared to conclude that it required a showing of retribution or ill will. At oral argument, Landlord defended this interpretation and contended that an award of double damages under § 4461(e) requires a showing of malice. See, e.g., *King v. Brace*, 150 Vt. 222, 224–25 (1988) (defining wanton and willful misconduct as "conduct manifesting personal ill will, or carried out under circumstances of insult or oppression, or even by conduct manifesting a reckless and wanton disregard of one's rights") (citations omitted). Mr. Grande contended that a showing of malice is not required because the statute requires only a willful failure to return the security deposit within 14 days; the Legislature could have, but did not, include a requirement of a finding of malice. He also argued in the alternative that even if malice were required, the facts support a finding of malice.

A showing of malice is not required under § 4461. The standard legal definition of "willful" is an act that is "voluntary and intentional, but not necessarily malicious." Black's Law Dictionary 1630 (8th ed. 2004). The dictionary definition is consistent with the term's common legal usage. See, e.g., *State v. Penn*, 2003 VT 110, ¶ 9, 176 Vt. 565 (mem.) (defining a willful act as one done "purposefully and intentionally, and not by accident, mistake or inadvertence"); *Russell v. Armitage*, 166 Vt. 392, 399 (1997) (explaining that, in the contempt setting, a defendant willfully violates a child-support order when he fails to make a required payment despite an ability to comply).

In this case, 9 V.S.A. § 4461 imposed a specific and definite obligation upon Landlord to return the security deposit no later than October 15th by hand-delivering it or putting it in the mail, with no exceptions. The evidence showed (and the Judge found) that Landlord prepared a check for the full return of Mr. Grande's security deposit on October 2nd, at which point Landlord was required to take no further action except simply put the check in the mail. For reasons that are unexplained by the Judge's findings, Landlord did not do this until October 16th. Janet Jacobs (one of the principals of the limited liability corporation that served as landlord for Mr. Grande's apartment) testified that she was on vacation or busy during this period, and that her failure to return the check was inadvertent. This assertion is outweighed by the Judge's findings, supported by evidence, that (1) Landlord is a limited liability corporation that employs more than one person, including a secretary responsible for handling paperwork in this matter; (2) Mr. Grande made repeated phone calls during the 14-day window inquiring as to the status of his security deposit; and (3) the check was not sent in time.

The findings of the Court show that Landlord had the ability to return Mr. Grande's deposit by October 15th but did not do so—and indeed did nothing between October 2nd and October 16th—despite repeated inquiries and reminders from Mr. Grande. Under the circumstances, the Landlord's conduct (through its agents) amounted to a choice to take no action instead of mailing the check. This constitutes a voluntary and deliberate failure to return the security deposit within 14 days, and justifies imposition of penalties under § 4461(e) for willful withholding.

For the foregoing reasons, the court concludes that the Judgment of the Small Claims Court must be reversed. A correct application of the law shows that Landlord willfully failed to return Mr. Grande's security deposit within 14 days from the date Mr. Grande vacated the apartment. Landlord is accordingly "liable for double the amount wrongfully withheld, plus reasonable attorney's fees and costs," *id.* § 4461(e). The evidence showed that $1,180.00 was the amount wrongfully withheld. Because Landlord has already remitted $1,180.00 to Mr. Grande, and Mr. Grande has not incurred attorney's fees or costs in the underlying action or appeal, Mr. Grande is entitled to a judgment in the amount of $1,180.00. This disposition makes it unnecessary to address Mr. Grande's remaining arguments.

ORDER

The decision of the Small Claims Court dated March 6, 2008 is *reversed*, and Judgment is entered in favor of Mr. Grande in the amount of $1,180.00.

Dated at Rutland, Vermont this 8th day of August, 2008.

Mary Miles Teachout

Hon. Mary Miles Teachout
Presiding Judge